

The complaint

Mr C complains that Bank of Ireland (UK) Plc failed to do enough to protect him when he fell victim to a crypto investment scam.

What happened

In May 2021 Mr C found an advert for a company, who I'll refer to as 'A', which offered a trading platform for crypto investments. Mr C submitted his contact details online and made an initial investment of £250. He was later contacted by someone purporting to be an account manager at 'A', who I'll refer to as Mr D.

Mr C initially questioned the legitimacy of 'A' and asked about its regulation. He also asked Mr D to explain why there were negative reviews of 'A' online. Mr C said Mr D answered all his questions and reassured him about 'A's' legitimacy. Mr C said when he spoke to Mr D he heard background noise that sounded like 'traders' in conversation with 'clients', which he said reassured him it was a large operation.

At some stage Mr D advised Mr C to download software that gave Mr D access to Mr C's computer. Over time Mr D persuaded Mr C to invest larger sums which were all paid via a legitimate crypto exchange (I'll refer to as 'K'). Mr C was provided access to what appeared to be a trading account where he could see his deposits, profits and losses.

In June 2021 Mr C applied for two buy-to-let mortgages secured on two rental properties he owned. He said he was looking to purchase a new rental property and wanted to make improvements to other properties he owned. Mr C said that Mr D became aware of the mortgage funds during their regular contact and persuaded him to invest them.

On 1 July 2021, Mr C went into his local Bank of Ireland branch to instruct a £70,000 transfer to his account with 'K'. Mr C said that he was asked by branch staff what the transfer was for, and he said he was buying crypto. He said he was then asked to sign a form which was kept by Bank of Ireland, but that he wasn't given a copy to keep himself.

Mr C's initial investments appeared to perform well - he could see profits being made and was able to make small withdrawals from his account. But later investments did not perform as well. Mr C said he was also struggling to keep up with the "day trading" 'A' offered. Mr C found another trading platform online, that I'll refer to as 'B', that offered "swing trading", that allowed trades to take place over longer periods. Again, Mr C was introduced to an account manager who advised him to use software that allowed the account manager to access Mr C's computer. He was again encouraged to invest large sums via a legitimate crypto exchange.

After Mr C's own funds had been exhausted, he says the account manager persuaded him to take out personal loans. Mr C said the scammer applied for these loans on his behalf using the software on his computer. Mr C believed that these loan funds would be invested for a short period of time and then repaid.

Mr C attempted to withdraw funds from B in September 2021 but was told he'd need to pay

an additional sum to cover trading fees and taxes, which he did. But after making this additional payment he was still unable to make a withdrawal and realised he'd been the victim of a scam.

Mr C said he reported 'B' to the police. He said he also asked the police to check that 'A' was legitimate but was told this was also likely a scam. By this point Mr C had transferred over £260,000 out of his Bank of Ireland account to crypto wallets in his name. The funds had been sent from Mr C's crypto wallet to wallet addresses provided by the scammers. Mr C had believed the crypto was going into wallets that belonged to him, but in actual fact it was likely sent directly to the scammers and Mr C was simply provided with a fictitious trading account simulation where he could see deposits, profits and losses.

Mr C contacted Bank of Ireland and told it he'd been the victim of a scam. Bank of Ireland investigated Mr C's claim but said he was ultimately liable for the transactions, which had been correctly authorised by him. It noted the payments had been paid to crypto wallet accounts held in his own name, which he had access to. It said Bank of Ireland staff had spoken to Mr C on two occasions to understand what the payments were for and to assess if he was at risk of financial harm from fraud. During these interactions Mr C had confirmed he was aware of the risks of investing in crypto and had investigated the companies and satisfied himself the investments were genuine.

Bank of Ireland confirmed that it had attempted to recover Mr C's funds but that no funds remained in the receiving accounts. But it discovered that it had been contacted by another bank, advising that one of its customers had been the victim of a scam and had sent funds to Mr C's account. It said that had this notification been processed properly Bank of Ireland may have been able to prevent Mr C making the last three transactions to the scam. So, it refunded £20,950, to reflect the loss it considered it could have prevented.

