

The complaint

Mr O complains that Bank of Ireland (UK) Plc (“BOI”) failed to refund £50,312.07 he paid to scammers posing as a binary options trader.

The details of this complaint are well known to both parties, so I will not repeat all the details again here. In summary, Mr O was contacted by an unsolicited caller in April 2019 from a scam company called Trade Ltd, where they persuaded him to invest in Forex trades. Over the space of six months, he was in frequent contact with the scammers and made the following payments (not including transaction fees):

Date	Merchant	Amount	
11 April 2019	tradeltd.com	£191.88	
15 April 2019	tradeltd.com	£383.13	
15 April 2019	tradeltd.com	£383.13	
26 April 2019	tradeltd.com	£1551.92	
08 May 2019	tradeltd.com	£1146.76	
08 May 2019	tradeltd.com	£1337.89	
20 May 2019	tradeltd.com	£2346.26	
20 May 2019	tradeltd.com	£1573.03	
03 June 2019	tradeltd.com	£2384.87	
03 June 2019	tradeltd.com	£1987.39	
17 July 2019	tradeltd.com	£2420.29	
22 July 2019	tradeltd.com	£4007.63	
22 July 2019	tradeltd.com	£1603.05	
13 August 2019	tradeltd.com	£4161.74	
04 September 2019	tradeltd.com	£2090.62	
04 September 2019	tradeltd.com	£2090.62	
17 October 2019	tradeltd.com	£2765.64	
17 October 2019	tradeltd.com	£2765.64	
17 October 2019	tradeltd.com	£2765.64	

17 October 2019	tradeltd.com	£2765.64	
21 October 2019	tradeltd.com	£1557.96	
22 October 2019	tradeltd.com	£1941.85	
22 October 2019	tradeltd.com	£1941.85	
30 October 2019	tradeltd.com	£1171.39	
30 October 2019	tradeltd.com	£2976.25	
	Total	£50,312.07	

Mr O subsequently discovered he had been scammed after Trade Ltd stopped corresponding with him and he was unable to withdraw his money, at which point he reported his concerns to BOI. A warning was subsequently placed on the Financial Conduct Authority website about investing with Trade Ltd, but BOI declined to refund the payments Mr O had made, as it said he had authorised them. Unhappy with this decision, Mr O referred his complaint to this service, and the matter has been escalated to me to determine.

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 agree with the conclusions reached by the investigator and have decided to uphold it. I'll explain why.

I am satisfied that Trade Ltd were not carrying out legitimate binary-options trades but were instead dishonestly defrauding customers, e.g. by not actually making trades/bets with the money received from clients but simply manipulating their online 'trading platform' to show purported gains—with initial token pay-outs—in order to induce further 'investments' from victims such as Mr O. In the absence of evidence to the contrary, I have concluded this because:

- a) Prior to January 2018, binary-options dealers were required to be licensed by the UK's Gambling Commission — whereas Trade Ltd were not. Nor were they regulated in any other jurisdiction so far as I am reasonably aware. This indicates they were operating illegally, probably with dishonest intentions. Legitimate firms tend to comply with regulatory requirements.
- b) On 9 January 2020, a warning about Trade Ltd was placed on the FCA's website.
- c) There are several reports in the public domain—e.g. foreign press and online forums—stating that Trade Ltd were scammers. This hearsay is not in itself sufficient evidence of fraud. But in the context of known regulatory facts, it may fairly and reasonably be regarded as circumstantial evidence that helps build an overall picture of scammers dishonestly seeking gains at the expense of others.

But having concluded that this was a scam, it's also necessary to consider whether the disputed payments were unusual or uncharacteristic enough for Mr O's account such that they ought reasonably to have triggered an intervention by BOI.

Unusual or uncharacteristic activity

BOI is aware of our general position on a Payment Service Providers' safeguarding and due-diligence duties to protect customers from the risk of financial harm due to fraud. We have published many decisions on our website setting out these principles and quoting the relevant rules and regulations. It is unnecessary to rehearse them again here in detail.

It is common ground that the disputed payments were 'authorised' by Mr O for the purposes of the Payment Services Regulations 2009 ('the Regulations'), in force at the time. This is because they were made by him using the legitimate security credentials provided by BOI.

These must be regarded as 'authorised payments' even though Mr O was the victim of a sophisticated scam. So, although he did not intend the money to go to scammers, under the Regulations, and under the terms and conditions of his bank account, Mr O is presumed liable for the loss in the first instance.

However, taking into account the law, regulatory rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider BOI should fairly and reasonably:

- Have been monitoring accounts—and any payments made or 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.

I am satisfied there were enough 'triggers' in this case to have alerted a responsible regulated bank such as BOI that Mr O's account was being subjected to unusual and uncharacteristic activity. There were reasonable grounds to suspect a fraud or scam, and therefore justify an intervention (such as phoning him in order to ask discreet questions about the nature and purpose of the payments).

First, regulated firms ought reasonably to take notice of common types of scams. As long ago as June 2012, the FCA's predecessor indicated—in its consultation paper entitled *Banks' Defences Against Investment Fraud: detecting perpetrators and protecting victims*—that it was good industry practice for firms to build up an updated watch-list of types of scams and potential perpetrators; and regularly to share "timely and detailed intelligence" with other banks, UK and overseas regulators, the police, etc. Whilst the regulator gave no specific timings, it is not unreasonable in my view to expect an international bank to update its watch-list and communicate internally to staff within, say, one month of an alert being posted by the FCA or IOSCO. In my judgment, such alerts should automatically trigger alarm-bells—and lead to the payment being paused—pending further enquiries (and a possible scam warning) to the payer.

