

The complaint

A company which I'll refer to as R complains that Bank of Scotland plc ('BoS') won't reimburse the money it lost in a scam.

Mr E, who is a director of R, brings this complaint on R's behalf.

What happened

R holds a business account with BoS. In November 2023 Mr E received a call from someone who claimed to be a court bailiff. He didn't know at the time that the caller was a scammer.

Mr E was told that he had missed a court appointment in July in respect of a payment owed to a company I'll call M in this decision. As a result, R now owed £2,890 plus bailiff charges. If the debt wasn't paid that afternoon, a bailiff would attend R's premises and remove goods to the value of the debt.

Mr E was provided with the number of the court and heard a recorded message asking him to choose from a list of options. The court officer Mr E spoke to emailed him a notice of enforcement from the court which said it was issued on 18 July 2023. Mr E was advised that he needed to pay the court clerk the outstanding debt. He could then file a defence and counterclaim and if this was decided in his favour R's funds would be returned. Mr E paid £2,890 from R's account to the court clerk.

When he reported the scam, Mr E told BoS that he had spoken to a representative of M in around 2020 about advertising services M could provide to R but had decided not to go ahead. The court officer advised that records showed Mr E agreed to a free trial and was required to cancel in writing but hadn't done so, meaning funds were owed.

The following day, Mr E was advised of a further debt to the same company of £2,300 plus bailiff charges. Again, he was emailed a court enforcement order. He made a further payment from R's account to the same court clerk.

Mr E was advised that court papers would be delivered to R's registered address, but this didn't happen. When he called the number provided by the scammer, Mr E was told the papers would be sent again. Eventually, Mr E looked at the court website and saw some information about scammers mimicking genuine numbers and requesting payment and realised he was the victim of a scam. He reported what had happened to BoS on 23 December 2023 and instructed a professional representative to complain on his behalf in January 2024.

Mr E's representative said that at the time of the scam he was vulnerable following the death of his sister-in-law, so should be reimbursed in full. They also said BoS didn't do enough to protect Mr E when he made the payments on behalf of R.

BoS considered R's complaint under the Lending Standards Board's Contingent Reimbursement Model Code ('CRM Code') and said Mr E, on behalf of R, didn't take sufficient steps to check the caller was genuine before making the payments. It noted that when he reported the scam, Mr E said he hadn't used M's services or received any information about a missed court hearing in July 2023. BoS also said that it didn't think Mr E was unable to protect himself from the scam he fell victim to as he told its agent that events that had happened in his life hadn't clouded his judgement when the payments were made.

Our investigation so far

The investigator who considered this complaint didn't recommend that it be upheld. He considered R's complaint under the CRM Code and said BoS could fairly rely on an exception to reimbursement and had met the standards expected of it. The investigator went on to say that BoS had done what it could to recover R's funds.

Mr E, on behalf of R, didn't agree with the investigator's findings and asked for a final decision. In summary, he said it would be fairer to split liability between R and BoS and raised the following points:

- Mr E was under considerable pressure at the time he made the payments, and his judgement was impaired as a result.
- Mr E received professional looking enforcement orders.
- Mr E tried to contact the court and couldn't get through. The scammers gave him an alternative, and very similar, number to call. When Mr E called this number the recording he heard was the same as when he called the genuine number.
- Mr E questioned the second marketing company being at the same address and he was told it was a different company in the same building, which seemed plausible to him.
- As a payment from R's account was going to a new payee, BoS should have provided a new payee warning that would have prevented the loss.

The complaint was passed to me. I reviewed the evidence and was minded to reach a different outcome to the investigator, so I issued a provisional decision on 18 August 2025. In the 'What I've provisionally decided – and why' section I said:

"I've considered all the available evidence and arguments to decide whether this is a complaint our service can consider.

When thinking about what is fair and reasonable in this case, I've considered whether BoS should have reimbursed R under the provisions of the CRM Code and whether it ought to have done more to protect it from the possibility of financial harm from fraud.

The CRM Code says that a customer who was vulnerable when they made an Authorised Push Payment ('APP') scam payment should receive a full refund of that payment, regardless of any exceptions set out in it. The CRM Code states that:

"A Customer is vulnerable to APP scams if it would not be reasonable to expect that Customer to have protected themselves, at the time of becoming victim of an APP scam, against that particular APP scam, to the extent of the impact they suffered."

I have listened to calls between Mr E and BoS. Mr E was asked if there was anything going on in his life at the time that may have affected his decision-making. He referred to the deaths of three family members in the space of a few months, but said his judgement wasn't clouded, the scammers were just very good.

I have no doubt that Mr E's personal circumstances had an impact on him, but I'm not persuaded, on the evidence currently available, that he was unable to protect himself from the scam he fell victim to (while acting on R's behalf). Mr E himself hasn't suggested this was the case, and the scam was reported to BoS a month after it happened – meaning Mr E had had time to reflect on it when he said that his personal circumstances hadn't impacted his decision-making. But I think Mr E's personal circumstances are relevant in considering whether BoS can fairly apply an exception to reimbursement (which I will cover below).

I turn now to consider the other provisions of the CRM Code, which says that a bank may choose not to reimburse a customer if it can establish that:

- The customer made payments without having a reasonable basis for believing that: the payee was the person the customer was expecting to pay; the payment was for genuine goods or services; and/or the person or business with whom they transacted was legitimate
- The customer ignored an 'effective warning' by failing to take appropriate steps in response to that warning.

