

The complaint

Mrs T complains that Bank of Scotland plc ("BoS") did not refund a series of payments she lost to a scam.

What happened

Mrs T fell victim to a cryptocurrency-based investment scam. She was initially sent the investment over social media, and was later invited via a messaging platform by a friend who had been investing over some months. The investment was with a company I'll call 'X' who said they could use artificial intelligence to trade in forex. Mrs T made a number of deposits from her BoS account to a cryptocurrency wallet in her name, before forwarding it onto X.

After a few days of investing, there was speculation in a group chat with other investors that something was wrong, as investors were unable to withdraw their funds. They were given excuses by X as to why this was, and eventually the customer accounts on X were taken down. The admins of X said investors had to pay £100 to transfer their accounts to a new website, but soon after this they were uncontactable. It was at that point Mrs T realised she had been the victim of a scam. Mrs T made the following payments from her BoS account:

Date	Amount
22/11/2023	£520
23/11/2023	£215
23/11/2023	£10.00
24/11/2023	£190
24/11/2023	£20.00
27/11/2023	£210
27/11/2023	£10.00
27/11/2023	£210
27/11/2023	£5.00

Mrs T raised a fraud case with the police and was advised to speak with Action Fraud and her bank account provider. BoS issued a final response letter in which they explained the transactions were not covered under the Lending Standards Board's Contingent Reimbursement Model ("CRM") Code, which gives additional protections to victims of authorised push payment ("APP") scams. This is because the funds went to another account in Mrs T's name before being passed onto the scammers. BoS said that as the scam payments were in line with the normal account activity, there was no reason for them to intervene in the processing of the payments.

Mrs T referred the complaint to our service and our Investigator looked into it. They agreed with what BoS had said and felt the payments were not unusual or suspicious enough to warrant intervention from BoS. Mrs T did not agree with this and felt BoS should have had concerns about the irregular payments going to an unknown and suspicious company. She also said the police had advised her of new regulations around APP scams that meant she should be reimbursed.

As an informal agreement could not be reached, the complaint has been passed 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.

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to be good industry practice at the time.

Broadly speaking, the starting position in law is that an account provider is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the terms and conditions of the account. And a customer will then be responsible for the transactions that they have authorised.

It's not in dispute here that Mrs T authorised the payments in question as she believed they were part of a legitimate investment. So, while I recognise that she didn't intend the money to go to scammers, the starting position in law is that BoS was obliged to follow Mrs T's instruction and process the payments. Because of this, she is not automatically entitled to a refund.

The regulatory landscape, along with good industry practice, also sets out a requirement for account providers to protect their customers from fraud and financial harm. And this includes monitoring accounts to look out for activity that might suggest a customer was at risk of financial harm, intervening in unusual or out of character transactions and trying to prevent customers falling victims to scams. So, I've also thought about whether BoS did enough to try to keep Mrs T's account safe.

I've looked over Mrs T's statements and compared the scam payments to her genuine account activity. Having done so, I don't think the value of the payments were so significantly high as to warrant intervention from BoS. I can see Mrs T regularly made higher value payments on the account in the months leading up to the scam, so I don't think the scam payments would have stood out as significant in comparison.

I do accept that there were a number of payments over five days, but I don't think this is enough of an indication that Mrs T could have been at risk of financial harm. And I don't think this therefore meant BoS should have carried out additional checks on the payments. I also understand that the payments were going to a cryptocurrency exchange, and these payments can carry a higher risk as a result. But again, I do not think the value and general pattern of the payments were so unusual that I think they should reasonably have been stopped for further checks before they were processed.

Mrs T is correct that new regulations came into force around APP scams on 7 October 2024 which mean increased protections for victims of APP scams. However, these regulations are not retrospective, meaning they do not affect Mrs T's transactions.

I understand that this will be very disappointing for Mrs T, and I recognise that she has been the victim of a cruel and manipulative scam. But I do not consider that it would be fair to hold BoS responsible for her loss, so I won't be asking it to refund any of that loss to her.

My final decision

I do not uphold Mrs T's complaint against Bank of Scotland plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T to accept or reject my decision before 25 February 2025.

Rebecca Norris
Ombudsman