

## The complaint

Mr F complains that Bank of Scotland plc ('BoS') have failed to properly compensate him for the harm they caused when he fell victim to a scam.

## What happened

I issued a provisional decision in early September 2022 to explain why I thought Mr F's complaint redress should be altered. And I said I'd consider anything else anyone wanted to give me. This is an extract from my provisional decision:

*"This complaint has been brought by Ms L, Mr F's daughter, acting with power of attorney for Mr F.*

*The details of this complaint are well known to both parties, so I won't go into every detail of what happened here. But in summary, Mr F has been the victim of a highly sophisticated scam. Between 2019 and 2020 he was tricked into sending money as part of an investment scam. The scam was highly sophisticated and involved scam websites purporting to be an investment company and the financial regulator, and various different characters. Between July 2019 and November 2020, he made 13 international payments from his BoS account, which amounted to over £500,000.*

*When Mr F and Ms L discovered the scam in December 2020, they reported it to BoS. BoS initially declined to refund the losses, but paid Mr F £500 in February 2021 in recognition of the levels of service he received. In April 2021, after Mr F and Ms L had come to our service and Ms L had conducted her own investigations which she shared with the bank and our service, they agreed to refund the losses with interest. Ms L queried the interest paid and further interest was paid, along with the fees Mr F had paid to send money abroad. BoS also paid a further £500 for the distress and inconvenience they had caused.*

*Mr F and Ms L remained dissatisfied. They said that they felt £1,000 did not adequately reflect the distress and inconvenience caused by BoS – and instead said that Mr F should be paid £50,000 in recognition of everything that the BoS had put him through due to the errors they made. Ms L has provided detailed correspondence on the matter, but to summarise, Ms L explained these were:*

- Failing to recognise the payments were unusual and out of character for Mr F, meaning they didn't intervene or challenge the payments sufficiently and ultimately failed to prevent Mr F falling victim to fraud and financial harm;*
- Failing to protect Mr F's interests and assets, and to identify him as a potentially vulnerable customer;*
- Call handlers who spoke to Mr F on occasion whilst the scam was ongoing, lacked empathy, patience and in some cases were 'downright rude';*
- A catalogue of errors after the scam was reported – poor processes and challenges which made the complaint almost impossible to deal with;*
- Failure to refund the scam funds for about 4.5 months;*
- Customer service failings including long call waiting times (of up to 50 minutes), frequent transfers between departments, lack of proactive communication from BoS,*

*and delays allocating their complaint to a case handler, lack of response to calls;*

- Failing to correctly record the Power of Attorney, and not telling Ms L they could operate under a third party mandate in the meantime which caused delays in Ms L being able to act on Mr F's behalf,*
- Failing to respond to the police's request for information about the receiving bank, thereby hindering their investigation;*
- Missing key call recordings in response to the data subject access request Ms L had done on behalf of Mr F, which Ms F thinks may have been omitted on purpose; and*
- Not providing an explanation or apology to her father.*

*Ms L said that this had a significant impact on Mr F and his quality of life. She said this was entirely preventable and should never have happened. Again, Ms L has provided detailed submissions which I have read and considered, but to summarise she explained that:*

- Mr F had previously been diagnosed with cancer, which he had been treated for. As the scam unfolded, he had further scans and in July 2020 it was confirmed the cancer had returned and spread. Mr F restarted treatment in August 2020. He was also diagnosed with an additional type of cancer in 2021 which required treatment. She explained that it is not entirely unrealistic to suggest that the stress caused by the situation have also contributed to the progression of his cancer.*
- Mr F had previously had no mental ill health, but in December 2020 Mr F was diagnosed with stress and clinical depression. This meant he was put on medication which has twice been increased and has required treatment with a psychiatrist. This continues to impact his mental health and well-being, meaning Mr F continues to have flashbacks and intrusive thoughts.*
- Mr F used to hold a shotgun license which required sign off from a general practitioner – which he is no longer able to get due to his mental ill health diagnosis. This was his 'one true passion' and because of his diagnosis, he voluntarily handed his shotgun over to the police in December 2020.*
- The whole family have been struggling as a result of what happened to Mr F, which has in turn impacted him further. In particular, but not exclusively, this has had a significant impact on Ms F and her sister (Mr F's other daughter) –*
  - Ms F has suffered from significant levels of stress due to this matter, and the time she has had to spend on trying to get it resolved. This meant she had to take two months off work and then a phased return to work for 3 weeks. This has in turn impacted Mr F as he has felt responsible for this.*
  - Mr F's other daughter was already dealing with a significant trauma and mental ill health as a result of this. When the scam came to light, she had to be signed off work for 8 weeks and then had 1 month on a phased return to work. Her nervous system became deregulated and she was unable to cope – leading to the necessity to call the crisis team, be on numerous types of medication, and requiring treatment. She had managed to avoid relying on medication after the initial trauma but had to go on them after the scam came to light. At a time when she should have been focusing on her own healing and well-being, she was unable to do so because of what happened to her father. As the bank didn't take responsibility, her father has felt responsible for this, too.*