There are further exceptions outlined in the CRM Code that do not apply to this case.

Did Mr E, on behalf of R, have a reasonable basis for belief?

In deciding whether to apply this exception BoS should take into account all the circumstances of this case, including the characteristics of the victim and the sophistication and complexity of the scam.

First payment - £2,890

Mr E no longer has a record of the number he was given to speak to the court. But I note that when he reported the scam to BoS he said the code matched the code for the court office the enforcement orders referenced. Mr E also told the BoS adviser that when he called the court, he heard a recorded message and had to choose a number for the relevant department. I consider that these points would have led Mr E to believe what the scammer told him.

Whilst Mr E, acting on behalf of his business, didn't think he had used M's services before, he recalled a conversation with M and was given a plausible explanation for owing money (which I have set out above). And M was a legitimate company. Mr E was also provided with a court enforcement order which to someone who is not an expert appeared to be genuine. In the heat of the moment, and with the fear that bailiffs would attend R's premises, I think it is understandable that Mr E decided to pay the amount owed and file a defence which should lead to the return of R's funds – particularly given what was happening in his personal life at the time. Whilst there were some red flags, like paying the court clerk, other evidence was convincing enough to overlook them given the pressured position Mr E was in.

So, on balance, I don't consider BoS can fairly apply the reasonable basis for belief exception to the first payment.

Second payment - £2,300

Mr E was advised of a further outstanding debt and was again provided with an enforcement order. Although Mr E's representative has referred to the debt relating to a different company in the same building as M, the enforcement order shows M's name. So it appears to be a further debt to the same company that was raised with Mr E the following day. I think that by this time, when Mr E had had the opportunity to reflect on the events of the day before, and to question why there were two orders about proceedings he knew nothing about, he ought reasonably to have taken additional steps to verify what he had been told before making the payment.

Overall, I'm satisfied BoS can fairly rely on an exception to reimbursement in respect of this payment.

Should BoS have provided effective warnings or intervened?

The CRM Code also sets out standards that firms are required to meet. Where these are not met, the firm may still be liable to reimburse a victim in part, even where it has been able to establish that an exception to full reimbursement can be fairly applied (as is the case here). Those requirements include the provision of what the Code defines as an "Effective Warning" when a firm identifies an APP scam risk in relation to a payment.

I'm not persuaded that BoS ought reasonably to have identified an APP scam risk when Mr E made either of the payments. Having considered R's statements it's clear that payments of similar and higher values were made and there was nothing remarkable about them.

In any event, I note that a new payee warning was provided to Mr E when he made the first payment. This warning said:

"If you have been called out of the blue to make this payment, it could be a scam. We'll never ask you to move money to another account."

This warning was relevant to Mr E, as he had been called out of the blue to make the payment.

I've also considered whether BoS did enough to identify out of character transactions that might indicate Mr E was falling victim to a scam. For the same reasons I have set out above about the transactions not being unusual, I'm persuaded it did.

Under the CRM Code, BoS should reimburse all of the first transaction and none of the second.

The CRM Code says that sending banks should act in accordance with the Best Practice Standards for the recovery of funds. BoS has told this service that it attempted to recover R's funds on the day the scam was reported. It was initially told that no funds remained and later that 10p remained, which has been credited to R's account. BoS hasn't provided this service with any evidence to show when it contacted the receiving bank, and the responses received. It should provide this evidence in response to my provisional decision so that I can consider if it acted in a timely manner (and not within 24 hours as BoS has suggested). If this evidence isn't provided, or doesn't show that BoS acted promptly, I may require BoS to reimburse the remaining loss."

Responses to my provisional decision

Mr E, on behalf of R, accepted my provisional decision. BoS provided additional information. It sent a recording of a call in which Mr E discussed whether his personal circumstances affected his decision-making that wasn't previously provided, and evidence it contacted the bank that received R's funds promptly.

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.

My final decision is the same as my provisional decision, and for the same reasons. In summary, I'm not persuaded Mr E was vulnerable as set out in the CRM Code, at the time the payments were made. I don't think BoS can fairly rely on an exception to reimbursement in respect of the first payment of £2,890, but the position changed when the second payment was made and BoS can fairly rely on the reasonable basis for belief exception. As I don't believe BoS needed to provide an effective warning when either payment was made, under the CRM Code BoS should reimburse the first payment in full and none of the second payment.

The further recording provided by BoS provides similar information to another, less detailed, call that was sent with its file. I used this information in determining that Mr E wasn't vulnerable under the CRM Code. And, even without taking into account his personal circumstances, I think that Mr E, acting on behalf of R, had a reasonable basis for believing he was transacting with a legitimate business when he made the first payment. I say this given the number he was called from, the recording he heard, the enforcement order he was provided with, and the fact he was made to act quickly in the belief bailiffs would arrive if he didn't make the payment.

Turning to the recovery of funds, the evidence BoS has now provided demonstrates it took prompt action to try to recover R's funds, which is what I would expect.

My final decision

For the reasons stated, I uphold this complaint and require Bank of Scotland plc to pay R £2,890 plus interest at the rate of 8% simple per year from the date it made its decision not to reimburse to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask R to accept or reject my decision before 2 October 2025.

Jay Hadfield
Ombudsman