

The complaint

Mr B complains that Bank of Scotland plc ('BOS') won't refund the money he lost after falling victim to a scam.

What happened

In January 2022, Mr B attended a conference which brought together entrepreneurs, property developers and investors. Mr B met an individual at the conference who I'll refer to as J.

Mr B and J kept in touch after the conference and, in April 2022, J proposed a business venture with Mr B. This would involve the purchase of commercial property. Mr B signed an agreement with a company who I'll refer to as L, whom J was a director of.

As part of this investment, Mr B made a payment of £25,000 in April 2022 to L from his BOS account.

Mr B made a further payment of £5,000 in July 2022, but changed his mind and the funds were returned to his account.

Mr B received returns between 18 July 2022 and 8 August 2022 which totalled £1,150.

J told Mr B that the business venture wasn't working and suggested that the funds could be recouped through trading. J introduced Mr B to a third party, who I'll refer to as G.

Mr B says he was told that G would trade the funds on his behalf, and he would receive a weekly return.

In August, Mr B put pressure on J to return the money he'd invested in the business venture, and J returned £10,000 to him.

When Mr B asked for the rest of his funds, J said he had substantial funds in cryptocurrency. But to release the funds, he needed to pay a fee of £12,000. J said he would pay £2,000 and asked if Mr B could help with the balance. Mr B agreed on the basis that it was a loan and J would owe him the £10,000.

Mr B made a number of payments in relation to the fees to release J's cryptocurrency and in relation to G trading on his's behalf. Most of these were made from an account Mr B held with another bank. But Mr B made the following payments from his BOS account.

Date	Details of transaction	Amount
22.11.2022	Payment to A – peer-to-peer cryptocurrency purchase	£4,360
23.11.2022	Payment to H - peer-to-peer cryptocurrency purchase	£2,000
22.12.2022	Payment to J	£750

Mr B says he realised it was a scam in December 2022, when he was asked for a further £5,000 to release J's cryptocurrency funds.

Mr B initially thought that G was the scammer, but says he later realised that J was party to the scam.

Mr B raised a scam claim with BOS, through a professional representative, in January 2023.

BOS declined to refund Mr B. BOS said Mr B didn't do enough checks before making the payments and the payments weren't unusual or out of character, so they didn't have any concerns when they were made.

Mr B wasn't happy with BOS' response, so he brought a complaint to our service.

An investigator looked into Mr B's complaint but didn't uphold it. The investigator wasn't satisfied that Mr B had evidenced he'd suffered his loss as the result of a scam.

Mr B disagreed with the investigator's opinion and asked for an ombudsman to review his case.

Having reviewed the case, I've reached the same overall outcome as the investigator, but for different reasons. So, I issued a provisional decision explaining why and giving both parties a chance to provide any further evidence they wanted to be considered before I issued a final decision.

My provisional decision

In my provisional decision I said:

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.

Where there is a dispute about what happened, and the evidence is incomplete or contradictory, I've reached 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.

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

The payments that Mr B made to L and J in relation to the property business venture

BOS have signed up to the CRM Code, which requires firms to reimburse customers who have been the victims of Authorised Push Payment (APP) scams, in all but a limited number of circumstances.

But, the CRM Code does not apply to private civil disputes, for example where a customer has paid a legitimate supplier for goods, services or digital content but has not received them, they are defective in some way, or the customer is otherwise dissatisfied with the supplier.

The CRM Code defines what is considered an APP scam as, "where the customer transferred funds to another person for what they believed were legitimate purposes, but which were in fact fraudulent".

In order to decide whether the circumstances under which Mr B made his payments meets the definition of an APP scam, I need to consider the purpose of the payment and whether Mr B thought this purpose was legitimate. The purpose J had in mind at the time of the payment and whether this was broadly in line with what Mr B understood the purpose to be. And, if I decide there was a significant difference in these purposes, whether I'm satisfied that was as a result of dishonest deception.

Mr B was making payments to J and L in relation to a business venture which involved the purchase of commercial property. I haven't seen anything that suggests Mr B didn't think this was a legitimate purpose.

So, I've gone on to consider what purpose J and L had in mind and whether it was in line with what Mr B thought. In reaching an answer on what purpose J and L had in mind, the key points are:

- L was set up as a UK incorporated company in April 2021, and its nature of business involved development and construction of commercial and domestic buildings, as well as building projects. So, L had been set up at least a year before Mr B made his payments and was an active company during the time Mr B made his payments.
- While L was dissolved in June 2023, we don't have any information about why L was dissolved. This could've been due to mismanagement or financial failure, neither of which would mean that Mr B has an APP scam as the CRM Code doesn't cover failed investments.
- While Mr B has reported the scam to Trading Standards and the police, there is no evidence that suggests that J or L took Mr B's money with a different purpose in mind or through dishonest deception.
- We've received third party information from the receiving bank which I can't share due to data protection legislation. However, that evidence that doesn't suggest that Mr B has an APP scam as set out by the CRM Code.
- J returned £10,000 of Mr B's original £25,000 investment and Mr B received returns in July and August 2022. I realise that Mr B didn't get the expected returns or the rest of his investment back. But I wouldn't expect this amount of money to be returned if J had set out with the intention of deceiving Mr B or obtained the money by dishonest deception.

I realise that Mr B has suffered a financial loss and that the business venture with J and L has fallen through. But, I'm not satisfied that he has evidenced that J and L took the funds with a different purpose in mind, or through dishonest deception. So, I'm not satisfied that Mr B's payments to J and L are covered by the CRM Code.

