

The complaint

Miss D complains that Bank of Scotland plc trading as Halifax (BOS) didn't do enough to protect her from losing money to scammers.

What happened

The background to this complaint is well known to the parties so I won't repeat it in full here. In summary, in 2018 and beyond, Miss D was scammed into paying a significant amount of money, through a mixture of cash and cheques, to rogue traders or scammers for work on her property.

On becoming aware, Miss D's representative complained to BOS in late 2020. BOS refunded some of the lost money to Miss D, but there were also a number of transactions it didn't agree to refund. Remaining unhappy, Miss D referred her complaint about BOS to this service. An investigator here recommended that Miss D's complaint be upheld in part. Miss D didn't accept the investigator's recommendation, so the case has been passed to me for a decision.

I sent Miss D and BOS my provisional decision on 26 April 2022 explaining why I was minded to uphold the complaint in part, and the compensation I was minded to direct BOS to pay Miss D. BOS replied to say it accepts my provisional decision. It's said it agrees to pay Miss D £22,025 plus interest calculated either at 8% simple per year or at the account rate from the date of loss to the date of settlement, plus £200 for distress and inconvenience. Mr D (Miss D's brother, on behalf of Miss D) replied to my provisional decision with some further comments which I'll address, where appropriate, below. Now both parties have had an opportunity to comment on my provisional decision, I'm now ready to explain my final 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 reached materially the same conclusions and for the same reasons as in my provisional decision. I've explained why again below, with some further comment where appropriate to address the parties' responses to my provisional decision.

It is common ground that Miss D authorised the cash withdrawals and cheques in question here. So, although Miss D did not intend to lose money to scammers, Miss D 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 BOS 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.

My fellow ombudsmen and I have referenced the relevant rules, codes of practice and good industry practice at the time in many previous decisions published on our website.

Bearing this in mind, in this case I have therefore thought about whether BOS acted fairly and reasonably in respect of the remaining transactions in dispute (the transactions BOS hasn't already refunded). The parties have already seen a full list of the 16 transactions in question so I won't repeat the list here.

Transaction 1 was a cheque made payable to Miss D herself – so Miss D has now asked for this transaction to be excluded from her complaint (I've included it here simply for the sake of completeness).

With regards to transactions 2 to 5 – cash withdrawals, each not more than £250 – Mr D has said he can't understand how BOS's algorithms didn't flag these payments. But there is a balance to be struck: banks had (and have) obligations to be alert to fraud and scams and to act in their customers' best interests, but they can't reasonably be involved in every transaction. And I don't think I can say these particular transactions were sufficiently unusual or uncharacteristic such that BOS ought to have been reasonably obliged to intervene. So I don't think I can reasonably say BOS ought to be held responsible for transactions 2 and 5 here.

However, the in-branch cash withdrawal on 25 July 2018 (transaction 6), was clearly unusual and uncharacteristic for Miss D's account, such that in my opinion BOS, in order to meet its obligations summarised above, reasonably ought to have spoken with Miss D on 25 July 2018, before processing her cash withdrawal request, to check everything was in order to protect her from the possibility of financial harm. As Miss D made the cash withdrawal request in branch, BOS had a natural opportunity to do so.

BOS reasonably ought to have asked Miss D what such a large amount of cash was for and for the basic surrounding context, and to have then proceeded appropriately from there – with the intention to disturb or unearth a potential fraud or scam.

I understand from representations made by Miss D's representative that Miss D was most likely suffering from early stage dementia at this time – Miss D was diagnosed with dementia in April 2020 following a delay caused by the pandemic. Aside from how this might have affected Miss D, I have no reason to believe she wouldn't have responded openly and honestly to BOS's questions about the context of her withdrawal request – had it asked them, as I think it reasonably ought to have done.

BOS would have – or ought to have – been aware that rogue trader type scams like this would be one of the main types of scam carried out in branch. It also ought to have been aware of the usual victims. And I think that once Miss D had explained the cash was to pay for work on her property (and the context and background), BOS ought to have been concerned – especially bearing in mind the level of vulnerability Miss D most likely would have displayed under questioning and probing from BOS.