*As Ms L and Mr F remained dissatisfied, one of our investigators looked into what had happened. They said that in their opinion BoS could have and should have done better, but that ultimately they thought the repayment of the losses with interest, refunding the international payment transaction fees and £1,000 in recognition of the distress and*

*inconvenience they had caused Mr F was fair and reasonable in the circumstances of the complaint.*

*Ms L and Mr F didn't agree. In summary, they said:*

- The bank admitted they were at fault and that they could have prevented the scam if they had spoken to Mr F at the time of the first and some subsequent payments which could have prevented the loss;*
- Mr F was subject to 17 months of stress, worry, anxiety, manipulation and suicidal thoughts which was entirely unnecessary had the bank taken action in line with its code - £1,000 does not reflect the level of unnecessary suffering they should have prevented;*
- BoS initially declined to refund Mr F's losses for over 4 months without conducting a proper investigation or explaining why. Ms L said this was clearly an attempt to pass the blame and was entirely unnecessary. As a result of this, Ms L explained she had to spend hundreds of hours conducting an investigation on her father's behalf, without which the correct outcome would not have been reached and his money would have never been refunded;*
- The bank redacted crucial calls from the DSAR which they assume was an attempt to sabotage their investigation;*
- The bank didn't issue interest, this was only done when requested and then it was not the correct amount and required Ms L to go back and insist upon further interest and a breakdown of how it had been calculated;*
- The bank didn't refund the international transaction charges until requested to do so;*
- The bank have a duty of care and need to be held to account to ensure this does not happen to other customers. They do not even appear to be aware of their obligations to investigate the numerous instances of the breach of the Conduct Rules and a requirement to report to the FCA;*
- BoS only refunded them because of the work of Ms L and the family, and because they 'held their feet to the fire by publicly outing them' through contacting the media.*
- Ms L did not agree that the bank's actions had not caused the harm to her father – they could have prevented the harm, and the harm was a reasonably foreseeable consequence of their failings. The bank have a duty of care and need to be held to account for their actions, or lack of action.*

*Our investigator said they had reviewed everything they had said, but their recommendations remained unchanged. As no agreement has been reached, the complaint has come to me to decide.*

### ***What I have provisionally decided – and why***

*I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of the complaint. Having done so, I am minded to reach a slightly different outcome to our investigator, I'll explain why.*

*I have no doubt that Mr F was the victim of a sophisticated and cruel fraud. Before I move onto my findings, I would like to say I have been so sorry to read of the circumstances Mr F has experienced as a result of this scam. I read the detailed submissions and I understand that this matter has had a profound and lasting impact on Mr F, and his family too.*

*I would also like to explain that I am aware that I have summarised this complaint briefly, in less detail than has been provided, and in my own words. I intend no discourtesy by doing so. Instead, I have focused on what I think is the heart of the matter here. If there is something I have not mentioned, it isn't because I have ignored it – I haven't. I'm satisfied I*

*don't need to comment on every single argument or point to be able to reach what I consider to be the fair outcome. Our rules allow me to do this – it simply reflects the informal nature of our service as a free alternative to the courts.*

*As the financial losses from the scam have been refunded, including interest and reimbursement for the international transaction charges, I will not be going into this matter in detail. All that is relevant of this now is that it is not in dispute between either party that BoS should have done more to intervene and they could, almost certainly, have prevented the loss occurring if they had done so. I also do not think it is in dispute that BoS should have refunded the losses sooner.*

*What remains in dispute is whether the £1,000 already paid represents a fair and reasonable compensatory award in recognition of the non-financial harm Mr F suffered as a result of BoS's failings – the pain and suffering he has experienced, as well as the distress and inconvenience he was caused. So, the question I must consider is the extent to which BoS can be considered liable for the harm that Mr F suffered, and having done so, I am minded to reach a different conclusion than our investigator did. Based on the evidence available to me I am thinking of saying that BoS ought to pay Mr F £2,000 for the pain and suffering, and the distress and inconvenience caused to Mr F. This is not the £50,000 that Ms L and Mr F requested – and I am sorry as I know how deeply this will disappoint them, as well as their wider family. I do, however, think that £1,000 does not sufficiently reflect the harm caused by BoS. I will explain my current thinking on this matter.*

*I agree with our investigator that the primary cause of the harm was the scammers themselves. But I also think that BoS should have taken further steps to question what was happening sooner, and this would have reduced or prevented Mr F's losses. I do believe their failings contributed to the scammers being able to trick Mr F into sending so much money to them. So, I think it was fair and reasonable that they refunded the losses, charges and interest.*

*Considering the impact of their mistakes – their failure to take proper action contributed to the extreme worry and impact on Mr F's health when he realised he had lost the money as the result of the scam. I also recognise that it was not until the robust arguments made by Ms L on behalf of Mr F including her correspondence with the bank, the media and our service, that BoS refunded the losses – and even then the full interest wasn't paid until Ms L pointed out that the calculations did not appear to be correct. There were also customer service failings throughout the scam and after it was reported – which I do not think are in dispute.*

