

The complaint

Mr K complains that Bank of Scotland plc ("BOS") has refused to refund several payments he made to a fraudulent investments trading company (Tradetime). These payments were made using Mr K's BOS credit and debit cards.

Mr K has a representative in this matter. For simplicity, I have referred to the representative's actions and submissions as being those of Mr K.

What happened

The circumstances of this complaint are well known to both parties, so I will not repeat them all again here in detail. But I will provide an overview of events below.

In short, from April to August 2019, Mr K made payments (using his BOS credit and debit cards) to what he thought was his trading account with Tradetime. At the time, he believed that they were a legitimate investments trading firm. However, he later discovered that Tradetime were operating a scam.

Based on Mr K's bank statements, the payments concerned are as follows:

| Date | Merchant | Payment Method | Amount |
|---------------|------------------|------------------------------|--|
| 30 April 2019 | Tradetime | Credit card | £387.40 (plus £11.42 non-sterling fee) |
| 6 May 2019 | Tradetime | Credit card | £500.38 (plus £14.76 non-sterling fee) |
| 25 June 2019 | Transferwise Ltd | Debit card (premier account) | £5,000 |
| 26 June 2019 | Transferwise Ltd | Debit card (premier account) | £4,500 |
| 27 June 2019 | Transferwise Ltd | Debit card (premier account) | £5,000 |
| 25 July 2019 | Tradetime | Debit card (premier account) | £4,024.08 (plus £120.31 non-GBP fee) |
| 30 July 2019 | Tradetime | Debit card (premier account) | £8,080.68 (plus £241.61 non-GBP fee) |
| 31 July 2019 | Tradetime | Debit card (classic account) | £4,995.41 (plus £149.86 non-GBP fees) |
| 31 July 2019 | Tradetime | Debit card (classic account) | £9,827.04 (plus £294.32 non-GBP fee) |
| 1 August 2019 | Tradetime | Debit card (classic account) | £5,033.75 (plus £151 non-GBP fee) |

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| 1 August 2019 | Tradetime | Debit card (classic account) | £9,902.46 (plus £296.58 non-GBP fee) |
| 1 August 2019 | Tradetime | Debit card (classic account) | £9,902.46 (plus £296.58 non-GBP fee) |
| 5 August 2019 | Tradetime | Debit card (classic account) | £8,279.38 (plus £248.05 non-GBP fee) |
| 5 August 2019 | Tradetime | Debit card (premier account) | £2,897.78 (plus £86.64 non-GBP fee) |
| 9 August 2019 | Tradetime | Credit (premier account) | £1,637.89 |

Mr K asked BOS to try to recover his money. As did not happen, he raised a complaint.

In short, BOS told Mr K that he did not have any rights under Visa's chargeback scheme, so it did not raise one on his behalf. Unhappy with this, Mr K referred his complaint to our service.

One of our investigators considered the complaint and upheld it. He considered that fraud triggers applied to Mr K's £5,000 payment to Transferwise on 25 June 2019. He argued that there was no evidence to show BOS provided Mr K with any meaningful warnings or gave him other reasons to doubt the legitimacy of the payments he made. The investigator held that this was a missed opportunity for BOS to intervene, so he asked it to refund Mr K all his money – including the prior two credit card payments to Tradetime in April and May 2019; plus transaction fees, less credits received.

Mr K accepted the investigator's findings, which were issued in October 2021. However, BOS has not responded to this. On 23 March 2022, I sent BOS the following:

This case has been referred to me for a decision.

From what I have considered, I am currently minded to uphold this complaint – subject to any submissions from you – for broadly the same reasons as the investigator, but with a slightly different approach:

- *I am satisfied that fraud triggers apply in this case.*
- *I am satisfied that the third debit card payment to Transferwise for £5,000 on 25 June 2019 should have triggered.*
- *Unlike the investigator however, I do not think the above should apply to the first two credit card payments.*
- *I am satisfied that the first two credit card payments should be refunded under section 75 of the Consumer Credit Act 1974, because, in short:*
 - *DCS chain is not 'broken', as credit card payments were made directly to Tradetime*
 - *Other criteria for section 75 are met*
 - *Mr K has provided persuasive evidence to show he was scammed and that he has an action for both breach of contract and mis-representation*
 - *There is a FCA warning about Tradetime – albeit post Mr K's payments*

Taking all the above points together, including this service's approach to these types of cases which you are familiar with – I am minded to uphold this complaint and therefore direct that Bank of Scotland plc:

- ***Pay Mr K all the money he lost; including any transaction fees, less any credits to his account – within 28 days of receiving notification of Mr K's acceptance of my final decision; plus***
- ***Pay 8% interest on this amount from the date it was debited from Mr K's account until the date of settlement.***
- ***If Bank of Scotland plc deducts tax in relation to the interest element of this award, it should provide Mr K with the appropriate tax deduction certificate.***

In my email, I also informed BOS that given the fact it did not respond to the investigator's findings: it had until 28 March 2022 to respond to my provisional thoughts. This date has now passed, and BOS has not replied. Therefore, I will now make a decision on this complaint.

What I have 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.

Below, I will deal with Mr K's first two credit card payments under the '*Section 75 of the Consumer Credit Act 1974*' heading. I will then deal with Mr K's remaining debit card payments under the '*Unusual or uncharacteristic activity*' heading.

