

## The complaint

Mrs M held/holds an account with Bank of Scotland plc ("BoS").

Mrs M's complaint is about BoS's refusal to reimburse her money she says she lost due to a scam.

Mrs M is represented by CEL Solicitors in this matter. However, where appropriate, I will refer to Mrs M solely in this decision for ease of reading.

## What happened

The circumstances of this complaint are well known to all parties concerned, so I will not repeat them again here in detail. However, I will provide an overview of events.

Mrs M says she has fallen victim to a cryptocurrency linked job scam. In short, she says that fraudsters deceived her into making payments to receive income from completing various 'job tasks'. The card payments in question are:

Payment Number	Statement Date	Beneficiary	Amount
1	23 November 2022	Okcoin	£40.24
	<b>23 November 2022</b>	<b>Fee</b>	<b>£1.20</b>
	<b>23 November 2022</b>	<b>Fee</b>	<b>£0.50</b>
2	23 November 2022	Okcoin	£133.66
	<b>23 November 2022</b>	<b>Fee</b>	<b>£3.99</b>
	<b>23 November 2022</b>	<b>Fee</b>	<b>£0.50</b>
3	23 November 2022	Okcoin	£342.76
	<b>23 November 2022</b>	<b>Fee</b>	<b>£10.24</b>
	<b>23 November 2022</b>	<b>Fee</b>	<b>£0.50</b>
4	24 November 2022	Binance	£214
5	24 November 2022	Binance	£510

6	28 November 2022	Binance	£300
	<b>29 November 2022</b>	<b>Binance</b>	<b>273.98 (credit)</b>
7	30 November 2022	Binance	£15
8	30 November 2022	Binance	£134
9	30 November 2022	Binance	£136
10	30 November 2022	Binance	£136
11	01 December 2022	Binance	£306
12	01 December 2022	Binance	£500
13	02 December 2022	Binance	£103
14	02 December 2022	Binance	£203
15	05 December 2022	Binance	£140
16	05 December 2022	Binance	£200
17	19 December 2022	Binance	£31
18	27 February 2023	Binance	£100
19	27 February 2023	Binance	£100
20	28 February 2023	Binance	£15
21	28 February 2023	Binance	£428
22	28 February 2023	Binance	£763

Mrs M disputed the above with BoS. She subsequently raised a complaint, which she also referred to our service.

One of our investigators considered the complaint and did not uphold it. As Mrs M did not accept the investigator's findings, this matter has been passed to me to make a decision.

#### **What I have 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.

Having done so, I find that the investigator at first instance was right to reach the conclusion they did. This is for reasons I set out in this decision.

I would like to say at the outset that I have summarised this complaint in far less detail than the parties involved. I want to stress that no discourtesy is intended by this. If there is a submission I have not addressed, it is not because I have ignored the point. It is simply because my findings focus on what I consider to be the central issues in this complaint.

### **Regulatory framework**

The regulations which apply in this matter are the Payment Services Regulations 2017 ("the PSRs").

### **Should BoS have recognised that Mrs M was at risk of financial harm from fraud?**

It is not in dispute that Mrs M authorised the payment transactions in this matter. Generally, consumers are liable for payment transactions they have authorised. However, that is not the end of the story. This is because even if a payment is authorised, there are regulatory requirements and good industry practice which suggest banks – such as BoS – should be on the look-out for unusual and out of character transactions to protect their customers from financial harm. And, if such payment transactions do arise, firms should intervene before processing them. That said, firms need to strike a balance between intervening in a customer's payment to protect them from financial harm, against the risk of unnecessarily inconveniencing or delaying a customer's legitimate transactions.

I have borne the above in mind when considering the payment transactions in this matter.

### **Payment 2**

Payment 2 triggered BoS's systems promoting it to block Mrs M's account. Consequently, Mrs M spoke to BoS over the telephone. During that call, amongst other things, BoS questioned Mrs M about Payment 2. Mrs M confirmed the payment was in relation to Bitcoin, and that she had carried out research to ensure her funds were safe.

I have thought about whether the above was a proportionate intervention from BoS.

I acknowledge that Payment 2 was identifiably a cryptocurrency related transaction. However, I have weighed this against the following. First, Payment 2 was for a relatively low amount – even when taken together with Payment 1. Secondly, Payment 2 was not a clear deviation in how Mrs M ran her bank account. Thirdly, Payment 2 did not drain Mrs M's account balance. Fourthly, Payment 2 was made to a genuine cryptocurrency exchange. Fifthly, the primary focus of the call was more about whether Mrs M had authorised Payment 2, rather than whether she was falling victim to a scam. This was no doubt due to the low risk of Payment 2 itself. Sixthly, Payment 2 occurred in 2022. The fraud and scams landscape looked very different then compared to how it developed and became understood the following year and thereafter. As such, the type of intervention and questioning I would have expected to see in 2022, is different compared to 2023 onwards.

I have weighed the single aggravating factor in this case against the mitigating factors set out above. Having done so, I am persuaded that BoS's intervention during the telephone call concerned was proportionate to the risk identified. I would not have expected such a

high level of scrutiny of Payment 2 just because it was made towards a (legitimate) cryptocurrency exchange – particularly given the low value of Payment 2.

In response to the investigator's assessment, Mrs M's representatives submitted, amongst other things, that the fact Mrs M was making a payment to a cryptocurrency exchange was a clear red flag that she was being scammed. I do not accept this proposition. I say this because there are thousands – if not more – legitimate cryptocurrency transactions made daily.

It is also submitted that during the call Mrs M revealed several indicators that she could be the victim to a scam, but BoS did not probe enough to detect this. I do not accept this argument. There is nothing I could ascertain during the call which suggested there were such indicators present.

### **Other payment transactions**

I am not persuaded that the other payments should have triggered BoS's systems. I say this because of the absence of any significant aggravating factors present. First, these individual payments were not for a relatively high amount. Secondly, none of the payments drained the account or placed it into an overdraft. Thirdly, during the telephone call regarding Payment 2, Mrs M effectively confirmed it was safe for her account to make cryptocurrency related transactions. Fourthly, each unchallenged payment to Binance would have alleviated any concerns BoS may have had.

For these reasons, I am not satisfied that Payments 1 and 3 to 22 should have triggered BoS's systems prompting it to intervene.

### **Recovery of funds**

Chargeback is an entirely voluntary scheme, which means firms are under no formal obligation to raise a chargeback claim. The relevant scheme operator can arbitrate on a dispute between a merchant and customer if it cannot be resolved between them. However, such an arbitration is subject to the rules of the relevant scheme – so there are limited grounds on which a chargeback can succeed.

The service of purchasing cryptocurrency/exchanging funds into cryptocurrency – is not covered under the chargeback scheme concerned in this matter. This is because the exchanges in question provided their services as intended. This also applies to any payment processor involved, as they would have carried out their services as intended when transferring funds.

For these reasons, I find that any chargeback claim in this matter had little chance of success under the relevant chargeback scheme. It follows that I would not have expected BoS to raise one on behalf of Mrs M.

### **Compensation for distress and/or inconvenience**

I have considered whether an award for distress and/or inconvenience is warranted in this matter. Having done so, I am not persuaded that it is. I have not found any errors in BoS's investigation. Any distress and/or inconvenience Mrs M has suffered is a result of the fraudsters' actions – not BoS's.

### **Conclusion**

Taking all the above points together, I do not find that BoS has done anything wrong in the

circumstances of this complaint. Therefore, I will not be directing BoS to do anything further.

### **My final decision**

For the reasons set out above, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 11 April 2025.

Tony Massiah  
**Ombudsman**