

The complaint

Mr and Mrs M complain that AIB Group (UK) Plc trading as First Trust Bank (AIB) didn't do enough to help them recover their money when they were the victims of an online investment scam.

The payments all came from a joint account, but for ease of reading and as he's done most of the correspondence to date, I'll mainly only refer to Mr M where I mean both Mr and Mrs M.

What happened

The detailed and lengthy background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here. Between September 2017 and May 2018 Mr M made a series of debit card payments to a merchant I'll refer to as 'X'. At the time he believed he was crediting an investment account that X had said would help him recover his losses that stemmed from a previous investment.

The payments to X totalled around £17,000. There was also a further payment to another merchant 'E' which took place in July 2018 for £3,841.48 which Mr M alleged he hadn't authorised.

In October 2018 Mr M contacted AIB. He made his allegation that the payment to E hadn't been authorised and also asked that a chargeback be raised in relation to the payments to X on the basis that the service hadn't been provided. The crux of his argument was that X couldn't have provided the trading services they purported to because they weren't regulated and authorised to do so.

Ultimately AIB declined to raise a chargeback or make any refund. Mr M complained and when AIB maintained their position the matter was referred to our service. One of our Investigators recommended that the complaint should be upheld in part. In summary she concluded that AIB had acted fairly when not raising a chargeback, but she accepted that the payment to E was unauthorised and recommended that this should be refunded along with 8% simple interest. AIB accepted this outcome but Mr M disagrees. He believes he should be refunded all the outstanding payments and has asked for an ombudsman to make 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.

As both parties accept our Investigators recommendation with regard to the payment to E, I won't comment on that in detail beyond making the award in this decision. Instead, I'll focus on the area still to be resolved, the payments to X.

I don't think AIB ought to have done more than they did in relation to the payments to X at the time they were made. I've looked at Mr M's account history and I don't think payments of those amounts were unusual or suspicious in relation to the usual account activity. Banks do have obligations to be alert to fraud and scams and to act in their customers best interests. But there is a balance to be struck between stopping and checking payments and allowing customers free access to their money. In the circumstances of this complaint, I'm satisfied it was reasonable for AIB to process all the payments to X unchallenged.

The only possible route to recovering the debit card payments is therefore the chargeback scheme. AIB are bound by the card scheme providers (Visa in this case) rules. There is no right to a chargeback, but I'd generally consider it to be good practice that a chargeback is raised if it has a reasonable chance of succeeding.

I can understand the point that Mr M is making when saying that X couldn't have provided the services they purported to due to them not being regulated to do so. He's also said that the 'trading' that took place was nothing more than a simulation when in effect his money was just kept by X. But in saying this, Mr M is in effect alleging that X were operating a scam and that this was all a trick to misappropriate his funds. It's not that services weren't provided that should have been, it's that the entire operation was fraudulent. Whilst I have natural sympathy for Mr M being a victim in this way, being the victim of a scam isn't something that the chargeback scheme provides resolution for.

I've carefully considered the relevant chargeback options under the Visa rules. And the only one that I think potentially might have succeeded would be if Mr M could evidence that X had refused to allow him to withdraw available funds from his account with them. But there are very specific evidential requirements for this. And by Mr M's own testimony, by the time he raised this with AIB, his account balance was zero. Mr M said in response to our Investigator that he had provided plenty of evidence to show the request for a withdrawal. I've considered this but I don't think anything Mr M has provided would have met the requirements of the chargeback scheme. There is nothing to show that he had an available balance to withdraw at the relevant time. And for clarity, even if such evidence had been presented, it would only have potentially resulted in recovery of that balance, not all the payments made.

As I don't think there was an option for a chargeback that had a reasonable chance of succeeding, I think AIB's decision not to pursue this was a fair and reasonable exercise of their discretion – they can only operate within the chargeback schemes rules.

During the time this complaint has been with our service, Mr M also mentioned payments to another merchant 'B' who he believes to be one and the same as X. But as these payments weren't disputed with AIB, it wouldn't be appropriate for me to comment on them. There were also two payments included on Mr M's initial chargeback request to AIB that he hasn't evidenced have come from his account with them. As such there wouldn't have been an option to dispute payments that weren't made on his AIB debit card or that didn't come from this account.

I'm of course sorry to hear that Mr M lost money in this way. But as I don't think AIB reasonably ought to have prevented this or that they should have done more in relation to a chargeback, I'm not going to tell them to do more than they've already agreed to to resolve this complaint.

My final decision

For the reasons outlined above, my final decision is that I uphold this complaint in part.

Unless they've already done so, AIB Group (UK) Plc trading as First Trust Bank must pay

Mr and Mrs M £3,841.48. They must add to this amount 8% simple interest between the date of debit and the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M and Mr M to accept or reject my decision before 31 March 2022.

Richard Annandale
Ombudsman