Mr C was unhappy with Bank of Ireland's response and referred a complaint to the Financial Ombudsman Service. He said it hadn't done enough to protect him from the risk of financial harm from fraud. He said that while bank staff had discussed the risks associated with crypto investments – in so far as the high-risk nature of the investment – it hadn't advised him of the risk of scams. He said that had it done so, he would not have transferred his money and would not have suffered a loss. He said Bank of Ireland had failed in its duty of care to him.

Our Investigator didn't uphold the complaint. While she thought Bank of Ireland could have done more to identify Mr C was at risk of financial harm due to a scam, she did not think any intervention from the bank would have prevented Mr C's loss. She noted Mr C had carried out his own research into the company and so was likely to go ahead with the transactions even if he'd been provided with appropriate scam warnings.

Mr C, supported by a claims management company, disagreed, and asked for his complaint to be referred to an Ombudsman for a final decision. He disagreed with our Investigator's assumptions that he would have continued with the transaction even if he'd been given a meaningful scam warning. He said that while the research he carried out before investing did not uncover the scam, this does not mean that Bank of Ireland would not have been put on notice that his transaction bore the hallmarks of a typical crypto investment scam.

As our Investigator couldn't resolve the matter informally the case was passed to me for a decision.

On 6 February 2023, I issued a provisional decision partially upholding this complaint. For completeness I repeat my provisional findings below:

"Like our Investigator, I consider that Bank of Ireland missed a crucial opportunity to warn

Mr C he was at risk of falling victim to a crypto investment scam. But unlike our Investigator, I consider that had Bank of Ireland intervened as I'd expect it to, the scam would have been uncovered and Mr C's losses would most likely have been prevented.

It is accepted that Mr C authorised the scam payments totalling just under £260,000 from his Bank of Ireland current account. So, although he didn't intend the money to go to the scammers, under the Payment Services Regulations 2017 and the terms and conditions of his account, Mr C is presumed liable for his loss in the first instance. And under the terms and conditions of the account, where a valid payment instruction has been received Bank of Ireland's obligation is to follow the instructions that he provides.

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 a bank to take additional steps or make additional checks before processing a payment in order to help protect its customers from the possibility of financial harm from fraud.

This service has referenced the relevant rules, codes of practice and good industry practice in many previous decisions published on our website, so I won't repeat them here.

While Bank of Ireland's first obligation is to follow Mr C's payment instructions, if an instruction is sufficiently unusual or uncharacteristic for the account, I'd reasonably expect it to intervene and ask more about the reasons for making the payment before processing it. I'd also expect it to provide appropriate warnings about common scams to help its customers make an informed decision whether to continue with the payment or not. There might also be cases where it would be reasonable for a bank to refuse to follow a payment instruction if there were good grounds to believe it was being made because of a fraud or scam.

I should note that this duty applies whether the losses occurred from Bank of Ireland's account, or at some later point in the payment journey. So, while I understand that Bank of Ireland has suggested it is not responsible for Mr C's loss as the funds were transferred to a crypto wallet in his own name, this does not absolve Bank of Ireland of its responsibility to intervene if it had grounds to believe its customer was at risk of financial harm from fraud. Mr C's losses, though not arising from the initial transfer, ought to have been within the contemplation of, and reasonably foreseeable to, Bank of Ireland. So, I'm satisfied it can be held responsible for the losses Mr C suffered.

Did Bank of Ireland do enough to identify the risk of financial harm from fraud?

Mr C instructed Bank of Ireland to pay £14,900 to 'K' on 5 May 2021. Before processing the payment Bank of Ireland contacted Mr C to confirm that he had authorised the transaction. During the call, Mr C confirmed he intended to make the payment as instructed. He volunteered that he was intending to invest in crypto, and he was making the payment via 'K'. Mr C mentioned it was his first-time transferring money to 'K', but he thought it was a legitimate company. He later remarked about the prevalence of scams and that he hoped he wouldn't fall victim to one.

Despite Bank of Ireland being alerted to the fact that Mr C was trying to make a large payment - which was out of keeping with his usual account usage - to 'K' as part of an investment, the call handler missed the opportunity to ask any questions about the payment, or offer any warnings specific to crypto investment scams, as I'd have expected them to do.

