

## **The complaint**

Miss M complains that Bank of Scotland plc won't refund her the money she lost to what she believes to be a scam.

## **What happened**

The background to this complaint is well known to both parties, so I won't repeat it in detail here. But in summary I understand it to be as follows.

Miss M has told us that in or around September 2017 a friend, who I'll refer to as "A", that she knew from university, introduced her to an investment opportunity. A told Miss M that if she invested £20,000 (which could be paid in small increments), she would be guaranteed a return of four times this amount, when the investment matured in three years.

Believing it to be a genuine investment opportunity Miss M decided to go ahead with it and between September 2017 and November 2020, she made 178 payments to A, totalling £18,136 from the account she holds with Bank of Scotland (with the payment values ranging from £10 - £600). Miss M didn't receive the returns she expected when the investment matured in December 2020. However, she remained in contact with A and didn't suspect things were wrong until she lost contact with A in June 2022 – she visited where she thought he lived, but he had moved and she was unable to contact him by phone, so she suspected she'd been scammed.

Some time later, after speaking to a friend, she was told that she may be able to raise a fraud claim with her bank, so she raised the matter with Bank of Scotland in March 2024. Bank of Scotland was a signatory of the Lending Standards Board Contingent Reimbursement Model CRM Code (the "CRM Code") which was in force between 28 May 2019 and 6 October 2024. The CRM Code required firms to reimburse customers who have been the victims of APP scams in all but a limited number of circumstances.

Bank of Scotland looked into Miss M's claim and upheld it in part. In summary, it said that the first 95 payments Miss M made weren't covered by the CRM Code, as they were made before it was introduced, so they weren't liable for those payments. But Bank of Scotland didn't think it had raised the matter with the beneficiary banks (the banks to which the payments were made) soon enough, when Miss M had raised the matter with it. Because of this it held itself liable to refund Miss M 50% of the remaining payments (payments 96-178), totalling £4,891, along with £1,328.75 of overdraft charges. But Bank of Scotland thought Miss M should be held liable for the remaining 50%, as it didn't think she had done enough to protect herself by making sure the investment was genuine.

Miss M raised the matter again with Bank of Scotland, as she didn't agree with the outcome and was unhappy with the service it provided. Bank of Scotland looked into matters again and issued its final response on 26 June 2024. In summary, it said having looked at matters again it now considered this to be a civil matter and therefore the payments would not be covered by the CRM code and the money couldn't be refunded. However, it said it wouldn't look to take back the money it had already refunded Miss M in May 2024 (£4,891 and £1,328.75). Bank of Scotland also agreed with Miss M that the service it provided wasn't as good as it should have been, it apologised to Miss M for this and in recognition paid Miss M

£30 compensation.

Unhappy with Bank of Scotland's response, Miss M brought her complaint to this service. One of our Investigator's looked into things and thought the complaint should be upheld in part. In summary, he thought the 50% refund Bank of Scotland had made to Miss M for payments 96-178 was fair and he wouldn't be asking it to do anymore. However, when considering the service Bank of Scotland had provided, it was our Investigator's view that it should increase its offer of compensation from £30, to £200 (an increase of £170). Bank of Scotland agreed to our Investigator's view. But Miss M didn't agree, she shared with this service something of her personal circumstances and maintained that she acted in good faith and had a reasonable basis for belief when making the payments.

As agreement couldn't 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.

I'm very aware that I've summarised this complaint briefly, in less detail than has been provided, and in my own words. No discourtesy is intended by this. Instead, I've focussed on what I think is the heart of the matter here. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual point or argument to be able to reach what I think is the right outcome. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts.

I'm mindful that there is a dispute between the parties in this case as to whether this is a scam. I've thought about this. But, in the circumstances of this case, my findings would not differ, even if I considered this was a scam. So, I'm satisfied that to reach a fair and reasonable outcome on this case, it isn't necessary for me to make a finding as to whether I think this is a scam.

I'm sorry to hear of what's happened to Miss M, and I can understand entirely why she feels so strongly that this money should be returned to her. But having thought very carefully about Bank of Scotland's actions, I think the outcome, in refunding Miss M the money she sent to A in part, is fair and reasonable.

