

The complaint

Miss S complains that Bank of Scotland plc (BOS) won't refund money she lost in an advance fee scam.

What happened

What Miss S says:

Miss S is represented by a firm of third-party solicitors.

Miss S was looking for work and had approached some recruitment companies. She was then approached via WhatsApp around June 2023 by someone representing a 'recruitment firm', and offered a remote working opportunity. The approach seemed plausible as Miss S had been searching for work and a change of job. The company seemed to know about her and had her contact details. She was told about a job she could do from home, and it was flexible.

She was told the job was to help merchants generate consumer data to improve product ratings and reviews. Miss S went through the documents and terms and conditions on the company's website, all of which appeared professional. She was asked to create an account for herself on the website.

Miss S was told she needed to complete 40 reviews to be able to access a percentage of her job's income. She spoke to the firm's representatives over WhatsApp.

Miss S then noticed her account had gone into a negative balance. Then, to complete the tasks, she was required to put more funds herself into the account. This she did.

Miss S told us that she was able to make a simple withdrawal, and this was completed – which gave her confidence the scheme was genuine. (note: I couldn't see such a credit to her BOS account). Miss S asked a number of questions about why her account was in a negative balance but got a lot of technical reasons from the scammers – which she didn't understand and didn't feel able to challenge.

Miss S had to set up a crypto wallet, from where the funds were sent to the scammers' platform.

Miss S made several payments:

Date	Payments*	Amount
3 July 2023	Debit card payment to crypto platform	£45

3 July 2023	Debit card payment to crypto platform	£110
3 July 2023	Debit card payment to crypto platform	£125
3 July 2023	Debit card payment to crypto platform	£420
3 July 2023	Debit card payment to crypto platform	£817.62
3 July 2023	Debit card payment to crypto platform	850
3 July 2023	Debit card payment to crypto platform	£1,326.47
3 July 2023	Debit card payment to crypto platform	£1,700
Total losses		£5,394.09

*note: Miss S' statements indicate these were debit card payments, whereas her advisors have said they were faster payments. In this decision I assume they were debit card payments.

*note: Miss S says she made a withdrawal, but there isn't such a credit to her BOS account.

The scam ended when Miss S used up her funds in the online account with the scammer and couldn't put anymore in - as she ran out of money. Miss S asked that she withdraw her funds but the scammer said this couldn't happen unless she put in more funds first. She realised she had been scammed.

As a result of what happened, Miss S lost a large part of her savings. She's suffered from sleepless nights as the thought of the scam and the loss of her money is constantly on her mind. She still struggles to come to terms with her losses and its impact. She had to borrow money to fund the payments and this needs to be repaid – another reminder of what happened to her.

Miss S complained to BOS. She says BOS gave no pop-up warnings, or general alerts to scams. There was no effective intervention for BOS at any stage. If the bank had intervened, the payments would've been stopped and her losses avoided.

She says the eight payments totalling over £5,000 were out of character with how she operated her BOS account. Certainly by the last payment of £1,700, BOS should've intervened. This is especially the case as the payments were going to a crypto platform – a well-known method for such scams.

Miss S says BOS should refund the money plus interest at 8% per annum simple, and compensation of £300.

What BOS said:

- BOS didn't provide our service with any information – so we have no knowledge of how the bank responded to Miss S' complaint.
- We decided to look into the complaint without the input from BOS, as we can do that

under our rules.

Our investigation so far:

Miss S brought her complaint to us. Our investigator didn't uphold it. He said:

- Miss S authorised the payments in question.
- The payments were made to a legitimate business.
- The value of the transactions were low, and BOS can't be expected to stop and inspect every payment.

Miss S didn't agree. She said:

- BOS should have intervened because it was common knowledge that the crypto platform in question was often used by scammers.
- She had not made such payments before.
- Her account was almost drained – the remaining balance on 3 July 2023 was £6.04.

Miss S asked that an ombudsman looks at her complaint, and so it has come to me to make a final decision.

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 Miss S 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 Miss S 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 BOS 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 BOS acted fairly and reasonably in its dealings with Miss S 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 payments made to another UK beneficiary – and in this case, the payments were made to Miss S's own account – her crypto wallet. And the payments were made by debit card – which also isn't covered by the CRM Code.

The first consideration here is: if the payments were of a sufficient size and were out of character with how Miss S normally used her account – then I need to consider whether BOS should have intervened and spoken to her. I looked at Miss S' account, and it's fair to say that the payments were not particularly unusual – I can see she made payments similar to some of the payments sent by her as part of the scam. For example:

April 2023: £650; £800; £1,260; £400.

May 2023: £700; £350; £715; £1,248; £700; £500; £450; £950; £800; £700; £280; £470.

June 2023: £700; £700; £700; £200; £800; £600; £600.

So, because of this, I don't think it's reasonable to expect BOS to have seen the payments made by Miss S as unusual, and therefore to expect the bank to intervene and question them.

There's also a balance to be made; BOS 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. And here – the payments were for relatively low amounts. Therefore, in this case, I think BOS acted reasonably in processing the payments – I don't think that I could reasonably say that BOS should have stopped the payments for further checks.

There are three further points I considered:

- the payments were to a crypto exchange.
- the payments were all on the same day and amounted to over £5,000.
- after the payments, Miss S' account was drained of funds.

I've considered these points. And in the circumstances of this complaint, on balance, because I don't consider the payments to have been unusual or of such a value – I don't think it's reasonable to have expected BOS to look into them further, i.e. who the beneficiary was; or the total amount of payments or the resulting balance.

Therefore, I don't hold BOS liable to refund the payments made by Miss S.

Recovery

We expect firms to quickly attempt to recover funds from recipient banks when a scam takes place. I looked at whether BOS took the necessary steps in contacting the bank that received the funds – in an effort to recover the lost money. Because we didn't receive any information from BOS, I don't have any evidence if a recovery was attempted. I note that Miss S complained to BOS on 31 July 2023 – almost a month after the payments were made. I need to form a view on the likelihood of any recovery had BOS tried to get the funds

back. And here, it's in the nature of such scams that the funds are removed within hours (or even minutes) – so my view is that any recovery attempt was unlikely to have been successful.

Miss S has lost a lot of money. I understand why the money was important to her, and the impact her losses have had. She will therefore be disappointed by my decision, but I'm not going to ask BOS 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 Miss S to accept or reject my decision before 7 May 2024.

Martin Lord
Ombudsman