

The complaint

Mr M complains that Bank of Scotland plc (BOS) won't refund the money he lost when he fell victim to a scam.

What happened

Around March 2022, Mr M saw an investment opportunity being advertised on social media. He reached out and spoke to some social media profiles who were involved in promoting the investment, who I understand he thought were financial advisors. He ultimately decided to make a £100 investment. This was paid as a bank transfer to an individual.

Mr M says the investment appeared to rise in value to £4,000. So, to improve his return, he made a further £100 payment that same day, followed by £800 the next day, towards the investment.

Mr M attempted to make a fourth payment of £500, but BOS flagged the payment for further checks. When it spoke to him about what he was doing, it realised – and warned him – he had fallen victim to an investment scam.

Following BOS's warning, Mr M ceased contact with the scammers. But they got back in touch around May 2022. They claimed they were legitimate, and sent him £250 – supposedly proceeds from his investment – to 'prove' this.

They scammers told Mr M he had over £20,000 in his trading account – which they would send him immediately on receipt of a £500 transaction fee. When he paid this amount (to a different individual than the one paid previously), they asked for a further £280 for legal fees. Mr M paid this. He also made two card payments of £2 and £24 to a cryptocurrency wallet around this time, which I understand it's accepted was done as part of the scam.

Despite making the payments as instructed, Mr M didn't receive the proceeds he had been promised. It seems he then realised the investment was a scam.

Mr M went on to complain to BOS about its decision not to refund him for the scam payments. It said it had considered his claim for the bank transfers under the Lending Standards Board's Contingent Reimbursement Model (CRM) code. And it wasn't liable to refund him as he didn't do enough to protect himself. It said it wasn't liable for the card payments either. It did pay £50 compensation for the delay replying to him.

Unhappy with this response, Mr M referred his complaint to our service. Our investigator didn't uphold it. They didn't think BOS was liable for the payments under the CRM code or otherwise. It had warned Mr M the investment was a scam, yet he'd continue to make payments. They also thought the social media promotion, and suspiciously high returns, should have given Mr M concern.

Mr M appealed the investigator's outcome. He said he was due a full refund under the CRM code as he was vulnerable. The investigator considered this – but wasn't persuaded Mr M's circumstances warranted a full refund under the code. As no agreement was reached, the complaint has now been referred on to me.

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 decided not to uphold it. I appreciate this will be disappointing for Mr M, who I don't doubt is the victim of a scam. I'll explain how I've reached my decision below.

I've started by considering whether BOS has liability for these payments under the CRM code, of which it is a signatory. The code doesn't cover card payments, but I'm satisfied it does apply to the payments made via transfer. As these were domestic transfers to another person, made as the result of a scam.

The starting position under the CRM code is that banks should refund victims of APP scams unless an exception applies. In declining to refund Mr M, BOS relied on the following exception:

The customer made the payment without a reasonable basis for believing that: the payee was the person the customer was expecting to pay; the payment was for genuine goods or services; and/or the person or business with whom they transacted was legitimate

In the circumstances, I'm persuaded BOS has applied this exception fairly. As I think there were warnings signs which ought to have undermined Mr M's basis for believing the investment was genuine.

The opportunity was being advertised on social media, and Mr M was communicating with who he believed to be financial advisors via their social media profiles. From what we've been told, it doesn't appear Mr M took any steps to independently look into the company or the investment being offered. I don't think it was reasonable to rely solely on what they told him via social media. Particularly when what they said seemed too good to be true.

For example – Mr M thought his investment of £100 had risen to £4,000 before making further payments. Bearing in mind he made the next payment within the hour, I don't think it was plausible that the investment would have increased fortyfold in this time.

At the point of the fourth payment, BOS spoke to Mr M and warned him it was a scam. This included covering off how scammers target victims via social media and will use a network of profiles to appear to back each other up – but the investment isn't real. Despite this clear warning, Mr M agreed to make further payments towards the scam. In light of what BOS had told him, I don't think it was reasonable for him to rely on the scammers' claim that his investment was worth £20,000 (from an initial investment of £1,000 – which again seemed to be good to be true). Or to trust their word that they would send him the funds once he paid the fees. Especially as it appears an additional fee was sought beyond that originally agreed.

For these reasons, I think the exception BOS has applied is relevant here. However, BOS wouldn't be able to rely on it as grounds not to refund Mr M if he was found to be vulnerable as defined by the code:

A customer is vulnerable to APP scams if it would not be reasonable to expect that Customer to have protected themselves, at the time of becoming victim of an APP scam, against that particular APP scam, to the extent of the impact they suffered.

I appreciate Mr M's representative says his circumstances mean he was vulnerable. I've considered this carefully. Overall, I'm not persuaded it's unreasonable to expect he could have protected himself.

Mr M's representative has explained he needs longer to process things. However, there was a gap of a few months in between some of these payments. From listening to the call, and based on his subsequent actions, it seems as though Mr M was able to understand and take on board BOS's warning at the time. This shows some awareness of the risk, and of what to do to protect himself (such as stopping with the scammer).

While I accept what we have been told about Mr M's circumstances, I note there is no record of him alerting BOS prior of any vulnerabilities. BOS also asked about this when it spoke to him in March 2022, and he confirmed he didn't need any assistance with his banking. BOS also specifically asked if anything had impacting his decision to make the payments – and he confirmed nothing had.

I don't doubt Mr M's circumstances were a factor in the scam he sadly fell victim to. But, bearing in mind the bar set under the code, I'm not persuaded he was vulnerable such that BOS has to refund him regardless of his basis for belief.

I'm satisfied BOS met the standards expected of it under the code. Aside from the payment it did flag as suspicious, I think it was reasonable to process the remaining payments without further checking – as I don't think they posed an obvious fraud risk. BOS also implemented Confirmation of Payee when Mr M made these transfers, and acted promptly to attempt recovery.

I have considered if there are other reasons why BOS should be held liable. Regardless of the code, there are circumstances when it ought to identify that a payment presents a fraud risk. That might occur when a payment appears significantly uncharacteristic compared to the normal use of the account. When such a risk is identified, it should respond proportionately to assess and protect its customer from the risk of fraud.

I'm persuaded BOS acted proportionately here. On the payment it flagged, it identified and warned Mr M about the scam – succeeding in stopping him from proceeding at that point.

As above, aside from the flagged payment, I don't think the other scam payments presented an obvious fraud risk. The amounts paid didn't appear excessively high in amongst Mr M's usual account activity. The card payments were for very small amounts that wouldn't have seemed concerning. Neither these, nor the later transfers, were identifiably linked to the recipient paid on the flagged payment. The final transfers were also spread out, with a few days in between – so it didn't look obvious if Mr M was being put under pressure.

BOS has already paid Mr M £50 compensation. I'm not persuaded it's fair to direct it to do anything further to resolve this complaint. I've not found it made errors which contributed to his loss, or that it breached the terms of the CRM code. While I appreciate the situation was stressful, this was largely down to the actions of the scammer; I'm not persuaded BOS caused Mr M *avoidable* upset warranting further compensation.

My final decision

For the reasons given above, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 16 February 2024.

Rachel Loughlin
Ombudsman