

The complaint

Mr L complains that Bank of Scotland plc (BoS), trading as Intelligent Finance, won't refund money he lost to an investment scam.

Mr L is represented by a firm that I'll refer to as 'C'.

What happened

The background to this complaint is well known to both parties and so I'll only refer to some key events here.

In 2017 Mr L sought investment opportunities and came across a firm I'll refer to as 'H'. He's explained their website and trading platform appeared legitimate – as it mimicked other genuine companies with features that included live graphs. And before investing Mr L says that, as part of his research, he found the individuals who worked for H were approved by the Financial Conduct Authority (FCA).

Mr L made four international payments from his BoS bank account – totalling about £19,000 – between June and November 2017 as part of the investment. He was then contacted in December 2017 by a senior wealth management officer who informed him that it would be in his best interests to transfer his investment funds to H's sister firm, which I'll refer to as 'A'. This was due to the previous broker being fired for rogue trading. Before agreeing to this, and as he wasn't yet ready to withdraw his profits, Mr L undertook due diligence on A. This, he says, included checking the FCA register that showed A were an investment firm based in the European economic area (EEA) and had 'passported in' using their authorisation from their home state's regulator.

Under the belief A was a genuine investment firm, Mr L proceeded to make further payments. The scam payments Mr L made from his BoS account are:

Date	Type	Amount
23 June 2017	International Transfer	£3,010
6 July 2017	International Transfer	£1,412.30
1 August 2017	International Transfer	£7,714.08
15 November 2017	International Transfer	£6,800
8 January 2018	Debit card payment	£5,000
9 January 2018	Debit card payment	£5,000
30 January 2018	Faster payment	£19,712

13 February 2018	International Transfer	£100,000
26 February 2018	International Transfer	£61,136.93
16 March 2018	International Transfer	£15,351.27
	Total:	£225,137.58

Mr L realised he'd been scammed when he didn't receive the funds from the investment as expected. C complained to BoS, on Mr L's behalf, in 2023 and – in summary – said:

- Mr L had a reasonable basis to believe the scam was genuine.
- BoS ought to have intervened before processing what were large and unusual payments based on Mr L's normal account activity. And It was BoS's responsibility to ask Mr L probing questions, thereby uncovering the scam, and deterring him from making the payments.
- BoS didn't provide Mr L with a warning – on any of the ten payments - that they may be scam related. And BoS failed to protect Mr L from the scam despite the payment(s) showing the obvious hallmarks of investment fraud. And so, they should've made enquiries about the payments and provided an effective scam warning – which, in turn, would've prevented them being made.
- To settle the complaint, they said Mr L would accept reimbursement of the monies lost plus 8% interest and compensation.

The complaint was considered by one of our Investigators but he didn't think BoS had to do anything further. He acknowledged that Mr L had lost a significant amount of money to a scam but he didn't think BoS could reasonably have prevented it. This was because, while he thinks BoS ought to have carried out additional checks before processing the £19,712 payment, he didn't think this would've made a difference and that Mr L would've gone ahead anyway. This, he said, was because there wasn't anything to suggest the investment, or firms, were identified as being a scam at the time Mr L made the payment(s). And Mr L has confirmed that he'd carried out his due diligence on A – the firm he was investing with at the time of the £19,712 payment – and they were showing as having the relevant permissions on the FCA register to undertake regulated activities in the UK. This therefore would've reassured BoS that Mr L was dealing with a legitimate firm.

Our Investigator also thought BoS did enough when Mr L reported the scam to them as they contacted the receiving banks – for the transfer payments – to try to recover the funds. And he didn't think any chargeback attempts for the debit card payments would've been successful as the funds were sent to a legitimate investment firm – so he received the service he requested.

C disagreed and so the matter has been passed to me to decide. In short, they said:

- BoS could've done more to protect Mr L and intervened on the £19,712 payment - as they have an obligation to protect customers from potentially falling victim to fraud or scams. This includes monitoring accounts and identifying suspicious activity that appears unusual or out of character.
- Had BoS discussed the payment with Mr L, they believe an effective intervention

would've at least prompted him to stop and consider his actions. The bank should've at least put a hold on the payment for 24 hours.

- Intervening on the £19,712 payment would've prevented most of Mr L's losses. But at the least, BoS should've prevented the £100,000 leaving his account. Although Mr L had previously made international payments, this value of this payment was much greater. And international payments are much less likely to be recoverable. So, BoS should've stopped the payment and questioned Mr L to ascertain the reasons for making such a large payment to an overseas account.
- Mr L has far less experience than BoS with this type of scam. And so, as the expert in the relationship, the bank should've taken the time to stop the payment and present effective tailored warnings which clearly set out the dangers and prevalence of these scams.
- BoS failed in their duty of care to protect Mr L and prevent his losses. They didn't even try to contact him and should therefore, at the least, share some of the liability on this matter.

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 Mr L has lost a significant amount of money and I don't underestimate the impact this has had on him. But while I know this won't be the outcome he's hoping for, I don't think BoS is responsible for the loss he's suffered for similar reasons to our Investigator. I'll explain why.

