

## **The complaint**

Mrs R complains about Metro Bank PLC.

She says that Metro didn't do enough to protect her when she became the victim of a scam and would like Metro to refund her the money she has lost.

## **What happened**

Mrs R was introduced to 'C' by a friend who had recently started investing with C and was happy with the service it was providing.

Having been through a significant life event, Mrs R was keen to maximise her savings. C then contacted Mrs R and persuaded her to invest with it. Initially Mrs R was impressed with the seemingly professional nature of C and could see through her 'online portal' that the money she was paying was being invested in gold and purchased by cryptocurrency.

However, this was not the case – the funds had been used to purchase crypto only and the online portal was fake.

Mrs R was then pressured to pay in further funds when her supposed profits started decreasing, which C blamed on the Covid-19 Pandemic. C kept pressuring her to pay more money.

Mrs R then realised that C was a scammer – and the friend that introduced her to C confirmed that they had also fallen victim to the scam.

Mrs R was in denial for a while and suffered depression after losing so much money, but then reported the scam to Metro through a third party and raised a complaint. Metro didn't uphold her complaint, so she brought it to this Service.

Our Investigator considered the complaint, and thought that it should be upheld in part, but that Mrs R should also be liable for some of the loss.

I have previously issued a provisional decision on Mrs R's complaint, where I explained that while I was minded to also uphold Mrs R's complaint, I also did not feel that the deduction in award was appropriate.

Mrs R accepted my provisional decision, but Metro did not. It said that it would be willing to now accept our Investigators view to bring the complaint to a close. It also provided further comments for me to consider.

## **What I've decided – and why**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, I've decided to uphold this complaint in part, and make no changes to my provisional decision, although I will comment on what Metro has said.

*Was Mrs R the victim of a scam?*

It isn't in dispute here that Mrs R was the victim of a scam. Mrs R was mis-led by the scammer into what she was investing in and was pressured to pay more money to reach certain 'levels' before she could access her supposed profits. C has now had a warning placed on it on the Financial Conduct Authority (FCA) register.

Mrs R made the following payments as part of the scam.

| Date payment left Mrs R's account | Payment type | Payee | Amount    |
|-----------------------------------|--------------|-------|-----------|
| 03/02/2020                        | Card payment | X     | £2,184.93 |
| 03/03/2020                        | Card payment | X     | £3,670.68 |
| 03/03/2020                        | Card payment | X     | £4,369.85 |
| 04/02/2020                        | Card payment | X     | £1,303.29 |
| 04/02/2020                        | Card payment | X     | £3,909.86 |
| 05/02/2020                        | Card payment | X     | £6,132.40 |
| 05/02/2020                        | Card payment | X     | £6,570.43 |
| 05/02/2020                        | Card payment | X     | £7,025.98 |
| 12/02/2020                        | Card payment | X     | £5,255.47 |
| 12/02/2020                        | Card payment | X     | £7,007.30 |
| 12/02/2020                        | Card payment | X     | £7,833.21 |
| 12/02/2020                        | Card payment | X     | £7,833.21 |
| 12/02/2020                        | Card payment | X     | £7,833.21 |
| 12/02/2020                        | Card payment | X     | £7,833.21 |
| 14/02/2020                        | Card payment | X     | £4,998.00 |
| 14/02/2020                        | Card payment | X     | £7,779.49 |
| 14/02/2020                        | Card payment | X     | £7,822.95 |
| 14/02/2020                        | Card payment | X     | £7,822.95 |
| 14/02/2020                        | Card payment | X     | £7,822.90 |
| 21/02/2020                        | Card payment | X     | £4,299.74 |
| 21/03/2020                        | Card payment | X     | £4,299.74 |

|            |              |       |             |
|------------|--------------|-------|-------------|
| 19/03/2020 | Card payment | X     | £6,125.26   |
| 19/03/2020 | Card payment | X     | £8,386.89   |
| 19/03/2020 | Card payment | X     | £8,434.01   |
| 19/03/2020 | Card payment | X     | £8,481.12   |
| 14/03/2020 | Card payment | X     | £4,525.31   |
| 14/03/2020 | Card payment | X     | £5,430.37   |
| 14/04/2020 | Card payment | X     | £5,430.37   |
|            |              | Total | £170,422.18 |

Did Mrs R authorise the payments?

In line with the Payment Services Regulations 2017 (PSRs), Mrs R isn't liable for payments she didn't authorise, unless she failed with gross negligence or intent to comply with the terms of the account or keep her personalised security details safe.

I'm satisfied that Mrs R did authorise the payments in question – they were made using her own bank card and she responded to a text sent to her by Metro that it was her making the payments.

I understand Mrs R had been tricked into instructing Metro to make the payments – but while Mrs R never intended the payments to go to the scammers, this doesn't change the fact she authorised them and is therefore presumed liable for the loss in the first instance.

I understand that Metro have stated that under reg 74 of the PSRs and set out in its current account Terms and Conditions, it is unable to investigate transactions that took place more than 13 months ago. But the PSR's only apply to unauthorised transactions – and these payments were authorised, so this doesn't apply.

#### *Recovery of Mrs R's payments*

After Mrs R made the payments, I wouldn't expect Metro to do anything further until it was notified of the scam.

The only recourse for potential recovery of the funds for the payments made by debit card would be via the chargeback scheme. Chargeback is a process by which disputes are resolved between card issuers (here, Metro) and the merchant (here, X).

