

The complaint

Mr O has complained Bank of Scotland plc won't refund several payments he says he made and lost to a scam.

What happened

The background to this complaint is well known to both parties so I won't repeat it in detail here. In summary, Mr O fell victim to an investment scam after building a rapport with an individual (henceforth referred to as the 'scammer') over a number of years. Mr O made numerous international payments and debit card payments to the scammer as he believed his investment was generating good returns. In total Mr O sent circa £70,187.49 to the scammer from around October 2019 to October 2020. However, he subsequently discovered the investment was a scam and raised his concerns with Bank of Scotland.

Bank of Scotland agreed that it could have done more to prevent the losses Mr O suffered. In recompense it awarded Mr O 50% of his total loss, 8% simple interest and £300 compensation. It deducted 50% because it believed Mr O was contributorily negligent for what happened.

Our Investigator looked into things but didn't recommend the complaint be upheld. They weren't persuaded that Bank of Scotland should be liable for the total loss Mr O suffered and agreed that the deduction was fair. As our Investigator couldn't resolve the matter informally, the case 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 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 focused 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'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 don't doubt Mr O has been the victim of a scam here; he has lost a large sum of money and has my sympathy for this. However, just because a scam has occurred, it does not mean he is automatically entitled to recompense by Bank of Scotland. It would only be fair for me to tell it to reimburse Mr O for his loss (or a proportion of it) if: I thought it reasonably ought to have prevented all (or some of) the payments Mr O made, or Bank of Scotland hindered the recovery of the payments Mr O made – whilst ultimately being satisfied that such an outcome was fair and reasonable for me to reach.

I've thought carefully about whether Bank of Scotland treated Mr O fairly and reasonably in its dealings with him, when he made the payments and when he reported the scam, or

whether it should have done more than it did. Having done so, I've decided to not uphold Mr O's complaint. I know this will come as a disappointment to him and so I will explain below why I've reached the decision I have.

I have kept in mind that Mr O made the payments himself and the starting position is that Bank of Scotland should follow its customer's instructions. So, under the Payment Services Regulations 2017 (PSR 2017) he is presumed liable for the loss in the first instance. I appreciate that Mr O did not intend for his money to ultimately go to fraudsters, but he did authorise these payments to take place. However, there are some situations when a bank should have had a closer look at the wider circumstances surrounding a transaction before allowing it to be made.

Considering the payments that Mr O made and what happened at the time, I think Bank of Scotland accepting it could have done more was fair. As this aspect is not in dispute, I will focus on why I think Mr O was contributorily negligent for the losses he unfortunately suffered.

During the calls which took place Bank of Scotland highlighted their concerns to Mr O. In the intervention call on 22 October 2019 Mr O informed it that he had downloaded screensharing software, but justified that it was for speed. Mr O informed Bank of Scotland he had invested with this scammer, made a profit (although he'd not tried to withdraw any funds) and maintained contact via telephone calls over the last couple of years. After Bank of Scotland then ascertained searching the company only showed IT related results, rather than what one would expect an investment firm to show, Mr O informed them of the scam company's previous name. Bank of Scotland was able to find this and made it clear to Mr O that this firm had acted without authorisation of the Financial Conduct Authority ('FCA'). Bank of Scotland also gave Mr O a general scam warning to be vigilant of inadvertently investing with scammers. He was required to first attend the branch before he would be able to make such a transfer.

During a follow-up call, Bank of Scotland highlight to Mr O concerns of this being a scam. Mr O also confirmed in response that it does seem odd for him to be sending funds to an IT company based in Germany. Mr O explained that the scammer had moved between firms; always taking his account with him. Bank of Scotland stated that's not how it would usually work as the account is with the firm and not the individual. Mr O agreed that would have been improbable as he never withdrew the funds to reinvest them. He confirmed he would first need to discuss this with the scammer and the FCA.