Section 75 of the Consumer Credit Act 1974

I have considered whether it would be fair and reasonable to uphold part of Mr K's complaint on the basis that BOS is liable to him under section 75 for the credit card payments he made in April and May 2019. In doing so, I am satisfied that BOS is liable to him for these payments. I say this because, in very broad summary:

- There is a debtor-creditor-supplier agreement falling under section 75:
 - Mr K (the debtor);
 - BOS (the creditor); and
 - Tradetime (the supplier) – as shown on Mr K's paperwork and on BOS's business file submissions.
- The two transactions Mr K made were financed by his agreement with BOS ("the deposit-transactions").
- Mr K's claim does not relate to a single item to which the seller has attached a cash price of less than £100 or more than £30,000.

For the reasons set out above, I am satisfied that section 75 does apply to the two credit card deposit-transactions in this case.

I will now turn to whether Mr K has a valid claim for misrepresentation and/or breach of contract.

Misrepresentation

Turning to Mr K's account. In short, he has said:

- He had an interest in Bitcoin trading, however, when Tradetime initially contacted him – they said Bitcoin was, ‘...*too risky an investment market and it was much safer to invest in the Forex Market.*’
- Tradetime never told him about any risk in investing in the market, nor directed him to their terms and conditions.
- Tradetime told him they were regulated and that they had a UK office.
- He received several calls from Tradetime asking him to make investments.
- The telephone numbers Tradetime provided were ‘*geographic virtual numbers*’.
- Tradetime had taken payments which he had not authorised.
- He was unable to withdraw his funds from Tradetime.

There is a body of external information available through various regulators, law enforcement agencies, government agencies, press cuttings and the card schemes that repeat the tactics used by Tradetime. This does lead me to seriously question whether any actual trades were being placed on the outcomes of financial markets or whether in fact Tradetime offered little more than a video game or simulation.

There is further evidence in the form of a warning on the Financial Conduct Authority’s (“FCA”) website dated 25 November 2020. Although this was published post the payments concerned, the warning suggests Tradetime may not have been acting legitimately:

‘We believe this firm may be providing financial services or products in the UK without our authorisation. Find out why you should be wary of dealing with this unauthorised firm and how to protect yourself.’

The FCA’s warning about Tradetime can also be found on the Investor Alerts Portal of the International Organization of Securities Commissions (“IOSCO”). Moreover, there is another warning about Tradetime on the Investor Alerts Portal published by the Spanish regulator dated 3 November 2020.

I do not think it is likely Tradetime were operating a legitimate enterprise. Therefore, I am persuaded they made misrepresentations to Mr K. That is, that they were running a genuine enterprise through which he could never have got back more than his deposits from the platform. I am also satisfied that if Mr K had known this, he would not have deposited any money, so he was induced into the contract on the basis of these misrepresentations.

Breach of contract

Here, Mr K has deposited funds to open an account in exchange for being able to use those funds on an investment platform and being able to withdraw them as and when he wished. Given the exchange of money in return for certain contractual promises – I am satisfied there were transactions (the deposit-transactions) as defined by section 75.

It follows, I think, that Tradetime had contractual obligations:

- a) To enable Mr K to use the funds from his deposits on an investment platform; and
- b) To enable Mr K to withdraw the funds deposited as and when he wished.

Mr K was not able to use the funds from his deposits on the investment platform. Further, he says Tradetime prevented him from withdrawing funds from his trading account when he wanted to. Taking these points together, I am satisfied that Tradetime breached the above contractual obligations.

It follows that as a breach of contract can be identified, Mr K's loss amounts to the full amount of each of his two deposits.

In summary

I've established two grounds Mr K could have recovered his two credit card deposit-transactions: misrepresentation and breach of contract. As a claim for misrepresentation gives the highest sum, BOS should put the Mr K back into the position he would have been had the deposit-transactions not been entered into. So, he should receive refunds of these amounts.

Unusual or uncharacteristic activity

Turning now to the other payments Mr K made using his debit cards.

I am satisfied that fraud triggers should apply from Mr K's £5,000 payment to Transferwise on 25 June 2019.

I am satisfied there were reasonable grounds for BOS to suspect fraud or a scam, and therefore justify an intervention. In light of the amount of the payment involved in relation to how Mr K normally operated his account, I think that BOS ought to have identified the risk of harm. In other words, this was a highly unusual and uncharacteristic pattern of spending for Mr K compared with their recent history on the account – which indicated that something untoward might be happening. For example, when reviewing Mr K's classic and premier account statements, there is nothing to suggest he was willing to take high risks or had a history of speculative investments or gambling.

Overall, it would have been reasonable for BOS to have properly questioned Mr K before processing the payment in order to satisfy itself that all was well. If it had done so, it likely would have found out about Mr K's dealings with Tradetime and discovered the scam.

I also take the view that there was no contributory negligence on this occasion and Mr K was simply the unwitting and blameless victim of a clever fraudster.

My final decision

For the reasons set out above, my final decision is that I uphold this complaint. I therefore direct that Bank of Scotland plc:

- Pay Mr K all the money he lost; including transaction fees, less any credits he received (see breakdown of payments above) – within 28 days of receiving notification of his acceptance of my final decision; plus
- Pay 8% interest on this amount from the date it was debited from Mr K's account until the date of settlement.
- If Bank of Scotland plc deducts tax in relation to the interest element of this award, it should provide Mr K with the appropriate tax deduction certificate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 27 April 2022.

Tony Massiah
Ombudsman