

The complaint

Mr and Mrs W are seeking to recover from Cater Allen Limited trading as Cater Allen Private Bank (“Cater Allen”), multiple payments they made between December 2021 and February 2022 from their joint bank account as a result of a third-party scam.

What happened

I’m not going to cover all the points raised in detail. The view of 9 February 2024 covered the detailed timeline of the transactions and the details of Mr and Mrs W’s testimony.

But briefly Mr and Mrs W fell victim to a safe account scam. In December 2021, Mrs W received a call from someone who said they worked for her bank and then later she received calls from someone purporting to be from the Financial Conduct Authority (FCA) but who, ultimately, turned out to be a scammer. The scammer persuaded Mrs W that all their accounts and assets were under attack, and they needed to move their money to a safe place. They coached Mrs W through the process. Mr and Mrs W transferred investments into their joint account with Cater Allen and into Mrs W’s sole account (subject of a separate complaint). From here the money was moved to cryptocurrency wallets set up in Mrs W’s name and from there into what Mrs W was led to believe to be a safe account with another bank.

The table below summarises the transactions:

Date	Payee	Debit
17/12/2021	Mrs W	£90,000
20/12/2021	Mrs W	£62,000
	Mrs W	£99,999
22/12/2021	Mrs W	£135,000
23/12/2021	Mrs W	£126,800
24/12/2021	Mrs W	£58,800
7/1/2022	Mrs W	£99,000
8/1/2022	Mrs W	£24,900
	Mrs W	£24,900
	Mrs W	£24,900
	Mrs W	£24,900
9/1/2022	Mrs W	£24,900
	Mrs W	£24,900
	Mrs W	£24,900
	Mrs W	£24,900
10/1/2022	Mrs W	£279,800
14/1/2022	Cryptocurrency P	£1,000
16/1/2022	Cryptocurrency P	£24,950
	Cryptocurrency P	£24,900

18/1/2022	Cryptocurrency C	£24,947
	Cryptocurrency C	£40,400
	Cryptocurrency C	£25,250

Notes from table:

Payments to P on 16 January 2022 were returned to the account by P so excluded from the loss. £24,900 has been refunded so needs to be taken into account in any refund.

Our investigator upheld the complaint in part. She didn't think any further questioning from Cater Allen would have revealed the scam for those transactions made to Mrs W's sole account. However, she upheld the last three payments that went directly to a cryptocurrency account in Mr W's name. The investigator also felt it was fair for Mr and Mrs W to share in the responsibility for their losses for these transactions – so recommended Cater Allen make a 50% deduction from the refund.

Cater Allen accepted the recommendations. Mr and Mrs W did not. They reiterated their position that the bank could have done more to protect them, and they should not be held accountable for any share in their losses. They said Mr W also suffered tax losses as a result of the transfers into the Cater Allen account which have not been accounted for. Our investigator explained that she didn't think Cater Allen had missed an opportunity to intervene and therefore stop Mr W cashing in his investments. So she did not make any recommendations to refund any tax lost.

I issued my provisional decision on 17 May 2024 explaining why I was reaching the same outcome as the investigator but some of my reasoning was different.

Responses to my provisional decision and further developments

Both parties broadly accepted the decision, but a query was raised around redress. In particular Cater Allen carried out a calculation in line with my decision including making a deduction for £24,900 previously refunded to Mr and Mrs W.

Mr and Mrs W's representative didn't think it was fair to deduct this sum as it related to an earlier transaction (on 16 January 2022 – which did not form part of the three upheld transactions in the decision).

Cater Allen explained that the refund was previously made but in fact that payment (for £24,900) was returned by the sender (cryptocurrency P) on 17 January 2022. So Mr and Mrs W had not actually suffered a loss in respect of the transaction for £24,900 on 16 January 2022.

I wrote to Mr and Mrs W's representative explaining that I felt it was fair for Cater Allen to make this deduction in the circumstances set out above. Whilst Mr and Mrs W were disappointed with what I'd said – they confirmed they had no further evidence or arguments to add on this matter.

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.

As neither party has provided any further evidence or arguments for consideration, I see no reason to depart from the conclusions set out in my provisional decision. For completeness, I have set this out below.

I should start by saying I am deeply sorry for what has happened to Mr and Mrs W and their family; this was a cruel scam and their losses are significant.

In deciding what's fair and reasonable, I'm required to take into account relevant law and regulations; regulatory rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

Where the evidence is incomplete, inconclusive or contradictory, I reach my decision on the balance of probabilities – in other words, on what I consider is most likely to have happened in light of the available evidence and the wider circumstances

In broad terms, the starting position in law is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. However, where the customer made the payments as a consequence of the actions of a fraudster, it may sometimes be fair and reasonable for the bank to reimburse the customer even though they authorised the payment.

Taking into account the law, regulatory rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider Cater Allen 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 made additional checks, or provided additional warnings, before processing a payment.
- Have been mindful of – among other things – common scam scenarios, the evolving fraud landscape (including for example the use of multi-stage fraud by scammers including the use of cryptocurrency) and the different risks these can present to consumers, when deciding whether to intervene.

Should Cater Allen have done anything more before it processed Mr and Mrs W's payments?

I've considered whether Cater Allen should have identified that Mr and Mrs W were potentially at risk of fraud as a result of the payments they made, or otherwise done more to protect them.