On the call of 23 October 2019 Mr O confirmed to Bank of Scotland he had completed his own independent research and had not discovered anything bad. He said he was apprehensive, but he was receiving a lot of money from his mother's estate and so still wanted to invest a lesser amount than he'd originally planned. Mr O considered £5,000 a more acceptable amount to risk losing as he has spoken with the scammer for circa three years. Bank of Scotland made it clear to Mr O that the chances of recovery if he were to send this would be low. It also said regardless of whether he felt he could lose the money, it doesn't mean it would want him to do so. In response, Mr O confirmed he was going to suggest first meeting the scammer face to face as then he'd feel comfortable sending his funds. Bank of Scotland suggested instead of the £5,000 that he instead try a smaller amount such as £200. Mr O then informed Bank of Scotland he was now seeking for the scammer to prove his identity and then he'd be prepared to trust him. He let Bank of Scotland know he would do nothing until he had confronted the scammer.

I do not find it unreasonable that Bank of Scotland took Mr O at his word that he was in fact going to do additional due diligence - to the heightened level of meeting the scammer and asking him to prove his identity. This was an expectation Mr O set on himself, not something

the Bank of Scotland said he had to do. Mr O seemed to be taking note of the warnings from Bank of Scotland and reaching logical conclusions of his best next steps. Therefore, it's not particularly unexpected for Bank of Scotland to have trusted Mr O and accepted what he was saying on face value. Additionally, by suggesting he invest a lower amount of £200 Bank of Scotland was then also minimising the risk to Mr O which made the intervention even more proportionate. I am persuaded the action Bank of Scotland took was reasonable.

On 2 December 2019 Bank of Scotland intervened again with two telephone calls for each transfer Mr O attempted. In response to their questions Mr O said he was making the transfer to a friend that he had known for 10 years, who he had met face to face. He said that he was just lending the funds to his friend and he was fine about doing so.

These calls all highlight the trust Mr O had in the scammer – which after circa two to three years is understandable as the scammer had a long period of time to build trust with him. Even after Bank of Scotland highlighted on multiple occasions the potential financial harm he could suffer here, and Mr O seemingly agreeing, he ultimately chose to trust the scammer over the Bank of Scotland. Deciding in the later calls to even mislead the bank as to his true intentions of why he was completing the transfers. Therefore, it would be unreasonable of me to say the entire loss was due to the failings of Bank of Scotland when Mr O chose to trust the scammer over its warnings and his own feelings of misgivings.

I do not doubt the scammer was able to give, what Mr O deemed to be, satisfactory explanations. I might understand how in isolation one of the red flags Mr O was made aware of may not have prevented him from proceeding. But when taken collectively I think there were sufficient red flags here that reasonably ought to have led Mr O to have acted far more cautiously than he did. So, I think Mr O did have a role to play in what happened and I think that the amount Bank of Scotland has deducted is fair to reflect that role.

I've noted Mr O has referenced decisions that he believes are close to his circumstances. However, we consider each case on its own individual merits and although he believes the circumstances of other decisions seem to be similar, there are key differences.

I am also sorry to hear about the vulnerable situation Mr O says he was in at the time of the scam following the death of his mother. The repercussions such a cruel scam has had on Mr O are not something I have overlooked when reaching my decision. However, I have not seen evidence that this may have been impairing his decision-making during this scam. I am empathetic towards him, but I do not consider this, in isolation of any other clear indicators of a potential risk of financial harm, to be something that should have triggered further red flags for Bank of Scotland.

Considering the remainder of the award to Mr O, the application of 8% interest and compensating him with £300 for the impact caused, I find this to be reasonable and am not minded to increase this.

Recovery

I have gone on to consider if Bank of Scotland took reasonable steps to try and recover the funds. However, due to the time that had elapsed between Mr O paying his funds to the scammer and reporting the scam it's highly unlikely Bank of Scotland would have successfully been able to recover them. This would have been so for both a chargeback attempt, or contacting the receiving bank to see if any funds remained. Therefore, I won't be asking Bank of Scotland to do anything further.

The Contingent Reimbursement Model Code

Although Bank of Scotland has signed up to the Contingent Reimbursement Model Code, the payments Mr O made from his account aren't covered by the Code. The Code does not cover card payments or international transfers. I cannot fairly and reasonably say that Bank of Scotland should have to refund payments under the Code when it doesn't apply here.

So, in light of all of the above findings, there's no fair and reasonable basis under which I can ask Bank of Scotland to reimburse Mr O's loss.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 25 July 2025.

Lawrence Keath
Ombudsman