By January 2019 we think banks had, or ought to have had, a good enough understanding of how these scams work – including that the consumer often buys crypto from a legitimate exchange, but under the advice of another company acting as a form of broker or trader (in many cases the scammer) - to have been able to identify the risk of harm from fraud.

Whilst it's not up to us to dictate which questions banks should ask, Bank of Ireland could have, for example, asked how Mr C had found 'A', whether there was a 'broker' or 'account manager' helping him in the background, whether he had a trading account, and whether he'd been able to successfully withdraw requested amounts from his trading platform. These are typical features of crypto investment scams.

I've thought next about what answers Mr C would likely have given Bank of Ireland had it asked him about his intended payment. Mr C wasn't given a cover story by 'A' and so I think it likely he would have answered any questions honestly and openly. Had Mr C been asked appropriate questions, I think he would have explained he had:

- *been enticed by an advert he'd found online;*
- *been introduced to an 'account manager' who would manage his investment and supported him in making the trades, and*
- *been advised to purchase crypto from a legitimate crypto exchange.*

I also think reasonable and proportionate probing would likely have uncovered that Mr C had downloaded software that allowed his 'account manager' access to his computer and that he'd seen a mixture of positive and negative reviews online.

All of this should have put Bank of Ireland on notice that Mr C was likely falling victim to a crypto investment scam.

Had Mr C been made aware his proposed investment bore the hallmarks of a scam, and that his money would be at risk, I think it's most likely he would have been receptive to the warning and decided the risk was too high to accept. As such, I think he wouldn't have made the payment and his future losses would have been prevented.

I say this as the evidence demonstrates Mr C was in fact wary of being scammed. He'd questioned Mr D about negative reviews he'd found online, although he was falsely reassured the reviews were themselves fake. Mr C also seemed to be seeking reassurance from Bank of Ireland that he wasn't at risk of being scammed when he volunteered to the call handler that he was looking to invest in crypto and that he hoped it wasn't a scam.

Bank of Ireland has argued that it provided Mr C with a clear warning before he made the in-branch transfer of £70,025, but that he decided to proceed despite the warning. But having reviewed the evidence Bank of Ireland has provided, alongside Mr C's testimony, I'm not persuaded that it provided a meaningful warning.

Mr C recalls being asked what his payment was for. He said he was buying crypto and was advised that crypto is a high-risk investment. He was then asked to sign a form that was retained by Bank of Ireland, but he wasn't provided with a copy.

Bank of Ireland has provided a copy of an 'Application For Telegraphic Transfer' form signed by Mr C. There is a mixture of undated handwritten notes on the reverse of this form, including:

- *"Sent funds previously [...] fraud conversation, happy to proceed"*
- *"Customer is buying [crypto] Happy with Ben Details has sent funds previously."*
- *"Checked all details"*

- "Read 2 statements"

- "Happy for payment to go".

The form carried two statements. The first statement referred to the account Terms and Conditions and confirmed that the account would be debited as instructed. The second statement said "It is important you have confirmed the beneficiary payment details and considered any potential risk of fraud and you can find further information at <https://www.bankofireland.com/help-and-support/security-zone>. Please tick to confirm you have considered this and wish [illegible] the payment." The form appears to have been wet signed by Mr C, but the statements have, what appears to be, computerised ticks next to them, suggesting that Mr C may not have ticked these boxes himself.

Having considered everything, I'm not persuaded that Bank of Ireland's interaction with Mr C in branch went far enough. Mr C's understanding of Bank of Ireland's warning was that he needed to assure himself that he had provided the correct payment details and that he accepted the risks of dealing in crypto. I can understand why he would have thought that given the notes refer to him checking details, being happy with the beneficiary details and having sent funds to K before. While the printed warning makes brief mention of the potential risk of fraud, there's no evidence Mr C was given any other information or guidance on what the risks may have been, particularly in his specific circumstances. For example, I'd have expected Bank of Ireland to specifically highlight the risks associated with investment scams where payments are made via legitimate crypto exchanges.

