

The complaint

Mr W complains that AIB Group (UK) Plc (AIB) won't refund money he lost in an investment scam.

What happened

What Mr W says:

Mr W was cold called by someone who said she was a broker, and she recommended investing in US oil and gas using an investment firm in Switzerland (which I will call 'firm B'). He dealt via the phone with the 'broker' and she became his personal financial advisor. He provided documents to confirm his ID. She called him every day to make his investments and advised him he was making profits.

As time went by, she encouraged him to invest more money as the returns were said to be improving. Mr W was told he could take his money out at any time – for a small charge. He didn't doubt her as she showed him his investments were doing well. One day he says the AIB payments app wasn't working and the account manager took control of his account using a screen sharing software. She made all the investments to firm B. From the time he downloaded the screen sharing software, he couldn't see his investment account at firm B, but felt he was being looked after.

Mr W trusted the account manager. He hadn't any prior investment experience.

Mr W made payments from his AIB account to a crypto wallet held at a crypto exchange firm (firm 'A'). **(continued)**

Mr W made the following 18 payments from his three accounts at AIB:

No.	Date	Payment	Amount
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1	29 August 2022	Online payment to firm A	£1,000
2	31 August 2022	Online payment to firm A	£1,000
3	1 September 2022	Online payment to firm A	£1,000
4	2 September 2022	Online payment to firm A	£1,000
5	12 September 2022	Online payment to firm A	£1,000
6	13 September 2022	Online payment to firm A	£1,000
7	14 September 2022	Online payment to firm A	£1,000
8	15 September 2022	Online payment to firm A	£1,000
9	16 September 2022	Online payment to firm A	£1,000
10	17 September 2022	Online payment to firm A	£1,000
11	20 September 2022	Online payment to firm A	£3,000
12	20 September 2022	Online payment to firm A	£2,000
13	21 September 2022	Online payment to firm A	£2,000
14	23 September 2022	Online payment to firm A	£7,517.73
15	28 September 2022	Online payment to firm A	£12,000
16	30 September 2022	Online payment to firm A	£7,000
17	7 October 2022	Online payment to firm A	£5,500
18	27 October 2022	Online payment to firm A	£8,219
	Total		£57,236.73

Mr W was then told his investments were worth USD78,000 and he decided to cash them in. He was told he needed to pay USD6,123 to do that. And then after he was told the investment had gone up to USD102,000, the withdrawal fee increased to USD8,325. The account manager then applied for two loans in his name (using the access to his account he had given). He then realised he had been scammed and contacted AIB on 1 November 2022.

Mr W has lost his life savings and had loans taken out in his name that he didn't apply for. One has been written off but the other one is still being paid for. His physical and mental health have been badly affected and it is only recently that he has felt able to tell his wife as shame and hurt consumed him.

Mr W says the payments were processed without question by AIB. They were unusual payments for him to make and he says AIB should've protected him from the scam. He says he's banked with AIB for 45 years and they should refund the money he's lost.

What AIB said:

AIB didn't refund any money. The bank said Mr W had authorised the payments and they were made to a legitimate company – firm A. The money was then transferred from firm A to the scammer firm B.

Our investigation so far:

Mr W brought his complaint to us. Our investigator upheld it. He said:

- Payments one to eleven were reasonably paid by AIB, given that they were relatively low value.
- AIB should've intervened from payment 12 onwards. By then, £5,000 had been paid on that day to crypto-related accounts, and this was by then unusual compared to Mr W's normal sending patterns.
- If AIB had intervened, by that time, crypto currency scams were well known and it was likely the scam would've been stopped and the rest of the payments not made.
- But, he said Mr W should be responsible for 50% of the losses as:
 - o He was cold called by someone he didn't know, and that isn't the normal way such investments are done.
 - o He found an online warning about firm B online which said it was a potential scam. So, Mr W couldn't have done enough research into firm B.
- On recovery, he said that given the period of time that had elapsed, it was unlikely any funds could be recovered.
- He said AIB should refund £44,236.73, (50% of the losses) plus interest at 8% per annum.

Mr W appealed and said AIB should pay all the money back. He thought he was investing in something that was legitimate and AIB should be responsible. Since September 2023, he has suffered ill health and is completely broke. He said his life has been ruined.

AIB didn't agree either. The bank referred to two other decisions from our service - which had been found in favour of AIB.

Because both parties didn't agree, the complaint has come to me to look into.

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 sorry to hear that Mr W has lost money in a cruel scam. It's not in question that he authorised and consented to the payments in this case. So although Mr W didn't intend for the money to go to a scammer, he is presumed to be liable for the loss in the first instance.

So, 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 Payment Services Regulations and the terms and conditions of the customer's account. And I have taken that into account when deciding what is fair and reasonable in this case.

But that is not the end of the story. 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 AIB 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.
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or make additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

I need to decide whether AIB acted fairly and reasonably in its dealings with Mr W when he made the payments, or whether it should have done more than it did. I have considered the position carefully.

