

The complaint

Mr H complains that Metro Bank Plc won't fully refund him money he lost when he was the victim of a scam.

Mr H is represented by a firm that I'll refer to as 'R'.

What happened

The background to this complaint is well known to both parties and so I'll only refer to some key events here.

In 2023 Mr H was the victim of an investment scam. He's explained that, while at work, he received a telephone call from an individual - claiming to work as a broker for a firm I'll refer to as 'A' – offering an investment opportunity. Under the belief A were legitimate, Mr H went ahead with the investment opportunity. And the scammer convinced Mr H to download remote desktop software – thereby allowing them to assist Mr H in setting up crypto wallets, a trading platform and making the payments for the investment.

The following debit card payments were made to legitimate crypto exchanges, to buy crypto, before being sent to A's trading platform:

Transaction date	Amount
24 February 2023	£300
7 March 2023	£888.97
10 March 2023	£1,500
22 March 2023	£4,400
23 March 2023	£600
28 March 2023	£30
29 March 2023	£30
29 March 2023	£30
17 May 2023	£4,800
19 May 2023	£5,200
Total:	£17,778.97

There was also an attempted payment of £3,200 on 18 May 2023, but this was unsuccessful and not processed.

Mr H realised he'd been scammed when A kept demanding more money, and so he contacted the Financial Conduct Authority (FCA) who confirmed it was a scam.

R complained to Metro, on behalf of Mr H, on 1 August 2023 saying these payments were made as part of an investment scam. They considered Metro failed to protect Mr H from the scam by not identifying the payments as out of character and indicative of fraud, and that they could've been prevented if had an appropriate intervention happened. They wanted Metro to reimburse Mr H and pay 8% simple interest.

Metro offered to repay 50% of Mr H's losses, £8,889.48. In short, they said:

- They were unable to review Mr H's claim under the Contingent Reimbursement Model code as the payments were card transactions.
- The transactions were challenged on two occasions by the bank. But while they took appropriate action questioning these transactions, they accepted this presented an opportunity for them to have asked more probing questions.
- Mr H failed to conduct sufficient due diligence checks of his own into A, especially when he hadn't instigated any form of contact – which is why they thought liability should be shared.
- R had provided a website link showing a firm flagged by the FCA as an unauthorised firm on 24 January 2023, a month before the first payment was made. The name of this firm is however slightly different to A. And further checks on Companies House show that A was a UK establishment of an overseas company that closed on 14 September 2020. Had Mr H conducted his own due diligence checks before investing, he would've not only been alerted to the FCA warning but also the Companies House information pertaining to A.
- Mr H allowed the scammer access to set up the accounts, thereby giving full control over the crypto wallets.

R provided Metro with Mr H's account details for the 50% refund to be paid, but they referred the complaint to the Financial Ombudsman for the remaining loss. Our Investigator, in short, said:

- She noted that R had said the scammers made the debit card payments to the crypto exchanges, as they were automatically stored on Mr H's internet browser. But while Mr H may not have made the payments himself, she was satisfied Mr H was aware of the funds leaving his account and consented to them – as he spoke with Metro about pre-authorising the transactions. She therefore considered Mr H had authorised the transactions.
- As Metro accepted they could've done more to prevent the scam, she considered whether they'd acted fairly by only refunding 50%.
- The FCA warning published on 24 January 2023 wasn't regarding A, but a firm with a similar name.
- But having searched A online, she'd found several websites with negative reviews – from the year prior - indicating it was scam. So, if Mr H had carried out his own checks, he ought to have come across these and he could've prevented the scam from occurring.
- She therefore thought Metro had acted fairly by refunding 50% of the scam payments as Mr H could've done more to protect himself from it too. She did however think Metro should pay 8% simple interest to reflect Mr H's loss of use of the funds.

Metro agreed to pay this.

Mr H disagreed. He didn't think there should be any reduction in the award due to contributory negligence as he carried out all the appropriate checks he could have to ensure A was legitimate. This included:

- Searching A online and not finding any negative reviews or reference of scams.
- He was able to match A with a company listed on Companies House.
- He reviewed A's websites and found it professional, as he did the scammer.