*The uncertainty of not knowing that Mr F would get this money back for over four months after the scam added to the substantial amount of distress Mr F was experiencing. So, whilst the harm was originally caused by the scammers, I think it is fair to say that BoS contributed to the decline in Mr F's mental health. The sums lost to the scammers were Mr F and his wife's life savings, and I think it is fair to conclude that the uncertainty over whether these were lost forever would have caused an extreme impact on Mr F. I understand he felt that as BoS were denying any liability, he felt he was to blame which clearly took a huge toll on Mr F.*

*Mr F has had to be treated and medicated for clinical depression – a condition he had never had before. This has also meant he has lost the ability to undertake a beloved hobby due to the removal of his shotgun license. I am not a medical expert by any means – so I am unable to say whether the stress did in fact contribute to the progression of Mr F's cancer, but I do recognise that cancer is an incredibly stressful thing to happen to someone, and so dealing with the fallout from the scam at the same time must have been incredibly difficult. It is of note that Mr F had cancer previously, and didn't have to take medication or receive treatment for his mental health at the time – so I am satisfied that the scam played a substantial role in his declining mental health.*

*As our investigator explained, I cannot award money to, nor in recognition of harm done to Mr F's family members who were impacted as a result of this scam – this is because it is Mr F who has a relationship with BoS and not them. So, my role is to decide on the dispute between Mr F and BoS only. But I recognise that witnessing the harm caused to his loved ones would have compounded some of the harm done to him – I understand from Ms L's submissions that he has blamed himself for what has happened to his family. And this is something I have taken into account. This is particularly so, given the trauma one of his daughters had recently been through. I don't doubt that as a father his mental ill health would have been worsened by seeing the amount of time, effort and emotional energy his family put into this complaints process.*

*I have very carefully considered all of this when trying to decide what a fair and reasonable figure would be to compensate Mr F for the harm caused by BoS. It is difficult in cases of scams – as I said before I maintain that the scammers should be considered the primary cause of a great deal of the pain and suffering Mr F experienced. But I do think that in this case, BoS made some substantial errors and some of the difficulties Mr F experienced were worsened as a conceivable consequence of these errors. It is also of note that our service is an informal alternative to the courts, and we are not designed to award punitive damages – we are not here to punish financial businesses. So, I think that a total of £2,000 should be paid to Mr F (deducting anything that has already been paid). Whilst I know no amount of money will undo the harm that Mr F has suffered, I think this is a suitable figure in recognition of the mistakes and their resulting sustained distress and impact on Mr F's health.*

### **My provisional decision**

*My provisional decision is that Bank of Scotland plc should pay Mr F a further £1,000 in recognition of the pain and suffering, distress and inconvenience caused by their failings."*

### **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 have reached the same conclusion as I was minded to reach in my provisional decision, and for broadly the same reasons. I will explain why.

I did not receive any further comments or evidence from BoS following on from my provisional decision. Ms L, on behalf of Mr F, did provide a detailed response. In summary, it said:

- The avoidable harm that occurred after the scam came to light was attributable to BoS;
- BoS didn't properly investigate the matter before issuing their outcome which compounded the distress already suffered of their vulnerable customer;
- BoS have never acknowledged their failings or said what steps have been put in place to ensure that no other customer comes to similar harm despite their failures causing a moral injury to Mr F and his family;
- Mr F and his family would like to see BoS has been given some kind of formal reprimand or improvement notice by its regulator in relation to the failures that occurred in this case, and for them to evidence that they are making tangible improvements to their systems to ensure that no other customer will go through any or all of the failings that Mr F had to endure;
- Without a payment that reflects the gravity of the harm caused there does not appear to be an incentive for the bank to behave responsibly, or to modify its behaviour;

With all of this in mind, Ms L said that they did not agree that £2,000 adequately reflected the gravity of the harm caused.

I've thought carefully about what Ms L said on behalf of Mr F. And I do understand why they would remain dissatisfied – the level of harm in this case has clearly caused profound and lasting damage to Mr F and his family. But I think an important matter to note here is the remit of this service. We are not here to punish financial businesses – and nor can we provide any kind of formal reprimand. We look to try and put things right in specific cases. I can appreciate the strength of feeling that BoS should be forced to pay a higher compensatory award, but nothing in the most recent submission has given me cause to alter my thinking which I detailed in my provisional decision, nor the award I thought was appropriate in this case. So I will be telling BoS that they are to pay an additional £1,000 to Mr F in recognition of the distress, inconvenience, pain and suffering caused in this case.

### **My final decision**

My final decision is that the Bank of Scotland plc should pay Mr F a further £1,000 in recognition of the pain and suffering, distress and inconvenience caused by their failings in this case.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 25 October 2022.

Katherine Jones  
**Ombudsman**