As such, while I can see that Bank of Ireland did have an interaction with Mr C, I'm not persuaded it did enough to discharge its duty to protect him from the risk of financial harm from fraud. I think it should've done more to protect Mr C. It was the expert, but it failed to seek sufficient information to understand the nature of Mr C's payments. Had it intervened appropriately on 5 May 2021, I think Mr C's losses from that date onwards could have been prevented.

Should Mr C bear some responsibility for his loss?

I have thought carefully about whether Mr C should bear some responsibility for his loss by way of contributory negligence (which might justify a reduction in compensation). And overall, I think he should.

Bank of Ireland has suggested that Mr C was dishonest when applying for buy-to-let mortgages with it. It has said that had Mr C told it he was planning to invest the funds, Bank of Ireland would not have approved the mortgages, and so Mr C's losses could have been prevented.

Mr C denies being dishonest when applying for the mortgage loans. He said he was manipulated and coerced into investing the funds and that he genuinely intended to use them for a house purchase and home improvements when he applied for them.

I've not been provided with any evidence that would help to prove what Mr C's intentions were when he applied for the buy-to-let mortgages. But in the absence of any evidence to the contrary, I'm inclined to believe his testimony that the loans were taken out for legitimate purposes. So, I don't agree with Bank of Ireland that he contributed to his loss by lying about the purpose of the mortgage loans he applied for.

But I think the available evidence does demonstrate that Mr C had a general awareness of scams and was concerned from the outset that 'A' may not be legitimate. Despite these concerns, there's no evidence Mr C took any reasonable steps to check 'A' was in fact a

legitimate firm, other than seeking reassurance from Mr D.

In an email exchange between Mr C and Mr D in April 2021 - after Mr C had made his initial £250 investment, but before he transferred £14,900 – Mr C questioned ‘A’s’ regulation and was insistent he was given an answer by email rather than over the phone, as Mr D tried to encourage. Mr C was told ‘A’ was regulated by St Vincent & The Grenadines Financial Services Authority (‘SVGFSFA’), which Mr C did not recognise. Having reviewed the SVGFSFA website I can see no evidence that ‘A’ was indeed regulated as it suggested. And I’ve seen nothing to suggest that Mr C carried out any further checks to confirm what Mr D had told him was correct, which I’d have expected him to do in light of his questions to Mr D.

In the same exchange with Mr D, Mr C forwarded a screenshot of reviews he’d found of ‘A’ online, which were entitled “Scam do not invest!” and “They are not giving me my money back”. Mr C expressed concern about what he was reading. Mr D was able to reassure Mr C that the reviews were fake and that reputable companies were being blackmailed with reviews like this.

I can see that Mr D was able to confidently answer Mr C’s concerns. But I think Mr C should have been aware that, asking a representative of a firm that he thought may be scamming him for reassurance that it was a legitimate business, would unlikely uncover the truth. I’ve seen no evidence that Mr C carried out any additional checks to reassure himself that ‘A’ was legitimate – for example checking ‘A’ was regulated as it suggested or seeking independent advice, which I think would have been reasonable in light of the sums he was intending to invest and his concerns about ‘A’.

I think a reasonable person in the same position as Mr C would have carried out more thorough research into ‘A’ or would have sought independent advice before entering into a risky investment opportunity.

Mr C was clearly concerned about the possibility of a scam but took inadequate steps to protect himself. Overall, I think Mr C’s lack of care went beyond what we would expect from a reasonable person. As such, I think he should be responsible for 50% of his loss.”

Responses to my provisional decision

Bank of Ireland disagreed with my provisional findings. In summary it said:

- ‘K’ owed a duty of care to Mr C in relation to the funds transferred out of the crypto-wallet and Bank of Ireland could not be held liable if another company failed to protect Mr C’s assets;
- It disagreed that Mr C had applied for the re-mortgage funds legitimately. It said there was no evidence to support Mr C’s intended house purchase.
- Even if Mr C had applied for mortgage funds for legitimate reasons, he was under a duty to inform the bank when he decided to use his funds to invest instead.
- Bank of Ireland’s intervention was reasonable given Mr C was an experienced property investor.
- Mr C failed to advise Bank of Ireland about his concerns about ‘A’. But as far as Bank of Ireland was aware Mr C was investing via ‘K’, an established crypto-provider.
- Bank of Ireland shared information with Mr C about how fraudsters target bank customer and so he should have expressed his concerns about ‘A’ then.