The payments that Mr B made to A and H

The CRM Code doesn't apply to payments made for legitimate purposes. In this case, Mr B purchased cryptocurrency from independent third parties, which he transferred into a wallet in his own name, before passing the funds onto the scammer. So, these payments aren't covered by the CRM Code.

Is there any other reason I could hold BOS liable for Mr B's loss?

Taking into account the law, regulators rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider BOS should fairly

and reasonably have been monitoring accounts and any payments made or received to counter various risks, including preventing fraud and scams.

Also, I'd expect BOS to have 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). And where a potential risk of financial harm is identified, to have taken additional steps, or made additional checks, or provided additional warnings, before processing a payment.

I'm not satisfied that BOS should've identified a potential risk of financial harm when Mr B made any of his payments. I say this because while the largest payment was for £25,000, Mr B had made similar sized payments from his account previously. So, I'm not persuaded that this payment was unusual or out of character compared to his previous account activity.

Having reviewed Mr B's statements I can see that he made two payments in February 2022 for £20,000, as well as a payment of £10,000. Mr B also regularly made payments for over £5,000, so I don't think any of the other payments he made as part of the scam should've concerned BOS. As I'm not satisfied that BOS should've identified a potential risk of financial harm, I wouldn't have expected them to have intervened when the payments were made.

However, for completeness, even if I was to say BOS should've intervened when Mr B made his first payment of £25,000, it wouldn't change the outcome.

If BOS had intervened on the first payment and contacted Mr B to ask questions about the payment, I think it's more likely than not he would've told them he was entering into a business venture with J and L, would've provided a copy of the contract, explained that he'd met J a few months prior at a reputable online conference and that L was an active UK incorporated company. BOS may've suggested that Mr B complete independent checks on J and L, but there wasn't any negative information available at the time about J or L.

So, I'm not satisfied that I can fairly say BOS could've prevented Mr B's loss.

I'm really sorry that Mr B has suffered a financial loss and feels betrayed by someone who he considered to be a friend. But, having carefully considered the evidence, I'm not satisfied that I can fairly hold BOS responsible for his loss or ask them to refund him.

My provisional decision was that I didn't intend to uphold this complaint.

Responses to my provisional decision

Mr B responded to my provisional decision and raised the following points:

- The scam was very complex and involved multiple layers, including the use of a seemingly legitimate business venture.
- There was pressure to keep investing and manipulation through promises of high returns.
- There were excessive fees to release funds which hadn't been previously agreed and there was a sense of urgency – which are indicators of fraud.
- The returns were unrealistic and there wasn't a clear investment strategy on how those returns would be achieved.
- Ultimately, Mr B wasn't able to withdraw his funds.
- BOS should've intervened on the transactions as they were suspicious and out of character.

BOS haven't responded to my provisional decision.

Under the Dispute Resolution Rules (found in the Financial Conduct Authority's Handbook), DISP 3.5.13, says, if a respondent (in this case Revolut) fails to comply with a time limit, the ombudsman may proceed with the consideration of the complaint.

As the deadline for responses to my provisional decision has expired, I'm going to proceed with issuing my 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've carefully considered all of the points that Mr B raised in response to my provisional decision, but I'm not persuaded to reach a different answer.

In relation to the payments Mr B made directly to J/L, I'm not satisfied that Mr B has evidenced that J or L had a different purpose in mind or that the business venture was an APP scam, as opposed to a civil dispute – which isn't covered by the CRM Code.

Mr B has raised a number of points, that I have considered, but he hasn't provided any evidence that points to J or L's intention at the point he made the payments.

Also, it's highly unusual that J returned £10,000 to Mr B, which was nearly half of his initial investment.

I realise that Mr B will be disappointed, but all of the information and evidence that I've seen persuades me that it's more likely than not the business venture failed, and Mr B has a civil dispute with J, so the payments to J and L aren't covered by the CRM Code.

As previously explained, the payments to A and H aren't covered by the CRM Code as they were used to purchase cryptocurrency – which is a legitimate purpose.

As the CRM Code doesn't apply to any of the payments Mr B made from his BOS account, I could only hold BOS responsible for his loss if I was satisfied that they should've intervened when he made the payments, and that intervention would have prevented the payments from being made. Having carefully considered the evidence, I'm not satisfied that is the case.

I'm still not persuaded that BOS should've identified the payments Mr B made to J, L or A and H as suspicious and intervened. Mr B had previously made similar or larger payments from his account, so these payments weren't so out of character that I'm satisfied BOS should've identified a potential risk of financial harm.

However, even if I thought BOS should've intervened when Mr B made the payment of £25,000, which was the largest payment, I'm not satisfied that they would've prevented Mr B's loss.

I say this as all of the information Mr B had at the time he made the payment of £25,000, suggested that it was a genuine business venture with an existing business that was UK incorporated. Also, J was someone that Mr B considered a friend and trusted at the point he made his initial payment. So, if BOS had asked questions, it's unlikely that they would've been concerned or that Mr B would've been persuaded not to make the payment.

I wouldn't have expected BOS to have intervened on any of the subsequent payments as they were in line with Mr B's previous account activity, and I'm not persuaded they should have been identified as concerning.

I'm sorry that Mr B has lost a significant amount of money, but suffering a financial loss doesn't necessarily mean that BOS can be held liable. And, having considered all of Mr B's submissions, I'm not satisfied that I can fairly ask BOS to refund him.

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 B to accept or reject my decision before 21 May 2025.

Lisa Lowe
Ombudsman