

The complaint

Mrs L is unhappy that Bank of Ireland (UK) Plc (BOI) won't refund her money she lost as part of a third-party scam.

What happened

The full details of this complaint are well known to both parties, so I won't repeat them here. Instead, I'll recap the key points, and focus on giving reasons for my decision:

In July 2020, Mrs L was researching bonds online and reached out regarding the information on the website she found. As a result of conversations with the initial organisation, she was referred to an FCA regulated business - I will refer to as N - who recommended an investment bond with a UK registered company - I refer to as Q.

Sometime later, Mrs L was contacted by police advising they had frozen Q's assets because it was under investigation. It appears that, although she was told her funds would be invested in property, funds actually went to the individuals within Q. Mrs L complained to BOI, but it said she was liable as she authorised the transaction. BOI upheld Mrs L's complaint for the service provided to her when she contacted the Bank regarding the disputed payment, and she was paid £250 for the trouble and upset caused.

Our investigator did not uphold the complaint. Although she felt BOI ought to have intervened when Mrs L made the payment, she didn't think any intervention would have made a difference.

Mrs L did not accept the investigator's conclusions, so the case has 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.

I have carefully noted the representations made by all the parties, but I won't be addressing every single point that's been raised. No disrespect is intended, and it doesn't follow that the points haven't been considered, simply that I don't need to particularise every point in reaching an outcome I consider to be fair and reasonable in all the circumstances. I've instead concentrated on the issues I think are central to the outcome of this complaint.

I should start by saying that each case is judged on its own merits and what may appear (on the face of it) to be a similar set of circumstances, may often transpire not to be the case. As already explained by the investigator, BOI is not a signatory to the Lending Standards Board's Contingent Reimbursement Model ('CRM Code') which is a voluntary code. The fact that this is voluntary is not something this service can review – we are set up to deal with individual consumer complaints and do not make the rules and regulations. It's also worth noting that Mrs L was making a payment to a legitimate organisation (N) and such payments

are not covered by the CRM Code. And this is potentially another nuance in Mrs L's case compared to other 'scam' cases - where funds may have been directly transferred to Q.

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 terms and conditions of the customer's account. So, although it wasn't her intention to pay money to the scammer, under the Payment Services Regulations 2017 (PSRs) and the terms of her account, Mrs L 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 good industry practice, there are circumstances where it might be appropriate for BOI to take additional steps or make additional checks before processing a payment in order to help protect customers from the possibility of financial harm from fraud.

BOI hasn't disputed the investigator's view that it ought to have questioned whether Mrs L was at risk of financial harm and intervened before allowing the £20,000 payment to go through. Having looked at how Mrs L used the account, I agree the £20,000 transfer was unusual for Mrs L and that BOI should have contacted Mrs L before processing the payment. But that is not enough on its own to uphold the complaint. I appreciate Mrs L doesn't think we can say something wouldn't have happened, but causation is a critical determination factor in every fraud case. I need to be satisfied that suitable intervention would have made a difference to Mrs L's decision making or that BOI could have prevented the loss. In doing so I reach my decision on the balance of probabilities (rather than giving Mrs L the benefit of doubt) – so what I consider more likely than not based on the evidence and wider circumstances of the case.

If questions had been asked about the nature and purpose of the payment Mrs L was proposing to make, I think it's more likely than not that Mrs L would have explained she was transferring the money to an FCA regulated organisation called N who were then investing in a bond for her with Q – itself a UK registered company. Whilst I appreciate Mrs L says she would have researched things more – I don't think the 'investment' would have been cause for concern at the point of transfer or the events that have now transpired with Q foreseeable. Mrs L was paying a legitimate regulated entity for an investment with an organisation which appeared – through its registration with Companies House - to be legitimate. So, the payment didn't look like fraud or a scam and it would have needed a considerable amount of investigation to unearth the facts about Q that have now come to light – quite some time after the investment was made.

I appreciate Mrs L has also asked for evidence that BOI tried to recover her funds but the beneficiary bank here was N - not the scammer - so I wouldn't expect BOI to have reached out to try and recover funds from a legitimate organisation. In any event, it's unlikely any attempts at recovery would have been successful given the time that had elapsed since the transfer and when Mrs L discovered the scam.

I understand Mrs L had to make a number of calls to BOI and her calls were not returned, and she was dissatisfied with the service she received. BOI acknowledged it could have provided a better level of service and made an offer of £250 compensation. I've noted Mrs L's comments in relation to the £250 BOI has paid. The core of which she confirms relates to it not being signed up to the CRM Code. I have already explained this is a voluntary Code and BOI not being signed up to it is not something for which I would make an award. Awards of this nature are not intended to punish or fine a business (nor is it my role to make punitive awards). Sometimes mistakes by a business have a practical or emotional impact and such awards reflect the distress and inconvenience a consumer might experience. Having considered what happened here I think the offer of £250 is fair and reasonable so I won't be recommending any further award.

I'm sorry Mrs L has lost a considerable amount of money and I can understand why she would like to be compensated for her losses. I do accept she has fallen victim to what can only be described as a cruel and callous scam. But I'm only considering whether the bank, which had no involvement in the scam itself, should be held responsible for what happened.

My final decision

My final decision is I don't uphold the complaint

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs L to accept or reject my decision before 2 January 2023.

Kathryn Milne
Ombudsman