

Complaint

Mr M is unhappy that Bank of Scotland plc didn't reimburse him after he fell victim to a scam.

Background

In mid-2020, Mr M fell victim to an investment scam. He'd made contact with an individual via an online dating website. They exchanged messages regularly on a social messaging app. Eventually, that individual brought up the subject of an investment opportunity. According to Mr M, she seemed very knowledgeable about how to take advantage of market conditions and earn quick returns. She'd said that she had a family member that worked in the investment industry and that he was a source of market intelligence.

Unfortunately, the person who had contacted Mr M wasn't legitimate and was instead a fraudster. He transferred a little over £13,000 in under a month. I understand that those funds were deposited into an e-wallet held with the third-party firm. It was then converted into cryptocurrency and transferred to a blockchain address controlled by the fraudster.

On the advice of his contact, he created an account with a third-party trading platform and an e-wallet at a cryptocurrency platform. He made some smaller payments to test the waters and was pleased by the results. His contact encouraged him to invest more. When he said that he didn't have the funds available, she encouraged him to borrow. He took out a loan for £15,000 and then proceeded to transfer £12,020 to the third-party platform.

This prompted Bank of Scotland to speak to him before allowing the payment to be authorised so that it could carry out fraud checks. He was asked whether he'd made transfers to this cryptocurrency platform before. He said that he'd done it once before to make sure the funds went to his account. The call handler asked him how he found out about the platform and whether someone had contacted him. He said *"No, no ... This is all my account and nobody's contacted me, nobody's asked me to send money..."* The call handler at the bank gave him some general background information about the risk and prevalence of scams involving cryptocurrency, but was generally satisfied that Mr M wasn't at risk of financial harm due to fraud and so allowed the payment to be made.

Once Mr M realised he'd fallen victim to a scam, he notified Bank of Scotland. It didn't agree to reimburse him. It said that it thought he should've undertaken more checks to ensure that the investment opportunity was a genuine one. The case was looked at by an Investigator who didn't uphold it. She noted that Bank of Scotland was expected to carry out checks on payments that were unusual or out of character. In this instance, the payment of £12,020 was out of character and so it was right that it queried it with Mr M before agreeing to process it. However, she didn't think there was any more it could've done in that call to protect him here because he'd not been entirely open when answering the bank's questions. He'd said that nobody had contacted him, but the payments were a result of him being encouraged by the person who'd contacted him online.

Mr M disagreed with the Investigator's view. He said that the answers he'd given to the bank's questions were factually correct – for example, the account was in his name and his contact hadn't specifically asked that he transfer funds to her.

He also pointed out that he has a diagnosis of ADHD. He says that this information was shared with the bank in 2016 when he was unhappy with the actions of another employee of the bank that was giving him mortgage advice. He says he disclosed his diagnosis to that employee when asked if he had a disability. He argues that, since Bank of Scotland knew or ought to have known about his diagnosis, it should've handled that phone call differently. It should've gone into more depth when discussing the scam risk and, if it had done so, he would've been put off going ahead with the payment.

Since Mr M disagreed with the Investigator's view, the complaint has been passed to me to consider and come to a final decision.

Findings

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

In broad terms, the starting position at law is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. However, that isn't the end of the story. Good industry practice required that Bank of Scotland be on the lookout for payments that were out of character or unusual to the extent that they might have indicated a fraud risk. On spotting such a payment, I'd expect it to intervene in a manner proportionate to the risk identified.

It is now known (with the benefit of hindsight) that Mr M was falling victim to a scam here. The question I have to consider is whether it should've been apparent to Bank of Scotland that there was a greater than normal risk of that happening. The Investigator concluded that the risk ought to have been apparent by the point Mr M asked the bank to make the payment of £12,020. I'd agree with that conclusion. It shouldn't have processed that payment without first making enquiries with Mr M to satisfy itself that he wasn't at risk of financial harm due to fraud.

It did call him. The Investigator didn't think that there were any major shortcomings with that call and that the employee of the bank was restricted by the fact that, in her opinion, Mr M didn't share the full extent of the circumstances. Mr M disagrees with that. He says that his answers were generally factual (for example, he was paying his own account) and that he couldn't make a connection between the scenario he was in and the scam typology described by the call handler. The call handler talked of "*moving funds into a portfolio*" but Mr M instead believed he was funding a foreign exchange account.

I'm not persuaded by that explanation. Mr M was asked whether someone had contacted him, and he said no. He was having an open-ended discussion with the employee of the bank, and he didn't give additional context when answering their questions. Given the way that he responded to those questions, I think there was little more that the call handler at the bank could've done to protect him from the risk here.

Mr M has attributed the fact that he failed to see the connection between the scam that had targeted him and the warning given to him by the bank to the fact that he has ADHD. He says that the bank became aware of this back in 2016 when he complained about a mortgage advisor that he'd spoken to.

I can see from email evidence that the relationship he had with that initial advisor broke down and so, on balance, I think his claim that he disclosed his diagnosis around that time is likely to be true. So, the bank was aware of the diagnosis, or ought to have been. However, it doesn't automatically follow from that that the call should've been handled differently. It

was on notice that he had the diagnosis, but not of any of the details as to how it affected his decision making or the management of his finances on a day-to-day basis. There was no agreement about reasonable adjustments and so it didn't know if he needed any. I'm not persuaded that there's any reason to believe, as Mr M has argued, that the mere provision of more detail would've been enough to change what action he took here.

I don't say any of this to downplay or diminish the fact that Mr M has fallen victim to a cruel and cynical scam. I have a great deal of sympathy for him and the position he's found himself in. However, my role is limited to looking at the actions and inactions of the bank and I'm satisfied it didn't do anything wrong in processing these payments.

Finally, the Investigator noted that Bank of Scotland had paid Mr M £50 in recognition of the distress and inconvenience that was caused by the poor customer service it provided when responding to his complaint. She wasn't persuaded that this was sufficient and recommended it pay him a further £150. I agree that it could've handled things better here and I'm satisfied that £150 is a fair sum in recognition of those customer service failings.

Final decision

For the reasons I've explained above, I uphold this complaint in part. If Mr M accepts my decision, Bank of Scotland plc should pay him £150.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 8 March 2024.

James Kimmitt
Ombudsman