

## **The complaint**

Miss C complains that Metro Bank PLC (“Metro”) hasn’t protected her from losing money to a scam.

## **What happened**

The background to this complaint is well known to both parties, so I won’t repeat everything here. In brief summary, Miss C has explained that in February 2020 she made ten debit card payments from her Metro account for what she thought was a legitimate investment. The payments totalled £52,520.90.

Miss C subsequently got in touch with Metro and said she’d been scammed. Metro didn’t reimburse Miss C’s lost funds, and Miss C referred her complaint about Metro to us. As our Investigator couldn’t resolve the matter informally, the case has been passed to me for a decision.

## **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 not uphold this complaint for materially the same reasons as our Investigator. I’ll explain why.

Banks have various and long-standing commitments to be alert to fraud and scams and to act in their customers’ best interests. But these are predicated on there having been a fraud or scam. So, my first consideration must be whether Maxiflex Ltd trading as EuropeFX (“M”) was operating a scam as Miss C alleges.

Not every complaint referred to us and categorised as an investment scam is in fact a scam. Some cases simply involve high-risk investments that resulted in disappointing returns or losses. Some of these investments may have been promoted using sales methods that were arguably unethical and/or misleading. However, whilst customers who lost out may understandably regard such acts or omissions as fraudulent, they do not necessarily meet the high legal threshold or burden of proof for fraud i.e. dishonestly making a false representation and/or failing to disclose information with the intention of making a gain for himself or of causing loss to another or exposing another to the risk of loss (Fraud Act 2006).

In simpler terms, some merchants may have used sales and promotional methods that could be seen as unfair by consumers considering the losses they’ve incurred – but this does not always amount to fraud.

Bearing this in mind, in this case I’m not sufficiently persuaded that at the relevant time M was operating a scam. I say this because:

- At the relevant time M was regulated by Cyprus Securities and Exchange Commission (CySEC) with passporting rights through the FCA, which meant it could

offer services to UK customers. It would be highly unusual for those operating a scam to agree to comply with the requirements of regulation.

- The International Organization of Securities Commissions (IOSCO) is an international body that brings together the world's securities regulators. I've found no information on the IOSCO's Investors Alerts Portal that M, who Miss C dealt with in February 2020, was operating a scam. Whilst this isn't automatically conclusive in its own right, bearing in mind the time and circumstances that have passed since Miss C's payments in February 2020, in my view it would be surprising (and unlikely) for there to not be a specific applicable warning on there about M if it was indeed operating a scam as Miss C alleges.
- The FCA (the UK regulator) also has its own warning list in place to share alerts and insight about merchants that have been identified as potentially being fraudulent. I note the FCA published a statement on 15 June 2020 explaining M couldn't open new accounts for UK customers. But it also said that UK consumers who weren't satisfied with any aspect of the handling of their trading accounts should first complain to the firm directly, and that if they were unhappy with the firm's response or they failed to respond, they could ask the Cyprus Financial Ombudsman to consider their complaint. So it explained there was recourse for any disagreement to be heard, which is not something I'd generally expect if it was a scam company.
- I note CySEC made the decision in December 2022 to withdraw its authorisation of M, after suspending it in October 2021. But the information I've seen about this does not persuade me this was because M was deemed to be running a scam.
- I've carefully considered Miss C's submissions, which include comments about information in the public domain she thinks indicates M was operating a scam. However, customers can lose a lot of money and quickly with high-risk investments. This can lead to a sense of being scammed, particularly if some questionable practices are involved. However, this doesn't mean M was operating a scam, bearing in mind what I've already said about this. So, whilst I've taken these points on board, they haven't changed my mind.
- Overall, I'm not persuaded the weight of evidence is tipped in Miss C's favour. I give strong weight to the fact that there is no credible evidence such as regulator warnings about this merchant operating a scam at the relevant time, particularly given the time that has passed since Miss C's payments. And overall, I'm not sufficiently persuaded that M was operating a scam at the time it offered services to Miss C.

As I'm not sufficiently persuaded M was operating a scam at the time, I can't reasonably say there would have been a reasonable expectation for Metro to have intervened in Miss C's payments before they were sent.

For completeness, and to help Miss C's understanding though, it's worth me saying here also that even if I thought M most likely was operating a scam (and for clarity I'll say again that I do *not* think it was), I still wouldn't have been persuaded to say Metro should have prevented Miss C's payments. This is because I think that even if Metro had paused the payments in February 2020, pending further enquiries with Miss C, it's unlikely that any questioning and discussion with Miss C about the payments would have resulted in her not making them. Metro has no obligation to protect its customers from bad bargains or to provide investment advice. And I'm not persuaded there would have been any persuasive

information available to Miss C or Metro at the time of her payments to suggest M was operating a scam.

After the payments were made, I wouldn't reasonably have expected Metro to have done anything until Miss C alleged she'd been scammed. But because I'm not sufficiently persuaded M was operating a scam at the time, I don't think it's likely a chargeback on the grounds that she had would have been successful. In any event, even if Miss C was scammed (and like I've said, I'm not sufficiently persuaded she was), a chargeback would only be able to be made within the scheme rules, which Metro is bound by, meaning there are only limited grounds and limited forms of evidence that would have been accepted for a chargeback to be considered valid, and potentially succeed; time limits would also have applied. So whilst I don't think Miss C was scammed and therefore a chargeback wouldn't likely have succeeded on those grounds regardless, for the sake of argument, I don't think this would have made a difference. This means I don't think Metro can reasonably be held responsible for the funds not having been recovered.

I realise Miss C will be disappointed. But for the reasons I've explained, I'm satisfied it wouldn't be fair to hold Metro responsible or to ask for it to do anything further.

### **My final decision**

For the reasons explained, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept or reject my decision before 6 February 2024.

Neil Bridge  
**Ombudsman**