In Mr O's case, there was no warning about Trade Ltd on IOSCO's Investor Alerts Portal or the FCA website until after he made all of his payments. So, I do not think BOI ought to have automatically blocked payments to it. However, in light of the odd pattern of payments that followed, I do think this was a trigger for potential fraud, particularly given that this was also a new payee; it was a transaction made in USD, and it was also a payee trading in binary options without being registered with the FCA (as required at the time). I appreciate the early

transactions were of relatively low value, but, BOI has said itself that *“the initial payments were outside of [Mr O’s] normal spending habit.*

So I’m satisfied it ought reasonably to have identified the transaction to Trade Ltd as unusual and uncharacteristic. Therefore, it would have been reasonable for BOI to have properly questioned Mr O before processing all the payments he made to Trade Ltd in order to satisfy itself that all was well. The frequency of the payments (and by BOI’s own admission, the unusual nature of the transactions) should in themselves have alerted the bank to the risk of harm and prompted discreet queries from the outset. However, no attempts to contact Mr O were made by BOI to question him about the payments he was attempting to make.

If BOI had fulfilled its duties and carried out due diligence by contacting Mr O and asking suitably probing questions, there is no reason to suggest he wouldn’t have been forthcoming about what he was doing. In such circumstances, whilst the bank had no duty to protect him from a bad bargain or give investment advice, it could have invited him to check whether the payee was registered with UK’s Gambling Commission. It could have also explained its own customer experiences with merchants like Trade Ltd in that customers would often be prevented from withdrawing available balances. After all, at that time, there was information in the public domain—which a bank ought to have known even if a lay consumer ought not—about the very high risks associated with binary options including many warnings of potential fraud (e.g. Action Fraud’s June 2016 warning; the European Securities and Markets Authority’s July 2016 warning; the Financial Conduct Authority’s consultation paper of December 2016; and the Gambling Commission’s December 2016 scam warning that “an unlicensed operator is likely operating illegally”, and so forth).

However, there is no evidence that BOI provided Mr O with any meaningful warnings or gave him other reasons to doubt the legitimacy of the payments he was making. It was therefore a missed opportunity to intervene.

Causation

If BOI had asked Mr O what the payments were for and the basic surrounding context, I consider it likely he would have fully explained what he was doing and that everything had been done over the phone and online with Trade Ltd. BOI did not need to know for certain whether Mr O was dealing with a fraudulent binary options trader or investing in a legitimate (albeit highly speculative) product; reasonable grounds for suspicion are enough to trigger a bank’s obligations under the various regulations and principles of good practice.

If BOI had questioned Mr O about the payments, it would have likely discovered that he had been contacted out of the blue by a merchant offering a high risk investment opportunity, who had also asked him to download remote access software while making payments. These are common hallmarks of a scam, so I consider there would have been reasonable grounds for suspicion here. So, BOI ought reasonably to have provided a scam warning in light of all the information then known to financial professionals about the risks associated with unregulated, overseas binary options.

If BOI had given a warning, I believe that Mr O would have paused and looked more closely into Trade Ltd before proceeding. There is no evidence that he was willing to take high risks or had a history of speculative investments or gambling. It seems more probable that he would have made further enquiries into binary-options scams and whether or not Trade Ltd was regulated in the UK or abroad. Mr O could have discovered they were not and the various regulatory warnings about the risk of binary-options/forex scams (see above). In other words, I am satisfied that a warning to Mr O from his trusted bank would probably have exposed Trade Ltd’s false pretences, causing him to stop ‘trading’ and preventing further losses.

Even if Mr O had not worked out that this was a scam, it is likely that a warning would have alerted him to the common issues arising in relation to binary options dealers, which in turn would have revealed the truth behind the supposed broker's representations. This would probably have stopped Mr O in his tracks. So, but for BOI's failure to act on clear triggers of potential fraud or financial harm, Mr O would probably have not lost his money.

Contributory negligence

Despite regulatory safeguards, there is a general principle that consumers must still take responsibility for their decisions (see s.1C(d) of our enabling statute, the Financial Services and Markets Act 2000). I do not place too much weight on general but arcane information in the public domain for reasons previously alluded to about the information imbalance between financial professionals and ordinary consumers.

In this case, I do not think that Mr O was to blame for what happened; that he did not foresee the risk of this sort of harm or any harm.

I do not think Mr O could have foreseen the risk that the company he was dealing with was a scam and the trading account he was viewing was likely to be a simulation. In the circumstances, I do not think it would be fair to reduce compensation on the basis that Mr O should share blame for what happened.

My final decision

For the reasons given above, I uphold this complaint and direct Bank of Ireland (UK) Plc to refund all of Mr O's stolen payments totalling £50,312.07 (as well as any transaction/foreign currency fees charged on top of these payments). Bank of Ireland should add interest to the total sum (less any tax properly deductible) at 8% simple interest per year from the respective dates of loss to the date of refund.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 22 February 2022.

Jack Ferris
Ombudsman