Our Investigator remained of the view a 50% refund, with 8% simple interest, was fair. She added:

- Mr H said he checked Companies House and found A listed. But this shows A was a UK establishment of an overseas company showing as 'closed'.
- The online reviews she'd previously referred to were found on the first page of the search results. So, although Mr H said he did checks she didn't think they were sufficient if he didn't find these.
- She therefore thought Mr H was also responsible for his loss given he proceeded to invest with a firm that he hadn't actively sought, and which showed as closed on Companies House as well having negative reviews online. Because of this, she didn't think Mr H had undertaken adequate research into A before investing.

Mr H disagreed and so the matter has been passed to me to decide. He further added:

- His initial study of the company was that he searched them online and found the firm had a four-star review (as shown in an image he provided).
- He can't remember what Companies House's website said.
- He recalls asking A where their office was based and they told him, while they had several branches, they were mostly working remotely due to the pandemic. Their branches would however be reopening soon and they explained the trading platform's name was 'A E.U.' as they were making Euro investments only.

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.

Metro has accepted they could've done more to protect Mr H from the scam. I therefore don't intend to comment on that any further here. Instead, I'll focus on whether Metro acted fairly by only refunding 50% of the payments. And for similar reasons as our Investigator, I think they did. I'll explain why.

Before I do though, I've firstly considered whether the payments were authorised by Mr H. And while it may have been A that made the payments, by way of using remote desktop software, there hasn't been any suggestion that Mr H didn't know or consent to this. It follows that I consider Mr H authorised the transactions and so, although there are circumstances whereby it might be appropriate for a bank to carry out additional checks first, Metro was expected to process them.

Banks, like Metro, ought to have systems and processes in place to counter various risks including preventing fraud and scams. But there's also a general principle that consumers must take responsibility for their decisions and conduct suitable due diligence to protect themselves too. And, having carefully considered everything, I don't think I can reasonably conclude Mr H did so before investing with A.

This is because I would've expected Mr H to have carried out some checks on A before investing – particularly as the investment opportunity came from an unsolicited call. And I think it would've been reasonable to have expected Mr H to have searched A online to determine whether they were legitimate. Mr H says he did this but he didn't find any negative reviews for A or references of it being a scam. But having carried out an historical internet search myself, I found several websites from 2022 – thereby predating the scam – that warned of A being a scam. And as these websites appeared high in the search results, I think Mr H ought similarly to have been able to find them. This therefore should've put him on notice that A may not be legitimate, thereby prompting him to take greater caution before proceeding.

Mr H has also told us that, as part of his due diligence, he found A on Companies House – albeit he can't recall what the website said. But, as both Metro and our Investigator have established, Companies House show that A was a UK establishment of an overseas company showing as 'closed' in September 2020. And so, given Mr H had found A on Companies House, I would've likewise expected him to have seen this. This, alongside the internet websites indicating A was a scam, should've given Mr H further reason to believe he wasn't dealing with a legitimate firm.

I also think it's relevant to point out that the image Mr H has provided showing a four-star rating online isn't for A – but it's for the firm spelt in a similar way, and which the FCA published a warning about. Therefore, if Mr H relied upon this, then I think he was careless when researching a firm that he was investing a significant amount of money with. And I think it's reasonable to expect a consumer to ensure they're looking at information about the correct firm when carrying out their due diligence. Furthermore, even if Mr H did mistakenly rely on this four-star rating, this was based on a single review. So, I don't think this would've been enough – considering the concerns I've outlined above – for Mr H to have reasonably been satisfied that A was a legitimate firm.

I therefore think Mr H contributed to the loss he suffered from this scam. And because of this, I think it was fair for Metro to only refund 50% of the scam payments – as, given Metro accept they could've done more to protect Mr H, both parties could've prevented the loss.

I have however considered that Mr H was deprived of the use of his money as a result of the scam. And, to recognise this, Metro has agreed to pay 8% simple interest – which is what I would expect and I think is fair here. I'm therefore only directing them to pay this interest in addition to what they've already paid.

My final decision

My final decision is that I uphold this complaint in part. I direct Metro Bank Plc to pay 8% simple interest, per year, on the 50% scam payments – totalling £8,889.48 - they've already refunded. This should be calculated from the date of each payment to the date of settlement less any tax lawfully deductible.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 30 January 2024.

Daniel O'Dell
Ombudsman