

The complaint

Miss N complains that Bank of Scotland plc (“BoS”) won’t refund money she lost when she fell victim to an investment scam.

Miss N is being represented by a claims management company in this complaint.

What happened

The detailed background to this complaint is well-known to the parties and has been previously set out by our investigator.

Briefly, Miss N fell victim to a cryptocurrency investment scam in the autumn of 2022. Between October and December 2022, she was tricked into parting with her funds in connection to what she believed was an investment opportunity she had been introduced to by someone she met online and became romantically involved with. Unfortunately, it turned out to be a scam.

After corresponding with the individual (“the scammer”) for some time, Miss N was persuaded to purchase cryptocurrency and deposit it into her account with a trading platform. She followed their instructions and used her BoS debit card to purchase cryptocurrency from cryptocurrency exchanges. The cryptocurrency was then deposited to her ‘investment’ account on a trading platform. The scammer told Miss N that the cryptocurrency exchange co-founded the trading platform.

The following transactions are relevant to this complaint –

	Date	Transaction Type	Amount
Payment 1	26 October	Debit card	£1.99
Payment 2	26 October	Debit card	£1.99
Payment 3	2 November	Debit card	£1.99
Payment 4	2 November	Debit card	£1.99
	8 November	Debit card	£4,843.21 (declined)
Payment 5	8 November	Debit card	£3,911.88
Payment 6	9 November	Debit card	£1.99
Payment 7	9 November	Debit card	£1.99
Payment 8	10 November	Debit card	£930.00
Payment 9	16 November	Debit card	£1.99
Payment 10	16 November	Debit card	£1.99
	18 November	Debit card	£6,385.38 (declined)
Payment 11	18 November	Debit card	£6,385.38
Payment 12	23 November	Debit card	£1.99
Payment 13	23 November	Debit card	£1.99
Payment 14	30 November	Debit card	£1.99
Payment 15	30 November	Debit card	£1.99

Payment 16	7 December	Debit card	£1.99
Payment 17	7 December	Debit card	£1.99

Some of the transactions (prior to Payments 5 and 11) were declined and BoS queried them with Miss N. Following her responses, the card was unblocked, and she was able to attempt the transactions again.

Miss N realised she'd been scammed when, at the end of November 2022, she noticed her investment account had been frozen and she was told she needed to pay tax to unfreeze it and make withdrawals. She queried this with the scammer who asked her to borrow money from friends and family. When Miss N was unable to raise the funds required, the scammer became aggressive and threatened her with legal action to recoup the money they said they had previously lent to her.

Miss N complained to BoS when it declined to refund her losses. The matter was subsequently referred to our service and our investigator didn't think BoS could reasonably have prevented Miss N's losses. Miss N didn't agree and asked for the matter to be determined by an ombudsman.

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'd like to start by saying I'm sorry to hear about Miss N's personal circumstances and how this incident has impacted her. I'd like to reassure her and BoS that although I've only summarised the background above, so not everything that's happened or has been argued is detailed, I have read and considered their submissions in their entirety.

It's not in question that Miss N was the victim of a cruel scam and it's very unfortunate that she's lost money. But BoS doesn't automatically become liable to reimburse her loss.

Under regulations and in accordance with general banking terms and conditions, banks should execute an authorised payment instruction without undue delay. The starting position is that liability for an authorised payment rests with the payer, even where they are duped into making that payment. There's no dispute that Miss N made the payments, and so they are authorised.

But in accordance with the law, regulations and good industry practice, a bank should be on the look-out for and protect its customers against the risk of fraud and scams so far as is reasonably possible. If it fails to act on information which ought reasonably to alert it to potential fraud or financial crime, it might be liable for losses incurred by its customer as a result.

I've reviewed Miss N's account and the payments she made to the scam. Having considered when they were made, their value and who they were made to, other than the two payments that did trigger an alert and were initially declined (see table above) I'm not persuaded that BoS ought to have found any of the remaining payments suspicious.

For the two payments it did decline initially, I can see Miss N needed to phone BoS to discuss them. I've listened to the recording of the calls. In the first call, Miss N confirmed the payment was for an investment. The agent asked her if she'd done it before and Miss N said not using the platform she'd attempted to make the payment to on that occasion. The agent asked Miss N if she'd done her research into the company she was investing in and whether

she was happy it was genuine and above board. They also asked if Miss N was being forced to make the payment or being told it was time sensitive. Miss N confirmed that the company she was like another company she'd used before, and no one was telling her to make the payment.

During the second call, in addition to similar questions, the agent also asked if anyone had told Miss N to make the payment or had applied pressure. She said no and the agent asked if someone had contacted her about the payment or whether she was making it herself. Miss N said she was doing it all herself using her card. She was asked if someone else had access to her account with the merchant and she said no. Miss N also confirmed that she had set up the account herself.

I've carefully considered Miss N's representative's comments that BoS's interventions were insufficient. I acknowledge that both agents could have questioned Miss N further – it's easy to be critical with the benefit of hindsight. But I also need to be persuaded on balance of probabilities that Miss N would have been open and honest with BoS if further questions were asked.

I've reviewed the written chat correspondence between Miss N and the scammer in the lead up to and during the payments. Given the nature and content of the messages that were exchanged, I find that the scammer was manipulating Miss N. Initially, she expressed some hesitation in going ahead with the investment opportunity. But the scammer managed to persuade her to make the payments anyway. The messages also show that the scammer tried to pressure her at times. Although Miss N was hesitant at first, the scammer persevered and convinced her to go ahead.

This is not a finding I've made lightly. But I'm mindful that BoS did ask Miss N if someone was pressuring her into making the payment or telling her it was time sensitive, and she didn't say anything. It seems that either the situation described by the agent didn't resonate with her, or she wasn't forthcoming.

Miss N was also asked if a third party was involved, and she advised BoS that no one else was involved. We know this isn't true, given the level of involvement on the scammer's part – the chat messages show that Miss N was following the scammer's instructions step by step. I'm not convinced that that, if pressed about it, she would have told BoS that a third party was involved.

Overall, on balance, I'm not persuaded that better questioning by BoS would have led to a different decision-making on Miss N's part. I think she would have wanted BoS to execute her instructions.

Recovery wise, it's unlikely recovery would have been successful given the cryptocurrency Miss N bought legitimately was sent out to the scammer. A chargeback would likely have been unsuccessful as merchant she paid (the cryptocurrency exchanges) did provide the service, i.e., provision of cryptocurrency in exchange for fiat funds. Therefore, I don't think BoS could or should have done anything more in relation to recovering Miss N's loss once it was notified of the scam.

In conclusion, while Miss N has undoubtedly been the victim of a cruel scam, I'm not persuaded that any failure on BoS's part is the proximate cause for her loss. I fully acknowledge that Miss N has lost a lot of money. But having considered the matter very carefully, for the reasons given, it wouldn't be fair of me to hold the bank responsible for her loss.

My final decision

For the reasons given, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss N to accept or reject my decision before 23 April 2025.

Gagandeep Singh
Ombudsman