

The complaint

Mr M is unhappy Al Rayan Bank PLC (“Al Rayan”) hasn’t reimbursed him after he transferred money to a fraudster as part of an impersonation scam.

What happened

I issued a provisional decision in November 2022 to explain why I thought Mr M’s complaint should be partially upheld. And I said I’d consider anything else anyone wanted to give me. This is an extract from that provisional decision:

“The details of this complaint are well known to both parties, so I won’t go into too much detail here. However, in summary, Mr M was the victim of a scam. He received a telephone call from someone who said they were calling from his broadband internet provider but who we now know to be a fraudster. The fraudster told him there were issues with his broadband that meant hackers might be able to access his bank accounts and steal his money.

Mr M has told us that the call took place on his landline. So, he doesn’t know the telephone number the caller called from, but he’s told us that the person he spoke with sounded professional and genuine. They knew his name and that he had an account with the internet provider in question. There were numerous calls with the fraudster(s) which took place over a number of days and Mr M was told updated security needed to be set up on his account. Mr M was told to login to his internet banking and check his bank account. Mr M didn’t see any unrecognised payments. However, he was told he would need to increase security on his account regardless in order to make sure he was fully protected.

Mr M was asked to install TeamViewer. The fraudsters then told Mr M that he would need to make some payments to accounts set up in both his and his wife’s names so they could test the new online security. The fraudster then talked Mr M through the online payment process - telling him to ignore any online scam warnings that popped up during the process. On 23 November 2021, Mr M made the following payments:

- £5,124.68
- £4,816.91
- £9,941.59

The final payment was blocked by Al Rayan’s security systems and returned to Mr M’s account. So, it won’t be discussed further here.

Mr M has said that throughout his conversations with the fraudster(s), some of which lasted over three hours, he was satisfied that he was speaking to a professional and that his money was at risk of being stolen. However, shortly after he had made the payments, Mr M realised he had made a mistake. Worried that he had been scammed, Mr M contacted Al Rayan.

Al Rayan acknowledged that Mr M had been the victim of a scam, but it declined to offer him a refund. It said Mr M had ignored scam warnings that had popped up on his screen during the payment process on over 20 occasions during the scam and so it didn't think it should be held liable for the success of the scam now. It went on to say that it had got in touch with the receiving banks where Mr M's funds were paid to immediately upon notification of the scam but unfortunately, by this point, the majority of Mr M's funds had been removed, and Al Rayan was only able to recover around £60.

Unhappy with Al Rayan's response, Mr M brought his complaint to this service and one of our investigators looked into things. She felt the two scam payments to be unusual for Mr M's account – Mr M hadn't made a payment from the account in over 6 months - and so she thought Al Rayan should have contacted Mr M about the payments before it agreed to process them on his behalf. Had Al Rayan done so, she thought the scam could've been uncovered and the scam and Mr M's loss prevented.

Al Rayan did not agree with our investigator's opinion. It said:

- The transactions shouldn't be considered unusual for an ISA account. ISA customers often maintain high balances for long periods of time before making larger transfers for a specific purpose. And so, the type of activity that took place during this scam wouldn't be considered unusual for this type of account.*
- The balance of the account was funded by a number of high value transactions into the account - all of which were in excess of £10,000. So, the payments now in discussion here did match Mr M's previous account activity.*
- The payments didn't raise any suspicions at the time and were under Al Rayan's threshold for further intervention which it believes is in-line with industry standards.*
- Mr M would've seen a scam warning at the time of making the payments that set out the consequences of continuing with the payments. Al Rayan thought this warning should've prevented Mr M from continuing.*
- The investigators findings appeared to be based on the fact that any transaction over £5,000 should be blocked for further questioning by the bank. Al Rayan pointed out that this was not an industry standard, and it felt the security measures it had in place at the time were adequate.*

Our investigator didn't change her mind and as an agreement has not been reached, the case has now been passed to me for a decision.

My provisional findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

In deciding what's fair and reasonable, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to be good industry practice at the time.

Having done so, I'm currently minded to reach a different outcome to the one reached by our investigator. I'm currently minded to say that both Al Rayan and Mr M should bear responsibility for the success of the scam. And so, I think the complaint should only be partially upheld. I'll explain why in more detail below.

Al Rayan's' obligations

The starting position in 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. However, taking into account the law, regulators rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider Al Rayan 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.*

This means that there are circumstances where a bank should fairly and reasonably take additional steps, or make additional checks, before processing a payment, or in some cases decline to make a payment altogether, to help protect customers from the possibility of financial harm.

So, in this case, I need to decide whether Al Rayan acted fairly and reasonably in its dealings with Mr M when he transferred over £9,000 to a scammer and when he reported the scam, or whether it should have done more than it did.

It is not in dispute that Mr M authorised the transactions himself. Because of this, Al Rayan had an obligation to follow his instructions. But there are some situations in which it should reasonably have had a closer look at the circumstances surrounding the payments - as I've explained above. I consider that as a matter of good practice Al Rayan should've been on the lookout for unusual and out of character transactions.

It is important for me to stress here that The Financial Ombudsman Service accesses each case on its own merits and in the particular circumstances of this case, I'm satisfied that the initial transfer of £5,124.68 was unusual when compared with Mr M's previous account history. And so, I'm persuaded that it should've prompted further action from Al Rayan.

