

The complaint

Mr M is unhappy Bank of Ireland (UK) Plc have not refunded him after he fell victim to a scam.

What happened

I'm not going to cover all the points raised in detail. The view of 15 June 2022 covered the detailed timeline of the transactions and the details of Mr M's testimony. But briefly, on 19 November 2021, Mr M made several purchases for gift cards from a supermarket after receiving emails from someone who he thought was his manager and another colleague from work. Mr M says he first became aware he was the victim of a scam the following day when he emailed his manager to inform her he had bought the gift cards - and she responded saying she knew nothing of the emails and requested gift cards. Mr M was also unhappy with the communication he received from Bank of Ireland during the complaint process.

Our investigator thought the transactions were unusual based on the account activity and a sudden flurry of activity just a few minutes apart warranted intervention from Bank of Ireland from the fourth transaction onwards. However, the investigator didn't feel any additional compensation was due for the way Bank of Ireland handled the complaint.

Bank of Ireland did not agree. It felt the spending was not unusual for the time of year with the run up to Christmas and said its systems would not have triggered. It also considered any intervention would not have made a difference. It felt the gap between the fourth and fifth transaction was long enough for Mr M to check with his manager and uncover the scam.

As the case could not be resolved informally, it's 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.

There is no dispute that Mr M authorised the transactions. In broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. And I have taken that into account when deciding what's fair and reasonable in this case.

However, looking at what happened here, it is evident that Mr M was the victim of a concerted fraud. And, taking into account the law, regulator's rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider Bank of Ireland 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 that its customers were at risk of fraud (among 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.
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or make 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.

So, Bank of Ireland had obligations in respect of protecting Mr M from fraud and financial harm. I appreciate the amounts were relatively small and I accept there is a balance to be struck between identifying payments that could potentially be fraudulent and minimising disruption to legitimate payments. I also appreciate that Bank of Ireland's fraud systems didn't identify these payments as having high risk characteristics. But that isn't to say that any activity not picked up on means a business doesn't need to do anything more.

I think Bank of Ireland should have been concerned that payments were being made in very quick succession with the gaps between the transactions just minutes apart. The third transaction took place just two minutes after the first and a fourth transaction was made just one minute later.

In the circumstances I do think Bank of Ireland could have acted here. I think in a situation like this Bank of Ireland should have spoken with Mr M to check everything was in order, to protect him from the risk of financial harm. If it had done so, and if it had asked suitably probing questions about the payments, I'm persuaded it would have uncovered that Mr M was purchasing gift cards for his manager. I think some basic questioning would have revealed his manager had emailed him to make the request.

As a financial services professional, I think Bank of Ireland would have been aware at the time of email interception scams; including ones to buy gift cards. With this in mind, I think the bank could, relatively easily, have identified and warned Mr M of the possibility he was being scammed. The bank should have helped Mr M to reflect on whether it was legitimate or not. This was something that a more experienced eye should think was potentially not quite right. I do think it could have done much more to bring to life what scams like this look and feel like by providing further information about the hallmarks of these types of scam. I think that would have been enough to cause Mr M sufficient concern. It seems probable that Mr M would have become suspicious and then incredulous about the scam in time and stopped the fourth and subsequent payments. The fraud would have failed; and Mr M would not have lost £100 or the transaction that followed.

I have also considered whether Mr M should bear some responsibility by way of contributory negligence. However, it is clear that up to and including the time of authorising the payments, he was still totally in the dark and simply did not appreciate what he was doing or the consequences of his actions. Mr M received an email from two work colleagues including his manager. He exchanged several emails with the scammer, and I can see why he didn't suspect he was being scammed. Overall, I think this was a very sophisticated and believable scam, I am satisfied there was no contributory negligence on this occasion, Mr M was simply the unwitting victim of a clever fraudster. The bank was the professional in financial matters; Mr M was a layperson.

Finally, for the reasons outlined by the investigator, I agree that Bank of Ireland acted within reasonable timeframes when handling Mr M's complaint and don't find there were any failings here – so I'm not making any further award.

Putting things right

The payment was made from Mr M's current account. I think it's likely had he not been defrauded he would have spent it on other things. So, I consider it fairest to award 8% simple interest. In order to put things right for Mr M, Bank of Ireland (UK) Plc should:

- Pay Mr M £500 within 28 days of receiving notification of his acceptance of my final decision; plus
- Pay simple interest at the rate of 8% per annum on the sum above from the date of the transactions to the date of refund¹.

My final decision

My final decision is I uphold the complaint in part and require Bank of Ireland (UK) Plc to put things right for Mr M as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 11 August 2022.

Kathryn Milne
Ombudsman

¹ If Bank of Ireland is legally required to deduct tax from the interest should send Mr M a tax deduction certificate so he can claim it back from HMRC if appropriate.