For the purposes of this decision, even if I were to accept that what has happened was a scam (which as mentioned above I don't need to here), I'm not persuaded that I would reach an outcome that would lead me to ask Bank of Scotland to refund Miss M any more than it has already agreed to. I'll explain why.

In broad terms, the starting position at law is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations (in this case, the 2017 regulations) and the terms and conditions of the customer's account.

However, that isn't the end of the story. Good industry practice required that Bank of Scotland be on the lookout for payments that were out of character or unusual to the extent that they might have indicated a fraud risk. On spotting such a payment, I'd expect it to intervene in a manner proportionate to the risk identified.

As mentioned earlier, Bank of Scotland is a signatory to the CRM Code. That Code requires firms to reimburse customers who have fallen victim to scams. However, it doesn't apply to

all payments. The first 95 transactions here aren't covered by the CRM Code because they were made before the CRM Code was introduced and the CRM Code can't be applied retrospectively. However, it does apply to all of the payments after this, as they were processed as bank transfers to UK accounts after the CRM Code had been introduced. I'll consider the provisions of the CRM Code in connection with those payments later in this decision.

### Payments 1 – 95

As mentioned, there are times when I might expect a bank to question a transaction(s) or payment(s), even though it may have been properly authorised. Broadly speaking, firms (like Bank of Scotland) should fairly and reasonably have been on the lookout for the possibility of fraud in order to protect its customers from fraud.

What this means is that I need to decide whether Bank of Scotland acted fairly and reasonably in its dealings with Miss M when she made the payments, or whether it should have done more than it did.

I have to be mindful that banks process a high volume of transfers and transactions each day. And a bank has to strike a balance as to when it should possibly intervene on a payment against not holding up or delaying its customer's requests.

I've thought about this carefully. Having done so, I can't fairly say the payments (1-95) Miss M made would (or should) have alerted Bank of Scotland that Miss M was potentially at risk of financial harm, to an extent whereby it should have carried out some additional checks before processing the payments. So, I don't consider Bank of Scotland are liable for the losses occurred on these payments.

I say that as I don't consider there was anything unusual or remarkable about the payment(s) or the amounts, in comparison to the typical account activity, that ought to have alerted Bank of Scotland to the possibility Miss M was being scammed or was at risk of financial harm. And while I appreciate overall this was a lot of money to Miss M, given the volume of payments Bank of Scotland processes, the amounts weren't so significant that I would expect Bank of Scotland to carry out some additional checks on them.

I'm also mindful here that while Miss M made a large number of payments to A and quite often, the payments weren't so frequent that I would have expected them to have alerted Bank of Scotland of a potential risk. Rather I'm more persuaded they would have become to appear as relatively modest payments to an established payee.

So, all things considered; I think it was reasonable that these payments didn't flag as suspicious – and I can't say Bank of Scotland acted unfairly on these payments.

### Payments 96 – 178

These payments are covered by the CRM Code. According to the Code, Bank of Scotland should reimburse customers for losses unless one of the CRM Code's exceptions applies.

One exception is where the customer didn't have a reasonable basis for believing that the transaction or the person they were paying were legitimate.

I accept that Miss M did sincerely believe that she was making those payments in order to contribute to an investment. But I'm afraid I don't think that belief was a reasonable one. The returns that Miss M was being promised, were extraordinarily high to the point that they were too good to be true, especially so given that there didn't seem to be an apparent risk

attached to the investment. I think Miss M ought reasonably to have questioned whether a legitimate investment could earn such vast returns.

Furthermore, the investment opportunity was introduced informally through A, and there was no formal contract or documentation alongside it. The lack of formalities should have prompted Miss M to be more cautious. I'm also mindful that Miss M didn't appear to have any control over her investment or direct access to review it or to her funds, rather she was reliant on A showing her updates on their phone. It is also questionable why Miss M would have had to make payments to A's personal accounts for the purposes of an investment – where more typically an investment would be made directly to a regulated investment firm or company.