The payments made were before the CRM code – which can offer a potential means of obtaining a refund following Authorised Push Payment (APP) scams - came into effect. And so, they're not covered by it. I've therefore considered whether BoS should reimburse Mr L under any of their other obligations.

In broad terms, the starting position in law is that a bank is expected to process payments their customer authorises them to make. It isn't disputed that Mr L knowingly made the payments and so, I'm satisfied they were authorised. Therefore, under the Payment Services Regulations and the terms of the account, BoS were expected to process the payments and Mr L is presumed liable for the loss in the first instance.

However, taking into account regulatory rules and guidance, relevant codes of practice and good industry practice, there are circumstances where it might be appropriate for BoS to take additional steps or make additional checks before processing a payment to help protect customers from the possibility of financial harm from fraud.

So, the starting point here is whether the instructions given by Mr L to BoS were unusual enough - in relation to his typical account activity – to have expected BoS to have identified Mr L was at risk of financial harm from fraud.

Having reviewed Mr L's account statements, I don't think the first six payments – made between 23 June 2017 and 9 January 2018 – were unusual enough based on his typical account usage for BoS to have sufficient reason to think he could be at risk of financial harm from fraud. This is because it wasn't out of character for Mr L to make transactions of several thousand pounds, and the scam payments weren't of a pattern whereby I think they would've been seen as suspicious. The £19,712 payment was however for more than Mr L typically

spent on his account. So, I think it is at this point that I would've expected BoS to have had concern Mr L could be at risk of financial harm from fraud. I therefore would've expected BoS to have carried out additional checks before processing it.

I haven't seen anything to show BoS carried out additional checks – such as questioning Mr L about the purpose of the payments – before processing them. I've therefore thought about what would've most likely have happened if BoS had done this.

I've no reason to think Mr L wouldn't have been honest with BoS. So, I think he would've explained the payment was being made for investment purposes. Given BoS's awareness of the prevalence of investment scams, it would've been reasonable for them to have asked further probing questions to establish whether Mr L was at risk of making a payment as part of a scam. And I think appropriate questioning would've uncovered that it was Mr L who approached the scam firm – which, by this point, he was dealing with A. And they'd come across extremely knowledgeable and professional, without any pressure having been applied for him to make the payments. He'd also seen a steady increase in profits from the amounts previously invested. And he'd undertaken due diligence on A before proceeding to invest with them, including checking the FCA register.

As it has been established, when Mr L checked the FCA register, it showed A were allowed to carry out regulated activities through passporting their authorisation from their home state within the EEA. So, they had the required permissions to provide their services within the UK. And ensuring customers are dealing with firms that have the relevant permissions to carry out regulated activities, according to the FCA register, is an important check banks can undertake to protect them from scams.

I appreciate Mr L was deceived by A and I'm not placing blame on him for what happened – as it seems he took steps to ensure he was dealing with a legitimate firm and relied upon information available on the FCA register as part his checks. But I likewise don't think I can hold BoS responsible as I'm not persuaded they ought reasonably to have been able to identify Mr L was making the payment as part of an investment scam. I think they would've been sufficiently reassured by the due diligence Mr L had carried out and so, they would've believed the payment was being made for legitimate reasons. And, as our Investigator explained, it seems there wasn't any information online at the time which suggested A was a scam firm.

It follows that, even if BoS had put a hold on the £19,712 payment, or the subsequent payments that followed including the £100,000 payment, as C has suggested, and advised Mr L to carry out further checks before proceeding with the payment(s), I don't think this would've made a difference. Ultimately, I consider Mr L fell victim to a sophisticated scam to which I'm not persuaded BoS could've reasonably prevented.

C has also argued that BoS should, at the least, share some of the liability given they didn't even try to contact Mr L. But while BoS may not have taken the steps I would've expected in or order to protect Mr L from the scam, it would only be fair and reasonable for me to direct them to refund his losses if I was satisfied that their action (or inaction) was the cause of it. And for the reasons I've explained, I'm not persuaded that's the case here

Upon being informed of the scam, BoS contacted the beneficiary banks to recover Mr L's funds – which is what I would expect in these circumstances. It seems that most of the payments couldn't be recovered as there weren't any funds remaining in the beneficiary accounts. There was however, from what I understand, funds returned relating to the £6,800 payment Mr L made on 15 November 2017. I haven't however seen anything to show BoS attempted to recover the two debit card payments by way of chargeback. But given these payments went to a legitimate investment firm, it's unlikely any chargeback would've been

successful as Mr L received the service he expected – that being the deposit of funds to a legitimate investment firm. I therefore don't think BoS had any reasonable means of recovering these payments. And so, I'm satisfied BoS acted reasonably in this respect.

I'm sympathetic to Mr L's situation as I realise he's suffered a significant financial loss. But it would only be fair for me to direct BoS to refund his loss if I thought the bank was responsible – and I'm not persuaded that this was the case. For the above reasons, I think BoS has acted fairly and so I'm not going to tell them to do anything further.

My final decision

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 L to accept or reject my decision before 23 February 2024.

Daniel O'Dell
Ombudsman