However, a chargeback in these circumstances would unlikely have been successful as Mrs R didn't report the scam until after the timescales usually allowed for a chargeback claim had already passed.

#### *Should Metro have reasonably prevented the payments in the first place?*

I can only uphold this complaint if I think that Metro reasonably ought to have prevented some or all the payments Mrs R made in the first place – therefore preventing the loss before it happened.

Mrs R authorised the scam payments in question here – so as I've explained above, she is presumed liable for the loss in the first instance.

That said, as a matter of good industry practice, Metro should have taken proactive steps to identify and help prevent transactions – particularly unusual or uncharacteristic transactions – that could involve fraud or be the result of a scam. However, there is a balance to be struck: banks had (and have) obligations to be alert to fraud and scams and to act in their customers' best interests, but they can't reasonably be involved in every transaction.

Taking into account the law, regulatory rules and guidance, relevant codes of practice and what I consider having been good industry practice at the time, I consider Metro should fairly and reasonably:

- Been monitoring accounts – including payments made and received – to counter various risks including anti-money laundering, countering the financing of terrorism and preventing fraud and scams;
- Have had systems in place to look out for unusual transactions or other signs that might indicate its customers were at risk of fraud (amongst other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer; and
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

This leads me to consider the payments that Mrs R made – and if Metro should have intervened.

#### *The first two payments*

I'm not persuaded that Metro should have intervened on the first two payments that Mrs R made – while they were higher than her usual day to day spending, but Mrs R did periodically make higher value payments, so they were not so uncharacteristic or unusual to have triggered a response from Metro at this time.

#### *Payment three*

By the time payment three was made, Mrs R's total spend for the day was now £10,225.46 – all going to a crypto exchange. This was unusual behaviour for Mrs R – and should have alerted Metro to check if everything was as it should be.

I understand that Metro says that as Mrs R is a private banking customer that the timeframe and transactions made were not unusual – but I disagree. Just because someone is a private banking customer does not necessarily mean that they will make high value transactions in a short space of time – and having looked at Mrs R's statements, it appears that they are unusual for her normal spending behaviour.

I consider that Metro should have contacted Mrs R, and I would have expected it to have questioned her about the payment – including what the payment was for, and the surrounding context – and to proceed accordingly. The intention being to disrupt or uncover a potential fraud or scam.

I've seen nothing to suggest that Mrs R had been coached, or told to lie about the payments

she was making – so I think that had Metro acted as I would've expected, it would quickly have uncovered what was going on.

I understand that Metro sent Mrs R a text message on 29 January 2020 (the day the payments were made, although not when they debited the account). And that she spoke with it on the phone to confirm the transactions were genuine – but Metro hasn't provided me with a copy of the call that it says took place, or any notes from the time. So, I can't say that it did give Mrs R a meaningful warning or acted as I would have expected. A text message to confirm a payment is genuine does not go far enough.

Metro has provided me with a later call where Mrs R questions if the payments had now gone through and mentioned that they were going to a crypto seller, and that she wanted to make more payments – this was again an ideal opportunity for Metro to intervene – although later than I would normally expect. But Metro didn't pick up on this either and told Mrs R that she could pay up to £20,000 in one day by card.

Had Metro warned Mrs R appropriately, I don't think that Mrs R would've continued with payment three and the loss could've been prevented from this point, and I think Metro missed an opportunity to intervene.

*Should Mrs R bear some responsibility for the loss?*

While I do think that Metro should have prevented the third payment I do also need to consider if Mrs R should bear some responsibility for the loss by way of contributory negligence.

I understand that our Investigator thought that Mrs R should bear some responsibility as she said she checked the FCA register, and found no warning about C. But I disagree.

Mrs R wasn't an experienced person here – whereas Metro was the expert and had more knowledge on the intricacies of these types of scams. She had been given convincing literature from C in an attempt to prove its supposed legitimacy, signed a contract and provided identification documents similar to what you would expect from a legitimate company. The promise of rate of return was also not so outlandish at between 5-10% per annum to have been unbelievable for an investment product.

C's website was also professional looking and provided fake details of its supposed credentials including regulation. And while Mrs R said that she checked the FCA website to determine if there were any warnings about the company, she hasn't said she checked to see if it was registered – this is an important distinction as I wouldn't necessarily expect Mrs R as a lay person to understand what she was supposed to be looking for. There were also no other warnings about C that I could find online from the time that Mrs R was scammed into making the payments, so even if she had done further research, I don't think that she would have found anything to have caused her alarm.

Metro said in response to my provisional decision that Mrs R would have seen that C was not regulated, so she should have known that there was a risk, and that the document Mrs R signed with C stated that she could not make a withdrawal until her account balance reached \$400,000 this should have been a further read flag. But as I've explained above, Mrs R checked the FCA website for warnings, and was not an experienced investor. Again, Metro was the expert, not Mrs R. So the points Metro has raised don't change my decision.

### **Putting things right**

Metro Bank PLC should refund Mrs R from payment three onwards.

I calculate this to be £164,566.57.

On top of this, Metro Bank PLC should also pay Mrs R the rate of interest on her savings account where the funds originally came from on this amount, from the date the payments were made until date of payment to Mrs R (less any lawfully deductible tax).

**My final decision**

I uphold this complaint in part. Metro Bank PLC should put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R to accept or reject my decision before 9 August 2023.

Claire Pugh  
**Ombudsman**