I acknowledge the argument put forward by Al Rayan that the payment was under its threshold for intervention - which it believes to be in line with industry standards. I also acknowledge that it believes the scam activity seen here to be characteristic of how this type of account is more generally managed by its customers. However, my role is to assess whether the transactions that took place here were unusual and out of character for this particular account. It is not to assess whether the activity is similar to that expected across the industry. And in this case, I'm satisfied the transactions were unusual. Mr M had not made a payment from this account in over 6 months – the account appears to have been used as a savings account. However, the initial transaction here is out of the blue, it's of high value and is being made to a new payee. And so I'm satisfied the payment was out of character when compared to how the account had historically been run. And so I think Al Rayan should've had and got in touch with Mr M prior to processing the payment. And, I think had they got in touch, it's most likely the scam would've been uncovered.

I'm satisfied some basic questions around who Mr M was paying would've quickly uncovered that Mr M was likely falling victim to a common impersonation scam that involves fraudsters pretending to be from a genuine broadband provider. And Al Rayan would've been able to tell Mr M that no legitimate organisation would contact him and ask him to move money from his accounts for "security reasons". I see no reason to doubt that, having been able to discuss the common features of this type of scam, Mr M would've

been dissuaded from continuing from making the payment(s). And so, my starting position here is that Al Rayan should offer Mr M a full refund of the payments made to the fraudsters. But that is not the end of the story.

Should Mr M bear some responsibility for the overall loss

I've also considered whether Mr M should also bear some responsibility for his overall losses, and I think he should. In reaching this conclusion, I've had regard to the scene that was set by the fraudsters and the impact I believe this reasonably had on Mr M when acting 'in the moment'. I'll explain why:

- Mr M appears to have believed what he was being told by the fraudsters without trying to independently verify the information they were giving him. And he accepted that he was speaking with his broadband internet provider without verification too. He's told us that he did so because the caller "sounded professional" and because whomever he was speaking with knew he had an account with the internet provider in question. It doesn't appear that Mr M carried out any checks on the caller at all before proceeding to make the payments – he simply took what he was being told at face value.*
- It's unclear how any potential hackers could've used Mr M's internet connection to access his bank accounts and so it's unclear why Mr M found this story plausible.*
- Mr M checked his bank accounts online after being told that they could have been compromised and he could see no money had left his account, but he proceeded with the payments to secure his account regardless.*
- Mr M's broadband provider wouldn't generally play a role in preventing crime or need its customers to access their personal bank accounts. And I'm satisfied that this should have struck Mr M as unusual. It would be his bank that dealt with any potential threats of fraud on his account, not his broadband provider.*
- It's unclear why Mr M's broadband provider would need a customer to transfer money out of their bank account in order to check the security of an internet connection. But Mr M doesn't appear to have questioned this.*
- Al Rayan has shown that during the payment process, Mr M was shown a warning that set out that no legitimate organisation would ask him to move funds from his account for "security reasons". Whilst I've taken on board what Mr M has told us about the fraudsters telling him to move past the scam warnings presented to him, I'm satisfied that the scam warning here should've rang alarms bells for Mr M – it was particularly relevant to the scam he was falling victim to.*

Overall, I'm satisfied that there were a number of things here that should have caused Mr M concern – he realises this himself only shortly after the payments have been made. And so, I'm satisfied that Mr M has failed to mitigate his own losses and therefore any award now put forward should reflect that he should bear some responsibility for his loss alongside Al Rayan. Any compensation award should fairly and reasonably reflect the role that each party played in respect of the success of the scam. For this reason, I am satisfied that the most fair and reasonable outcome is for Al Rayan to refund 50% of Mr M's loss – alongside interest calculated at the account rate, minus any funds already returned. As it stands, I think this settlement reflects that Al Rayan could've done more to prevent the success of the scam but at the same time, Mr M could've done more too."

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'm minded to reach the same overall conclusions I reached in my provisional decision. I'll explain why.

Al Rayan responded to my provisional decision to say it agreed with my findings. Mr M responded to say that he'd like to reiterate how much pressure the fraudsters had put him under whilst the scam was taking place. He also enquired if Al Rayan had acted quickly enough in contacting the receiving bank when he reported the scam.

I want to assure Mr M that I have not disregarded the pressure that he would have been under at the time of the scam. But I also can't ignore that no checks on the caller were carried out, despite the requests being unusual.

I also want to assure Mr M that I have seen evidence which shows me that Al Rayan got in touch with the receiving bank whilst he was still on the telephone to Al Rayan's call-handler reporting the scam and an indemnity was sent around an hour later too. And so I am satisfied that Al Rayan contacted the receiving bank within a reasonable timeframe.

Finally, I want to stress that I'm really very sorry to hear about what's happened to Mr M. I have significant sympathy for the situation he found himself in. But having thought very carefully about what he's told us happened at the time and Al Rayan's actions, I'm not persuaded it would be fair and reasonable for me to hold Al Rayan solely liable for his losses.

Summary

Having taken into account the further submissions provided to me by Mr M, I am not minded to depart from the conclusions I reached in my provisional decision for the above reasons.

My final decision

My final decision is that I partially uphold this complaint against Al Rayan Bank PLC.

Al Rayan Bank PLC should now:

- Refund Mr M 50% of his total loss taking into account any funds that have been returned from the receiving bank.
- Pay interest on the above amount at the account rate from the date the funds left the account until the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 6 January 2023.

Emly Hanley
Ombudsman