DRN-5689951

The complaint

Mr H complains Bank of Scotland plc ("Bank of Scotland") didn't do enough to protect him when he fell victim to a cryptocurrency investment scam.

Mr H referred his complaint to us using a professional representative for ease I will refer to Mr H throughout.

What happened

Both parties are familiar with the circumstances of the complaint, so I'll only summarise the details here.

Mr H said he found an investment opportunity on social media, supposedly endorsed by a celebrity. Mr H said a 'broker' who we now know to be a scammer contacted him about investing in stocks and shares and they only invested using cryptocurrency. He said they communicated regularly, and I've seen this was via a messaging app and phone calls. Mr H said he had access to an investment platform where he saw his investment increase to £3.5 million. Having initially been able to withdraw funds, when he tried to withdraw further funds Mr H said he was asked for additional fees and the scammer stopped communicating with him, this is when he realised he'd been scammed.

Below are the payments Mr H made from his account with Bank of Scotland which were lost to the scam.

	Date	Amount
1	15 July 2020	£10,000
2	20 July 2020	£25,000
3	21 July 2020	£25,000
4	21 July 2020	£50,000
5	22 July 2020	£25,000
6	23 July 2020	£25,000
7	14 August 2020	£100,000
8	7 September 2020	£25,000
9	8 September 2020	£25,000
10	9 September 2020	£50,000
11	16 September 2020	£100,000
12	23 September 2020	£16,000
13	24 September 2020	£14,000
14	9 October 2020	£18,000
15	12 October 2020	£17,000
16	12 October 2020	£16,000
17	12 October 2020	£14,000
18	13 October 2020	£15,000
19	26 October 2020	£15,000

Mr H received a withdrawal of £10,024.78 on 1 September 2020 which he said he reinvested into the scam.

Mr H complained to Bank of Scotland, and it didn't provide an outcome within its response and so Mr H raised the matter with the Financial Ombudsman Service. Bank of Scotland then made an offer to Mr H. It said it recognised it could have done more and offered to refund 50% of the payments he made towards the scam from and including payment 8 in the above table. It also offered 8% simple interest to compensate Mr H for the time he was without the funds.

As the complaint had already been referred to us when Bank of Scotland made its offer, one of our Investigators looked into the complaint. They thought Bank of Scotland ought to have intervened sooner than it did but didn't think doing so would have prevented Mr H's earlier losses. Our Investigator thought the point at which Bank of Scotland had decided to refund was fair, as was holding Mr H equally liable for his losses from that point.

As an 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.

I'm sorry that Mr H has been the victim of a scam. I realise he's lost a significant sum of money and I don't underestimate the impact this has had on him. And so, I'd like to reassure him that I've read and considered everything he's said in support of his complaint. But I'll focus my comments on what I think is relevant. If I don't mention any specific point, it's not because I've failed to take it on board and think about it, but because I don't think I need to comment on it to reach what I think is a fair and reasonable outcome. I know this will come as a disappointment to Mr H but having done so, I won't be asking Bank of Scotland to refund him in full for broadly the same reasons as our Investigator. I'll explain why.

In broad terms, the starting position at law is that banks and other payment service providers are expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account.

Mr H authorised the payments in question here – so even though he was tricked into doing so and didn't intend for his money to end up in the hands of a scammer, he is presumed liable in the first instance.

But as a matter of good industry practice, Bank of Scotland should also have taken proactive steps to identify and help prevent transactions – particularly unusual or uncharacteristic transactions – that could involve fraud or be the result of a scam. However, there is a balance to be struck: as while banks and Electronic Money Institutions should be alert to fraud and scams to act in their customers' best interests, they can't reasonably be involved in every transaction.

I've also thought about the Contingent Reimbursement Model which Bank of Scotland is a signatory of. The payments were made to accounts in Mr H's own name and so the code isn't relevant.

I've thought about whether Bank of Scotland acted fairly and reasonably in its dealings with Mr H when he made the payments, or whether it should have done more than it did. In doing so I've considered what Bank of Scotland knew about the payments at the time it received Mr H's payment instructions and what action, if any, Bank of Scotland took prior to processing the payments.