Cater Allen did in fact have conversations with Mr W regarding the purpose of the payments on a number of occasions. So, the bank was sufficiently concerned about the possibility of fraud to ask questions and warn of fraud and scams. Accordingly, it's just a question of whether it did enough in all the circumstances.

During the first conversation, Mr W confirmed he was transferring money to his wife and that there would be follow up payments. It was going to one of the joint account's managed payees - a known and established payee on the account. And (although Mr W was authorising the payment on behalf of the joint account holders) – it was also going to an

account belonging to one of the account holders, his wife. I think Cater Allen could reasonably take comfort from the fact that money was being transferred to one of the account holders' own accounts and its enquiries were proportionate in the circumstances. It didn't obviously look like fraud or a scam.

I appreciate the transfers that followed were large sums and there was a lot of activity coming into the account from investments, but Mr W's story (that they were looking to buy a second property) made it very difficult for Cater Allen to give a tailored warning. And his story (which he consistently relayed) was plausible given the large sums transferred. But even if Cater Allen had made further enquiries on balance, I'm persuaded the answers Mr W would have given would more likely than not have satisfied Cater Allen that he and his wife weren't at risk of financial harm. So, I can't fairly or reasonably say that any further intervention would have made a difference on the payments that were made to Mrs W's sole account.

I also don't think the first payment of £1,000 to a genuine cryptocurrency provider ought to have caused Cater Allen concern. I am aware that scams involving cryptocurrency had become increasingly prevalent and well known to banks. But I think it was reasonable for Cater Allen to take into account a range of factors when deciding whether to intervene or provide a warning. I am mindful that banks can't reasonably be involved in every transaction. There is a balance to be struck between identifying payments that could potentially be fraudulent and minimising disruption to legitimate payments. I don't think this payment was consistent with a heightened risk of financial harm.

However, by its own admission, Cater Allen could have done more during its call with Mr W on 17 January 2022 when Mr and Mrs W had started making more sizeable payments directly to cryptocurrency. I'm not going to go into detail here – because Cater Allen has accepted it didn't do enough and it has subsequently accepted to partially refund the three final transactions as the investigator recommended. But for completeness I agree it could have done more.

Should Mr and Mrs W share in the responsibility for their losses?

I've thought about whether Mr and Mrs W should bear any responsibility for their losses. In doing so, I've considered what the law says about contributory negligence, as well as what I consider to be fair and reasonable in all of the circumstances of this complaint.

I won't go into detail here as I agree with the investigator – broadly for the same reasons. I understand there were sophisticated aspects to this scam and that Mr and Mrs W were acting under the fear of losing all their assets. Some of the documents such as the letter from the FCA and bank statements where funds were ultimately supposedly deposited do look convincing at first glance.

However, by the time of the transactions I'm upholding - I think there were signs that things weren't quite right. The initial call had taken place around the 2 December 2021 and the first large cryptocurrency transaction was around six weeks later. I do think there was time to reflect on what Mr and Mrs W were being told. Whilst I appreciate, they did look up the (spoofed) number of the caller purporting to be from the FCA, they never called this number which would have revealed the scam. Mr and Mrs W moved vast sums of money into an account that had supposedly been compromised – over a long period of time. I don't agree that there would not have been time to reflect on what they were being told during this time.

Where I find that the bank didn't do enough and the consumer should share in the responsibility for their losses, I consider it is fair and reasonable for the loss to be split between the parties.

On that basis, I think it's reasonable for Mr and Mrs W to share the responsibility with Cater Allen and reduce the refund on the payments I am upholding by 50%.

Putting things right

In assessing what would be fair compensation, I am satisfied that what I have set out below is fair, reasonable and proportionate given Mr and Mrs W's circumstances.

In order to put things right for Mr and Mrs W, Cater Allen Limited trading as Cater Allen Private Bank should

- Refund 50% of the last three transactions less anything already refunded

Because Mr and Mrs W have been deprived of this money, I consider it fairest that Cater Allen add 8% simple interest to the net refund above from the date of the transactions to the date of settlement.

If Cater Allen is legally required to deduct tax from the interest it should send Mr and Mrs W a tax deduction certificate so they can claim it back from HMRC if appropriate.

Tax liabilities and other costs

Mr and Mrs W raised a point that Mr W's tax liabilities had not been considered in this case. This is because Mrs W's tax liabilities had been considered by the investigator in the linked case.

I understand that Mr and Mrs W cashed in investments and other assets and have incurred tax liabilities as a consequence. I wouldn't normally expect Cater Allen to cover such a loss in a case like this. The reason I say this is because the primary financial loss is the money Mr and Mrs W lost to the scam itself. This is the key foreseeable loss that flows from Cater Allen's failure to prevent the scam. I am mindful there was a third party involved here and I am not considering what would have happened but for the fraud, I am considering what would have happened but for the bank's mistake. In any event, Cater Allen couldn't reasonably have prevented those losses in this case as those assets had already been encashed before I am holding Cater Allen liable. Overall, I consider any loss from an associated tax liability to be too remote from the bank's failing's here.

I feel a complaint could've been brought to the bank and this service without the use of professional advisors. I therefore do not consider it appropriate or fair to make an award for legal costs.

My final decision

My final decision is that I uphold this complaint in part and require Cater Allen Limited trading as Cater Allen Private Bank to put things right for Mr and Mrs W as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W and Mrs W to accept or reject my decision before 24 July 2024.

Kathryn Milne
Ombudsman