

The complaint

Ms W complains that Bank of Ireland (UK) Plc (BOI) won't refund money she lost in a romance scam.

What happened

What Ms W says:

Ms W is represented by a third-party firm of solicitors.

In December 2020, she met someone through a dating website. Following the sad loss of both her husband and son, she was ready to find a relationship again. She came to trust the person involved and she was sure the website would've vetted the man as genuine. They exchanged messages on WhatsApp and formed what she thought was a genuine and mutual affection. They planned a new life together. The man then said he needed to pay his workers and asked Ms W for loans pending reimbursement from the company he was contracted to.

Ms W then made two online international payments to an account which was said to be the bank account of the person's accountant.

| Date | Payment | Amount |
|-----------------|------------------------------------|------------------|
| 29 January 2021 | International payment (RO Ireland) | £4,994.55 |
| 9 February 2021 | International payment (RO Ireland) | £2,300.34 |
| Total | | £7,294.89 |

After the second payment Ms W became suspicious – as the person confirmed receipt immediately, which was odd as the bank account was said to be that of his accountant. She did a reverse image search on the scammer's picture, and found it was a journalist. She then realised she had been the victim of a scam.

Ms W complained in September 2023. She says the payments were out of character and BOI should've intervened and protected her. If BOI had done so, and asked questions, the losses would've been prevented. She says BOI should refund the payments, plus interest at 8% per annum and pay compensation of £300.

Ms W says she was in a vulnerable state at the time, having lost her husband and son. As a result of what happened, she lost her husband's inheritance – which she relied on to live. She is unemployed and struggles to pay for essentials. She feels shame and embarrassment, and lives in fear of being scammed again.

What BOI said:

In December 2023, BOI said the payments were not covered under the Contingent Reimbursement Model (CRM) Code as they were international payments to the Republic of Ireland - and the CRM code applies to 'UK to UK' payments. The payments were authorised in internet banking after a successful log in; and weren't triggered as being suspicious by BOI's fraud systems.

Due to the passage of time between when the payments were made and Ms W's solicitors contacting BOI, the bank couldn't reclaim any of the monies.

While Ms W's solicitors said she was vulnerable, this wasn't something they were made aware of at the time of the payments.

BOI rejected Ms W's complaint.

Our investigation so far:

Ms W brought her complaint to us. Our investigator didn't uphold it. She didn't consider there was anything out of character regarding the payments. There had been a payment for £20,000 in March 2020. So, she didn't think BOI needed to intervene and stop the payments.

She said BOI didn't try to get the money back as the fraud wasn't reported until September 2023, and any attempt to do so wasn't likely to be successful.

Ms W asked that an ombudsman look at her complaint. She said one payment of £20,000 didn't mean the scam payments were out of character. She said she didn't make large payments – and the largest one in the year prior to the scam was for £1,000. She quoted another case where she said an ombudsman had upheld the complaint in similar circumstances.

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.

Ms W has quoted another case which she argues is similar. But let me say that my role is to decide what's fair and reasonable in the individual circumstances of this complaint – every complaint is different and I have considered Ms W's case in its individual and particular circumstances.

I'm sorry to hear that Ms W has lost money in a cruel scam. It's not in question that she authorised and consented to the payments in this case. So although she didn't intend for the money to go to a scammer, she 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 BOI 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 BOI acted fairly and reasonably in its dealings with Ms W when she 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 it applies to faster payments made to a UK beneficiary – and in this case, the payments were made to an overseas account, in the Republic of Ireland.

The important matter here is whether these were payments that BOI might reasonably have considered unusual, and therefore whether they should've held or stopped the payments and contacted Ms W about one, or both of them.

I looked at Ms W's account history with BOI. And I don't think the nature of the payments meant that that BOI could've reasonably been alerted that they may have been part of a scam.

There was a payment of £20,000 in March 2020. But I also accept that of itself, that doesn't mean the scam payments were in line with normal account behaviour. But I can also see that Ms W did make frequent and regular online payments of up to £1,000 every month - about five or six each month.

I can also see there was a payment of £2,300 the day before the second scam payment – on 8 February 2021. So, that was very similar to one of the scam payments.

But most importantly I don't consider the payments met the usual patterns of a scam, I say that as:

- Ms W's account wasn't drained of funds each time. There remained a balance of about £5,200 credit and £2,600 credit respectively. Typically, scam payments drain an account of funds.
- The first payment wasn't preceded by a similar credit into the account – as might normally be the case where a scam payment is being made.
- The payments weren't made rapidly in succession as is normally the case in a scam. The two payments were almost two weeks apart.

Together with this, I also need to bear in mind that there's a balance to be made: BOI 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.

In this case, in all the circumstances, and on balance, I think BOI acted reasonably in processing the payments.

Recovery:

We expect firms to quickly attempt to recover funds from recipient banks when a scam takes place. I looked at whether BOI took the necessary steps in contacting the bank that received the funds – in an effort to recover the money. But here, given that the scam took place in early 2021 and Ms W complained to BOI in September 2023, I'm satisfied there was little point in BOI contacting the recipient bank– as normally in such scams, funds are removed from the recipient bank immediately.

Ms W has lost a lot of money. She's explained why the money was important to her, and the impact her losses have had. I was sorry to learn of her circumstances. She will therefore be disappointed by my decision, but I'm not going to ask BOI to do anything here.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms W to accept or reject my decision before 22 April 2024.

Martin Lord
Ombudsman