I can understand how in isolation any one of these things may not have prevented Miss M from proceeding. But when taken collectively I think there were sufficient unusual factors here that Miss M ought to have acted far more cautiously than she did. I'm satisfied, therefore, that Miss M didn't have a reasonable basis for believing she was making payments for a legitimate investment.

Bank of Scotland is also expected under the CRM Code to provide customers with effective warnings where it spots a fraud risk in connection with an individual payment. However, I'm not persuaded that any of these payments were sufficiently high in value or suspicious, when compared to Miss M's typical account activity, that I'd have reasonably expected it to display a warning.

With all of this in mind I think the offer Bank of Scotland made to refund 50% of payments 96-178 is fair and I can't reasonably ask it to pay anymore when considering the principles of the CRM Code.

### Miss M's circumstances

Miss M has told us something of her background and circumstances, telling us about the difficult times she has had recently and the impact and stress this matter has had on her. I thank her for this, I can't imagine it was easy for her to tell us this.

I have a great deal of sympathy for her, and I acknowledge that this has been a difficult time for her. But I can't see that Bank of Scotland would have been aware of any vulnerabilities she had at the time she made the payments, so there would have been no reason for Bank of Scotland to think she might be at a higher risk of financial harm. As well as this, from what I understand of Miss M's circumstances at the time she made the payments, I'm not persuaded it would have been unreasonable to expect her to have protected herself against the particular scam she fell victim to, I say that as she seems to have been in control of her finances at the time.

I don't say this in any way to diminish the difficult personal circumstances Miss M is going through. Rather the submission Miss M has presented to us suggests that Miss M's challenges with her health and finances have followed what happened, rather than having been present at the time the payments were made. As a result, I'm not persuaded the CRM Code's definition of vulnerability applies here or that there is any other reason why Bank of Scotland ought to increase the amount it has refunded to Miss M.

### Recovery

For the sake of completeness, I've also looked into whether Bank of Scotland did everything I'd have expected in terms of recovering Miss M's funds. I can see that there was a delay in Bank of Scotland reaching out to the beneficiary banks once Miss M had made it aware of

things. However, evidence I've seen from the beneficiary accounts indicates that at the time Miss M reported the scam, sadly no funds remained to be recovered. Given the matter was raised with Bank of Scotland some years after the payments were made, the prospect of there being any of her funds left in the account was always going to be remote.

### Customer Service

Finally, I've considered the customer service provided to Miss M.

I've reviewed a number of call recordings and considered Miss M's testimony and the bank's records. I agree with Miss M that Bank of Scotland could have done better, and I don't think it handled her claim with sufficient care.

From what I've seen Miss M spent a not inconsiderable amount of time seeking an update on her claim and there were times where she didn't receive updates, nor call backs that were promised and on numerous occasions Bank of Scotland staff had difficulty locating her case. As well as this, Miss M was also incorrectly told that her account had been blocked and one of Bank of Scotland's fraud Investigators declined to take a call from Miss M. In addition, when Miss M did receive a refund from Bank of Scotland, it was provided with no context.

In the circumstances, while we mustn't lose sight of the fact that the main perpetrator of Miss M's distress is A, I think Bank of Scotland's actions here did cause Miss M unnecessary distress and inconvenience. Bank of Scotland has acknowledged that the service it provided could have been better and has agreed to our Investigator's recommendation that it pays an additional £170 (on top of the £30 it has already paid). While it won't come as any consolation to Miss M, I'm satisfied that this is fair and reasonable in the circumstances and is in line with what I would have recommended.

I don't say any of this to downplay the fact that Miss M has lost a lot of money, and I don't underestimate how difficult a time this must have been for her. I have a great deal of sympathy for her and the position she's found herself in. However, my role is limited to looking at the actions and inactions of the bank and I'm satisfied that for the reasons explained above the refund and compensation that it has already offered and agreed to is fair and reasonable in the circumstances.

### **Putting things right**

Overall and with all things considered, for the reasons explained above, my decision is that I uphold this complaint in part and now ask Bank of Scotland plc to:

- Pay Miss M an additional £170 for the distress and inconvenience caused (in addition to the £30 it has already paid).

### **My final decision**

My final decision is that I uphold this complaint in part.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 18 June 2025.

Stephen Wise  
**Ombudsman**