

The complaint

Mr M's complaint concerns Bank of Scotland's (BoS) actions surrounding his attempts to make payments to what he thought was a legitimate investment, but which turned out to be a scam.

What happened

The details of this complaint are well-known to both parties. And so I won't go into great detail about the circumstances here. In summary:

Mr M was introduced to a fraudulent investment scheme in December 2022. Convinced at the time that all was genuine he made a total of three payments towards the investment, by first sending funds to another account held in his name:

- £5,000 on 7 December 2022;
- £24,000 on 8 December 2022; *and*
- £40,000 on 13 December 2022.

BoS stopped the first payment to question Mr M about it. It was concerned he was at risk of financial harm from fraud.

Mr M first spoke to BoS on the phone. He told it he was looking to engage in 'a little bit of business' and that his other bank had also blocked similar payments.

BoS said Mr M would have to go into branch to discuss the payment as it wasn't satisfied the investment was legitimate. Mr M attended and discussed the payment further. BoS grew increasingly concerned, giving strong warnings against proceeding, believing Mr M was falling victim to a scam. Mr M was still convinced all was genuine, so BoS invoked the Banking Protocol, meaning the police were called.

The police spoke to Mr M and, like BoS, said he was likely falling victim to an investment scam. But Mr M wasn't persuaded by what BoS or the police had to say, and he insisted his payment was completed. BoS proceeded to do so.

The second payment was also flagged for additional checks but released at Mr M's insistence. A later attempted payment of £21,000 was blocked and discussed with Mr M. At this point BoS took the decision to freeze Mr M's account and not allow further payments.

Over the course of the scam, Mr M received credits totalling £3,058.15, which he believed to be returns on his investment.

Mr M complained to BoS about its actions. He said it needed to either prove the investment was a scam or else release his money. BoS remained concerned that Mr M would continue to send money to fraudsters and so decided to close his account.

Mr M brought his complaint as he was unhappy with BoS' actions. At this time, he still wasn't fully persuaded he'd fallen victim to a scam. One of our investigators considered the complaint and said it should be upheld, with Mr M receiving a refund of 50% of his loss. She said:

- BoS were strongly of the view that Mr M was falling victim to a scam. It blocked the payment and called the police. And so it should not have allowed the payment to go

through, even at Mr M's insistence, given it knew (or at least very much suspected) the payment was going toward criminal activity.

- Had BoS taken this action, blocked further payments, and perhaps even closed Mr M's account sooner, his losses could have been prevented.
- Mr M ought to bear some responsibility for his loss, given the very strong warnings given by the bank and by the police. She didn't think it was reasonable for him to proceed after intervention and warnings received.

Her recommendation was that Mr M receive a refund of 50% of his losses. She also said BoS should pay simple interest on the refund at 8% per year, calculated from the date of loss to the date of settlement.

This outcome was initially put to BoS in a mediatory sense, in an attempt to resolve the complaint quickly and informally. But it didn't agree, saying it had done all it could to protect Mr M from the scam. It didn't agree it was wrong to put the payments through given Mr M's insistence.

Our investigator then issued more formal findings which Mr M and BoS have had an opportunity to respond to. Mr M accepted he'd fallen victim to a scam and gave over no further evidence or arguments.

BoS objected to the outcome. It gave no comment about its actions during the scam. Instead, it said it should be given an opportunity to investigate the scam claim itself, as the complaint had originally been about the blocking and closing of Mr M's account.

The case has been passed to me as a resolution hasn't been agreed.

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'm upholding Mr M's complaint and for broadly the same reasons as our investigator.

A customer will generally be responsible for any payments made from their account that are properly authorised, as per the Payment Service Regulations 2017. And a bank should typically act on a customer's payment instruction without delay.

However, there are times when a bank ought to step in to question payments. Particularly where there are signs that a customer is at risk of financial harm through fraud. This requirement is well demonstrated by many of the steps BoS took in questioning Mr M.

BoS could see there was a risk of harm and so it spoke to him on the phone and in branch. And it also called the police, to help with an intervention. It was doing the right thing by following through with all these actions.

However, I'm satisfied that BoS ought not have let the first payment (or any subsequent payments) through. BoS had rightly identified the supposed investment opportunity as a scam. It was so concerned that the police were involved, who also believed Mr M was falling victim to a scam.

I then consider it was wrong to allow payments to go through, knowing a scam was taking place, and knowing Mr M was going to be paying money toward a criminal activity.

BoS evidently understands it can refuse to make payments and, if necessary, close accounts. That's what it did following Mr M's final attempt to send funds from BoS. It needs to be able to do so to protect itself as well as its customers. That action should have happened sooner, even if Mr M seemed assured of what he was doing. Had it done so the scam would have been avoided.

Like our investigator, I have recognised Mr M's own actions here and I agree he ought to have heeded the warnings he was given. Even if the investment seemed initially convincing, I find there ought to have been enough doubt and concern generated by BoS and the police that he shouldn't have continued. And so it's right he bear some responsibility for his loss.

I don't accept BoS' argument that it ought to now be given time to investigate Mr M's scam complaint. It's been aware of the scam for a long time now and our investigator even attempted to mediate a resolution to the complaint. In response to that mediation BoS never suggested there was any issue with proceeding with a scam complaint at this service; that objection was only presented after the more formal opinion was issued.

What's more, we have an inquisitorial remit. Whilst Mr M might have brought his complaint to us about the blocking and closure of his account, the scam complaint has naturally flowed from it. It's fair and reasonable, and within our remit, to have continued to investigate and provide an answer to it.

Putting things right

BoS should now:

- refund 50% of Mr M's total loss; *and*
- pay simple interest on the refund at 8% per year, from the date of loss to the date of settlement

My final decision

I uphold this complaint against Bank of Scotland plc.

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

Ben Murray
Ombudsman