The Lending Standards Board Contingent Reimbursement Model Code (CRM Code) provides for refunds in certain circumstances when a scam takes place. But – it doesn't apply in this case. That is because AIB hasn't signed up to it. I have therefore looked at this complaint using general Authorised Push Payment considerations.

If the payments were of a sufficient size and were out of character with how Mr W normally used his accounts – then we would expect AIB to have intervened and spoken to him about them. I looked at Mr W's accounts, and it's fair to say that the payments were unusual compared to the way in which he used his account – which was to make day to day expenditure of low value; and I can see he made fairly regular payments of between £500 and £1,000.

And I must consider - there's a balance to be made: AIB has certain duties to be alert to fraud and scams and to act in their customers' best interests, but they can't be involved in every transaction as this would cause unnecessary disruption to legitimate payments. For those reasons, in this case, I think AIB acted reasonably in processing the payments for £1,000 each time – up to payment number 10.

And then, Mr W made the payment for £3,000 on 20 September 2022. At that point, I think it was reasonable for AIB to have made that payment. **(continued)**

But by payment number 12 – this would've meant that Mr W had then paid £5,000 on that day and to a crypto related account provider. And therefore, I agree that it was at that point that it would've been reasonable to expect AIB to have intervened, stopped the payment and contacted Mr W.

AIB was the expert in such matters and if they'd intervened, held the payments and contacted Mr W we would have expected them to ask open questions such as:

- Why are you making the payment?
- Who to?
- For what purpose?
- How did you hear about the investment?
- How were you contacted about it?
- Where did the money come from that you're investing?
- Where is the money going to from your crypto wallet – to 'bitcoin'?
- What do you know about bitcoin investing?
- Have you made bitcoin investments before?
- How were you given the bank account details where the money was to be paid to?
- Have you given control on your devices to anyone else?

AIB would've found out that Mr W had been contacted 'out of the blue' via a phone call; the investments were arranged and agreed to on the phone; he had no investment experience; the money was to go to another investment (firm B) after firm A; and he had given control of his devices to the scammer.

All of these were red flags and there was enough going on to persuade me that Mr W would've been warned about the risks involved and wouldn't have made the payments from the 12th payment onwards.

I'm also not persuaded that the fact the payments were going to Mr W's own account and so appeared to be going somewhere safe and within his control should have satisfied AIB that he wasn't at risk of harm. This is because by January 2019, firms like AIB had, or ought to have had, a good enough understanding of how these scams work – including that a customer often moves money to an account in their own name before moving it on again to the scammer - to have been able to identify the risk of harm from fraud.

I considered what AIB argued – that our service has found in their favour on two scam-related cases. But – as the bank will know, our service looks at each complaint on its own merits and in the particular circumstances of each one – and that's what I've done here.

Therefore, in the first instance, I find AIB liable to refund £44,236.73

Contributory Negligence: But that's not the end of the story here. I also considered whether Mr W could've done more to protect himself and whether he should therefore reasonably share some of his losses.

In thinking about this - we apply a test of what we would expect a reasonable person to do in the circumstances. We don't (for example) apply a test of what we would expect a finance professional to do. Given this, I think it is fair that Mr W be responsible for 50% of the refund. I say that as:

- The payments were spread out over two months, so he had time to reflect and get advice as to what was going on.
- He didn't take any guidance from a trusted adviser or friend.
- He was called out of the blue on the phone – and trusted that person, who he'd never met (and I've seen no evidence of a zoom call for example).
- I haven't seen any evidence of written documents or contract/prospectus - everything was taken on trust on phone calls.
- Mr W agreed to allow the scammer to take control of his bank account – this was not a very wise thing to do.
- After a period Mr W couldn't see any evidence of the investment 'value' but accepted what he was told on the phone and continued to send money.

Given all of that, I think Mr W could've done more to protect himself.

Recovery: We expect firms to quickly attempt to recover funds from recipient banks when a scam takes place. I looked at whether AIB took the necessary steps in contacting the bank that received the funds – in an effort to recover the lost money.

And here, the funds went from the bank account to a crypto currency merchant and the loss occurred when crypto was then forwarded to the scammers. In this case, as the funds had already been forwarded on in the form of cryptocurrency there wasn't likely to be anything to recover.

Mr W has lost a lot of money. He's explained why the money was important to him, and the impact his losses have had. I was sorry to learn of his circumstances. He will therefore be disappointed by my decision because he says he wants the full amount of his losses refunded, but I am confident that this outcome is a responsible one for both parties here and in the circumstances of what happened.

Putting things right

AIB must refund 50% of £44,236.73 - £22,118.37, plus interest at 8% per annum simple from the date of the payments to the date of settlement.

My final decision

I uphold this complaint. AIB Group (UK) Plc must:

- Refund £22,118.37 plus interest at 8% per annum simple from the date of the payments to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 10 December 2024.

Martin Lord
Ombudsman