- Mr C should not be awarded 8% interest on the borrowed funds.

In view of Bank of Ireland's comments and having received more information from Mr C regarding the origin of his funds he had invested, I clarified my provisional decision in an email dated 13 March 2023. In summary I said:

- Bank of Ireland ought to have been aware of how scams like this work, including the fact that customers often move money into an account in their own name before moving it on again to scammers. So, the fact that Mr C was initially making payments to a genuine crypto-exchange did not mean he was safe from the risk of financial harm. Bank of Ireland also had a relationship with Mr C and understood the normal operation of his account and ought to have known when his instructions became out of character. As such, Bank of Ireland had a responsibility to find out more about Mr C's intended payments and investment. It should also have offered Mr C meaningful, targeted warnings before agreeing to process his transactions.
- Bank of Ireland has not proved that Mr C had obtained his mortgage funds by deception. I explained that, as the allegation was essentially that Mr C had acted fraudulently, the burden of proving this was high. But even if I were persuaded that Mr C had acted dishonestly, it did not absolve Bank of Ireland from its responsibilities. Bank of Ireland had also highlighted in its response that it was aware at the time Mr C made his in-branch transfer that he was using mortgage funds towards an investment, which it had separately confirmed was in violation of its lending rules. In these circumstances, I considered that Bank of Ireland, as the expert and in compliance with its regulatory obligations, ought to have refused to carry out Mr C's payment instruction when it learned about the origin of his funds.
- Similarly, even if Mr C had failed to comply with his obligation to inform Bank of Ireland that he had changed his mind regarding the use of funds, this would not absolve Bank of Ireland of its responsibilities. For the reasons already set out, it should have intervened and stopped the payment.
- I was not persuaded that Bank of Ireland's interaction with Mr C was sufficient, regardless of whether Mr C was an "*experienced property investor*". Bank of Ireland had a duty to protect Mr C from the risks of financial harm due to fraud, regardless of his knowledge and experience. But from the evidence I had seen Bank of Ireland had failed to give him a tailored warning about crypto investment scams, and had it done so I think Mr C's losses would have been avoided.
- Had Bank of Ireland intervened as it ought to have done when Mr C instructed his first payment, it would most likely have become aware of the involvement of Mr D and the scam would have been identified.
- The warning read to Mr C in branch was not sufficiently meaningful to highlight the specific risks of investment scams, specifically those involving crypto. So, it wouldn't have alerted Mr C to the risks he faced, nor did it set him on the path to uncovering the scam.
- I clarified how much interest Bank of Ireland needed to pay relevant to different parts of Mr C's losses:
 - I explained that interest did not need to be added to the funds that were paid from Mr C's current account. Mr C had said that he intended to invest these funds in crypto before falling victim to the scam. Given the high risk, speculative nature of trading in crypto, I don't think it would be appropriate for Bank of Ireland to add

interest to Mr C's initial losses (those between 7 May and 11 June 2021), as there's no guarantee he would have earned anything on his investment and indeed there was a risk he could have made significant losses.

- Bank of Ireland should pay interest when Mr C started using funds from his various personal loans and re-mortgage funds. I'm satisfied that had Bank of Ireland intervened as it should have on 5 May 2021, the scam would have been uncovered and Mr C would not have been coerced into applying for the personal loans that were paid towards the scam.
- There had therefore been an additional loss to Mr C – as well as the money transferred to the scam, he has also had to pay interest on the loan amounts. Mr C has also had to make monthly repayments towards the loans. Had it not been for Bank of Ireland's error, Mr C would have had this money available for day-to-day spending.
- So, I think Bank of Ireland should refund any interest applied to the personal loans from the date the loans were agreed to the date of settlement. It should also add 8% interest on the payments Mr C made towards the loans since they were agreed to the date of settlement.
- In terms of the funds taken from Mr C's re-mortgage, I'm satisfied that he would always have applied for and received these funds whether he'd fallen victim to the scam or not. And in doing so he agreed to pay the associated interest and fees. As such, I don't think Bank of Ireland should be responsible for reimbursing these.
- But Mr C has explained that the re-mortgage funds were intended to be spent elsewhere - purchasing a property and making improvements to existing properties. As such I think Bank of Ireland should add 8% interest to the re-mortgage funds that were lost to the scam (which I understand to be £146,830), to reflect the fact that Mr C lost the use of those funds.