In these circumstances, I don't think BOS reasonably ought to have agreed to execute Miss D's cash withdrawal request until it was confident Miss D had been sufficiently supported to ensure she wasn't being scammed. I can't be certain about what this would have meant or led to. But bearing in mind that Miss D's representative – her brother – had helped Miss D organise some legitimate work at her property previously, and that he ultimately helped uncover these further payments to the scammers when he became aware what had happened, it's quite easy to imagine how sufficient warnings and support from BOS ought reasonably have led to Miss D talking to her brother about these 'traders' and the payments they were requesting ahead of work being completed. And I think this ultimately would have most likely led to the loss of money to these scammers being prevented from transaction 6 onwards.

Due to personal circumstances Miss D understandably cannot recall things clearly, and the parties will understand why we don't have clear details on what each transaction (transaction 6 to 16) was for. And I want to reassure both parties I have fully considered and taken into account the possibility that some of these transactions, or some part of some of these transactions, funded legitimate, or at least partial, work on Miss D's property. Miss D's representative has also understandably struggled to piece things completely together. From the information I've seen, I am inclined to accept that: Miss D had legitimate work done to her driveway and fence, paid for by transactions unlinked to those disputed with BOS; Miss D also had legitimate work done under her stairs (when this work wasn't completed by the scammers) costing around £200, and Mr D and his son completed work to her patio doors costing around £1,000. I haven't seen clear evidence that other work funded by the transactions 6 to 16 was completed.

This has led me to the following overall conclusions on fair redress – BOS should pay Miss D:

- 100% of the in-branch cash withdrawals (totalling £14,000). Given the circumstances of this case, I'm satisfied these transactions were most likely lost to scammers.
- 50% of all the other transactions (excluding transactions 1 to 5). These were ATM cash withdrawals and cheque payments, totalling £16,050, 50% of which is £8,025. This hasn't been easy to decide, because it's possible all of these transactions were lost to the scammers; it's also possible some of these transactions *weren't* lost to the scammers. In this particular case, I think the fairest outcome is that BOS refunds Miss D half of these.

Miss D's representative has said the cheques (transactions 9, 13 and 14) were all paid to scammers. He's also suggested a further cheque (ending 31) should have been added to his complaint because, he says, this was also paid to a scammer. However, as I have explained, the facts around what really happened in this case aren't particularly clear at all. I understand the reasons behind the lack of recollection and detail, but it remains difficult to know whether all of these transactions really were lost to scammers and were not paid for at least partial work on Miss D's property. In my view, I just can't be sure enough about this – and that's why I'm satisfied a compromise (50% award) is the fairest outcome here.

With regards to the cheque ending 31, Mr D previously suggested this might have been used to pay for legitimate fencing work. I'm not sufficiently persuaded that this wasn't the case. This wasn't included in the complaint, and I don't find there to be good reason at this stage to say it should be included in the refund. Instead, I think the lack of clarity around this only goes to support the overall uncertainty around the

facts here and the appropriateness of a compromise award.

- Interest on the total refund amount above. BOS has agreed to calculate and pay this interest at 8% simple per year from the date of each transaction to the date of settlement, and I'm satisfied this is fair and reasonable. This is to compensate Miss D for having been deprived of this money.
- £200 for the distress and inconvenience Miss D has suffered. In deciding this amount I am mindful that Miss D's distress was ultimately caused by the callous acts of the scammers and Miss D authorised these transactions, albeit BOS probably should have prevented the loss from transaction 6 onwards.

I've considered everything Miss D's representative has said in response to my provisional decision but these points haven't changed my mind. Mr D has said that if Miss D had engaged a professional firm (I take this to mean a representative), the costs would have been thousands of pounds. But Miss D didn't; and complaining to BOS and referring a complaint to us is a free service.

Putting things right

To put things right, BOS should pay Miss D: £22,025; plus interest on each transaction included in that total calculated at 8% simple per year from the date of the transaction to the date of settlement; plus £200 for distress and inconvenience.

My final decision

For the reasons I've explained, I uphold this complaint in part – and I direct Bank of Scotland plc trading as Halifax to pay Miss D:

- £22,025 to refund payments lost to the scammers; plus
- interest on each transaction included in that total calculated at 8% simple per year from the date of the transaction to the date of settlement (if BOS deducts tax from this interest, it should provide Miss D with the appropriate tax deduction certificate); plus
- £200 for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D to accept or reject my decision before 18 July 2022.

Neil Bridge

Ombudsman