

The complaint

Mr K is complaining that Bank of Scotland plc won't refund payments he says he made as part of a scam. He's also unhappy with how Bank of Scotland plc dealt with things after he reported the disputed payments.

What happened

Mr K holds a current account with Bank of Scotland.

Between 11 October 2023 and 20 October 2023 Mr K made 38 payments to a gambling company's website by faster payment through open banking. The payments ranged from £10 to £500, and totalled £3,554.92.

On 16 October 2023 Mr K received a credit of £446.10 from the same company, and on 17 October 2023 he received a credit of £1,723.82.

On 20 October 2023 Mr K reported to Bank of Scotland that he'd been scammed. He said, in summary, that he found the gambling company's website to be unresponsive and couldn't get in touch with them, and they didn't have a licence to operate in the UK. The adviser he spoke to said they'd contact the company to try to recover the funds through a chargeback claim. But this was incorrect, as the chargeback rules didn't apply to the sort of payments Mr K made – and Bank of Scotland didn't get back to him.

Mr K complained to Bank of Scotland, and they issued a final response letter to Mr K. They said they would pay Mr K £40 for the incorrect information they'd given him about the potential for a chargeback claim. But Mr K remained unhappy with their response and brought his complaint to us.

Our investigator looked into Mr K's complaint, but he didn't uphold it – and he thought what Bank of Scotland had done to put things right about the incorrect information they'd given Mr K was fair. Mr K disagreed, and asked for an ombudsman to review his complaint.

He said, in summary, that he was unhappy with the £40 Bank of Scotland had paid to him, because he didn't think it was enough to compensate him for the false hope of a refund, or that they continued to call him when he'd told them not to; he thinks Bank of Scotland should have been aware he had a gambling addiction from his account history and done more to protect him; and, the payments were unusual as they were international transfers, which he hadn't made before.

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 very sorry to learn of Mr K's health condition and I know this outcome won't be what he'd hoped for - but I'm not upholding his complaint. I'll explain why.

It's not in dispute that Mr K authorised the disputed payments. And Bank of Scotland have a duty to act on his instructions. But in some circumstances, Bank of Scotland should take a closer look at the circumstances of the payments – for example, if they ought to be alert to a fraud or scam risk, because the transaction is unusual, or looks out of character or suspicious. And if so, they should intervene, for example, by contacting Mr K directly, before releasing the payments.

Like the investigator, I'm not persuaded that Mr K has been the victim of a scam. I can see that there are online reviews of the gambling company which say there have been difficulties withdrawing funds. But there are also positive reviews of the company. And I've not found any official warnings about this company have been published by any financial regulator.

Mr K did receive two credits from the company of over £2,000 in total. He's told us these weren't winnings – but whether they were winnings or a funds withdrawal, the fact he's received these credits from the company doesn't suggest to me that a scam has taken place.

It also appears that on the face of it, Mr K paid for a service he received. I've not seen sufficient evidence to show that Mr K was unable to use the service the company provided or that he was unable to withdraw funds that he'd paid in. Mr K says the company don't have a licence to operate in the UK, but I don't think this is something Bank of Scotland was required to consider in respect of intervening when Mr K made the payments.

I don't think Mr K's payments were made as part of a fraud or scam so I don't think Bank of Scotland needed to intervene. I also don't think Bank of Scotland should have intervened for any other reason.

Mr K has said Bank of Scotland were aware of his gambling addiction – or should have been from how his account had been operated - and there had been blocks placed on his account. But Bank of Scotland say they weren't aware of this until Mr K contacted them about this issue after making the payments in October 2023 – and I've not seen anything to show they were. They've provided records to show a gambling block was placed on his account in November 2023, after the payments were made.

But in any event, Bank of Scotland's gambling block will only prevent card payments to merchants identified as gambling - but Mr K's payments weren't made by card. So, I don't think they ought to have done anything to block these payments.

Whilst I appreciate that Mr K feels Bank of Scotland could have done more to prevent the transactions being processed, they do need to balance any intervention with allowing the day to day running of the account. The payments weren't of a value where Bank of Scotland ought to have been concerned about a heightened risk of financial harm to Mr K, and appear to be broadly in line with Mr K's previous spending patterns. Although the payments were being made internationally which may sometimes indicate a higher degree of risk, Bank of Scotland will consider a range of factors when deciding whether to intervene. It wouldn't be reasonable to expect them to monitor every transaction Mr K made, even if he had made them aware of a gambling problem.

It's true that Bank of Scotland incorrectly advised Mr K that they could attempt to recover the payments he'd made through the chargeback process. I'm not persuaded they ought to have done any more to recover the payments, or that any recovery attempt would have been successful here. But I do appreciate that Mr K has experienced 'false hope' about the

chances of the payments being recovered due to Bank of Scotland's error. Bank of Scotland have apologised for this and paid him £40 in compensation, which I think is fair and reasonable taking into account the impact Mr K says this had.

Mr K also says Bank of Scotland continued to attempt to speak to him when he'd asked them not to. I can see that they had made a note that he found speaking on the phone difficult due to anxiety before they asked him to call them about his complaint, but I can't see that he'd said he was unable to speak on the phone at that point. They said they were sorry for this in their final response letter and I don't think they need to do anything else.

Once again, I'm sorry to disappoint Mr K and I'm glad to learn he's now in recovery from his gambling addiction. But I don't think Bank of Scotland ought to have done more to prevent the disputed payments, and they've already paid fair compensation for the mistake they made here. So, I'm not going to ask them to do anything else to resolve Mr K's complaint.

My final decision

My final decision is that I'm not upholding Mr K's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 6 September 2024.

Helen Sutcliffe
Ombudsman