

The complaint

Mr C complains that Bank of Scotland plc won't reimburse him after he fell victim to an investment scam.

Mr C is professionally represented in bringing his complaint to our service, but for ease of reference I'll refer to all submissions as being made by Mr C directly.

What happened

Mr C has explained that in around September 2023, a friend of his told him about an investment opportunity, where his friend had recent trading success. Mr C's friend put him in touch with his 'account manager' who set up an account for Mr C on the 'investment' platform. However, unfortunately, unbeknownst to Mr C at the time, the account manager was in fact a fraudster and the platform wasn't genuinely making trades.

Mr C was shown how to open cryptocurrency accounts and shown falsified screens of his investment progress. To make the payments, Mr C moved his funds from his Bank of Scotland account to another bank account already held in his name, then from there on to the cryptocurrency platform. Mr C was told there was a 'big jump' coming to investments and that if he invested, results could be life changing. Mr C was encouraged to take loans out to capitalise on this opportunity, and was reassured that he'd be able to repay them within two weeks. In total, Mr C's account activity looked as follows, as a result of the scam:

Date	Value	Payment description
26/09/2023	£1,000	Open banking payment to Mr C's own bank account
09/10/2023	£190	Open banking payment to Mr C's own bank account
09/10/2023	£900	Open banking payment to Mr C's own bank account
13/10/2023	+£5,000	Loan credit received
13/10/2023	£5,000	Open banking payment to Mr C's own bank account
17/10/2023	+£21,999	Loan credit received
17/10/2023	£22,000	Open banking payment to Mr C's own bank account
25/10/2023	+£6,700	Loan credit received
25/10/2023	£6,700	Open banking payment to Mr C's own bank account
31/10/2023	£1,600	Open banking payment to Mr C's own bank account

As Mr C didn't see the returns he was hoping for, he requested to withdraw the funds he had. The final payment Mr C made was on the understanding that this would allow him to withdraw the rest of his funds. However, when the fraudster then advised further fees were due and Mr C had no further money left to send, he realised he'd fallen victim to a scam.

In December 2023, Mr C contacted Bank of Scotland to raise a scam claim. Bank of Scotland considered Mr C's complaint but didn't uphold it. It said the payments Mr C made went to his own account which he had paid before - and that payments didn't appear out of character for the account. It also said Mr C failed to complete due diligence before proceeding with the investment and had he checked online, it would've been apparent that the company he was trading with wasn't legitimate.

Mr C remained unhappy and referred his complaint to our service. An investigator looked into his case but didn't uphold it. She thought that as payments were made to an account in Mr C's name, that he'd previously transferred to, the account activity wasn't so unusual that Bank of Scotland ought to have intervened, prior to releasing the payments. She also thought that even if Bank of Scotland had intervened it wouldn't have made a difference here. This is because the fraudster had told Mr C to tell his bank that the loans received were for home improvements, and that when he'd been called by his other banking provider about the cryptocurrency payments he was making, Mr C wasn't open about having an account manager involved in the payments.

Mr C disagreed with the investigator's view. He argued that only one prior payment of £10 had been made from his Bank of Scotland account to his other banking provider, therefore these transfers ought to have appeared as out of character.

As Mr C disagreed with the investigator's view, the complaint has been referred to me for 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.

There's no dispute that Mr C authorised these transactions and that means that under the Payment Services Regulations 2017 and the terms of his account he is presumed liable for the loss in the first instance. The Contingent Reimbursement Model (CRM) Code does provide further protection for *some* payment transfers that were made as the result of a fraudster. However, the CRM Code does not include transfers such as this where the payments were sent to another account owned by the customer.

However, taking into account longstanding regulatory expectations and requirements and what I consider to have been good industry practice at the time, Bank of Scotland ought fairly and reasonably to have been on the look-out for the possibility of fraud and have taken additional steps, or made additional checks, before processing payments in some circumstances.

In addition, since 31 July 2023 when the Financial Conduct Authority's Consumer Duty came into force, there are additional obligations on firms to avoid foreseeable harm to customers. As a result, where it would be considered appropriate based on the risk level, we'd expect warnings provided by firms to be more 'dynamic', and cover a variety of potential scam options, including cryptocurrency investment scams.

I've considered the payments Mr C made to his other banking provider in light of this and whether Bank of Scotland ought to have been on alert that Mr C may be at risk of financial harm from fraud. As Mr C had made a payment to his other account around three months before this scam occurred with no issues raised, I think it's fair to say that this account would've been considered very low risk by Bank of Scotland – particularly as it had been established that the account was in Mr C's name and therefore under his control.

That's not to say that I would never expect Bank of Scotland to have raised questions – the transfer Mr C made of £22,000 was notably higher than any others he'd made in the past year and followed the second loan credit being received that month. I can therefore understand why Mr C thinks Bank of Scotland ought to have done more. However, I need to balance this with the fact that Mr C *had* made an undisputed payment to this account before, albeit low value – and he had also taken another two loans out in the past year unrelated to this scam. In addition, I need to consider the fact that thousands of transfers between own

accounts are made daily, the vast majority of which are not fraud related, and so Bank of Scotland has a difficult balance to strike in not wanting to inconvenience customers moving money between their own accounts.

Even if Bank of Scotland had intervened, I can't conclude it would've made a difference here. Mr C had been told to tell his bank that these transfers were for home improvements – so I think that had Bank of Scotland questioned any of the transfers he made, he would've provided this as the reason for the payment. Even if this had been uncovered as not true and Bank of Scotland had established these payments were in fact for cryptocurrency, the issue still remains that Mr C's other banking provider had provided a comprehensive warning to Mr C, which included advising him on a number of 'huge' red flags that were relevant in this case. So even if Bank of Scotland had done similar, I don't think this would've impacted Mr C's decision to make these payments.

Therefore, while I'm sorry to disappoint Mr C, and don't make this decision lightly, particularly given the financial distress this scam has placed him under, I don't think Bank of Scotland could reasonably have prevented this scam from occurring.

I've therefore gone on to consider whether Bank of Scotland could have done anything further to recover Mr C's losses, once it was made aware of the scam. However, as the payments Mr C made went to his own account before being lost to the scammer, the only recovery avenue Bank of Scotland would reasonably have would be against Mr C's own account. Therefore I don't think Bank of Scotland had any prospects of recovering Mr C's funds.

To conclude, while I'm very sorry to hear of the cruel circumstances Mr C has been left in as a result of these fraudsters, I don't think Bank of Scotland is liable for his losses and I'm therefore not recommending it reimburses him.

My final decision

My final decision is that I don't uphold Mr C's complaint against Bank of Scotland plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 28 October 2024.

Kirsty Upton
Ombudsman