Mr C accepted the revision to my provisional decision but asked that I consider whether Bank of Ireland should cover his representatives' fees as he had lost a considerable part of his private pension plan due to the scam.

Bank of Ireland maintained that Mr C should be responsible for the losses he incurred and questioned how I'd reached a "balanced responsibility" outcome. It noted that Mr C had raised funds through five lenders without declaring that he intended to use the borrowing for a speculative investment.

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 am upholding this complaint in part, for all the reasons set out above.

I accept that Mr C was partially responsible for his loss. While alerted to some concerns about 'A', Mr C didn't take appropriate steps to assure himself that 'A' was genuine or that his money was safe. I maintain that his lack of care went beyond what we would expect of a reasonable person. This is why I reduced his redress by 50%.

I understand Bank of Ireland's concerns about the loans Mr C took out and paid away to the scam. But, as it ought to be aware, this is a common feature of scams of this type. We know

that scammers often use social engineering and pressure tactics to encourage their victims to take out loans to increase their investments. In this case Mr C said the scammers applied for the loans on his behalf using software that gave the scammers control over his computer. But even if I were persuaded that Mr C had lied to the loan companies to obtain the loan funds, I wouldn't conclude that this made him wholly responsible for his loss.

Ultimately, Bank of Ireland was the expert and had a duty to warn Mr C of the risk of financial harm from fraud. It failed to give him a meaningful warning, despite the clear red flags. Had Bank of Ireland intervened as it should have, I'm persuaded the scam would have been uncovered and Mr C's losses would have been prevented. So, Bank of Ireland is partially responsible for his losses.

Overall, I'm satisfied that it is a fair outcome that Bank of Ireland and Mr C are held jointly responsible for his losses.

Lastly, I've considered whether Bank of Ireland should pay Mr C's representative's fees, but I don't think it should. We don't normally expect a business to pay any fees the consumer incurred while bringing their complaint. The Financial Ombudsman is a free service, and while Mr C was entitled to use a representative to help him bring his complaint he was not required to do so. Bank of Ireland had advised Mr C in its final response – as it was required to do so - of his right to refer his complaint to the Financial Ombudsman, free of charge. So, if Mr C chose to use and pay for a representative, this was his choice, but we wouldn't expect Bank of Ireland to pay this additional cost.

Putting things right

I've explained why I think, if Bank of Ireland had done what it reasonably ought to have done, Mr C would not have lost the payments in dispute.

Bank of Ireland should therefore refund Mr C's losses, less any sums he received back in credit. While Bank of Ireland does not need to compensate Mr C for his lost investment opportunity, it should compensate him for any additional costs he incurred as a result of the scam. It should therefore refund any interest applied to the personal loans and add 8% interest to the loan repayments he has made to date. Bank of Ireland should also compensate Mr C for the loss of use of the re-mortgage funds by paying 8% interest on those funds.

My final decision

For the reasons set out above, I uphold this complaint and direct Bank of Ireland (UK) Plc to

- Refund Mr C's losses incurred between 5 May 2021 and 14 September 2021, less any credits and refunds he received relating to the scam (which I understand includes a £1,999.68 payment in August 2021 and a refund of £20,950 in September 2021 but may also include payments received on 16 and 24 August 2021).
- It should also
 - refund any interest applied to the personal loans from the date each loan was granted to the date of settlement,
 - add 8% interest on the loan repayments Mr C made since each loan was paid to the date of settlement.
 - add 8% interest to the re-mortgage funds that were lost to the scam (which I

understand to be £146,830).

From this total amount Bank of Ireland (UK) Plc can deduct 50% to reflect Mr C's contributory negligence.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 26 April 2023.

Lisa De Noronha
Ombudsman