Bank of Scotland intervened at various points during the payment journey and Mr H spoke with it regarding several payments prior to them being processed. Some of these conversations were in branch and there is little known about these due to the passage of time from the payments being made in 2020 and being reported as a scam in 2024.

I believe Bank of Scotland ought to have been concerned when Mr H made payment 1. I say this due to the value of the payment and it being made to a new payee, I also don't think it could be considered in-line with how Mr H typically used his account. I therefore think Bank of Scotland should have been concerned Mr H was at risk of financial harm from fraud such that it ought to have intervened. I think a proportionate warning at the time payment 1 was made would have been for Bank of Scotland to display an automated scam warning. I wouldn't have expected it to be tailored to the circumstances of the payment at the time the payment was made.

I can't be sure what would have happened if Bank of Scotland had done this, but I think on balance a general scam warning wouldn't have prevented Mr H from making the payment. I don't think it would have given enough information that related to the circumstances of the scam Mr H was falling victim to, such that it would have resonated with him and prevented him from making the payment.

I think Bank of Scotland should have been suspicious when Mr H made payment 2, it was significantly higher than payment 1 and was made within days. I think what Bank of Scotland knew at the time payment 2 was made, including what had come before, it ought to have intervened prior to processing the payment. I think a proportionate intervention would have been direct human intervention.

Again, I can't be sure what would have happened if Bank of Scotland had intervened in this way so I need to make a decision based on what I think would most likely have happened if it had. Having considered this I'm not persuaded human intervention at the time payment 2 was made would have made a material difference. I'll explain why.

As mentioned, Bank of Scotland spoke with Mr H several times about the payments he was making, I've listened to intervention calls but I won't detail them in full. In summary during early interventions it's clear that Mr H isn't forthcoming with Bank of Scotland. He says he's transferring the funds to an account in his own name which prompts Bank of Scotland to give warnings around 'safe account' scams which I think was reasonable given the information it had. These warnings didn't prevent Mr H from making payments and it's likely because he didn't think they applied to him as he wasn't falling victim to a safe account scam.

There are times when Bank of Scotland detail hallmarks of scams like social media advertisements, contact via messaging apps and third-party involvement which were relevant to the scam Mr H was falling victim to but didn't resonate with him. Instead he tells Bank of Scotland his friend introduced him to the investment and he's acting on his own instructions. As the interventions continue through the payment journey Mr H becomes increasingly frustrated at the friction Bank of Scotland places on some of the transactions, making it clear it's his money and that he doesn't agree with the level of concern Bank of Scotland is showing.

I believe had Bank of Scotland directly intervened when payment 2 was made and spoken with Mr H he wouldn't have disclosed enough information such that it would have uncovered the scam and prevented his early losses.

However, I do think things change later in the payment journey. This is due to the scam evolving such that there were more concerns than earlier in the scam and Mr H is more forthcoming with Bank of Scotland. Particularly in a call on 16 September 2020. Initially Mr H is resistant to answer the questions he's asked but Bank of Scotland persist and say he needs to answer the questions before the payment can be processed.

Mr H maintains he was introduced by a friend and says he knows people personally who are also taking advantage of the investment opportunity, when he told us he saw it on social media. He discloses he has a broker, but says they've worked together for a long time which isn't the case. And he's successfully withdrawn funds without issue, although the withdrawal wasn't smooth and took a long time. He also doesn't disclose the use of remote access software when asked.

It's unclear why Mr H isn't accurate with this information but communications with the scammer show they told Mr H not to speak with anyone except him, and while this is in reference to the 'company' the scammer works for, I think its relevant here as it shows Mr H was under the scammer's spell early in the scam. The scammer had even given Mr H a password to use to make sure he only spoke with the scammer and no one else from the broker firm. And when cryptocurrency platforms seek verification Mr H speaks to the scammer about this and is told what actions to take. I think this shows Mr H had fully bought into the scam and further supports he was under the scammer's spell. Still, during this call Mr H gives Bank of Scotland enough information that it is suspicious that Mr H may be falling victim to a scam, in particular about the use of a broker.

When asked Mr H discloses the name of the broker firm and Bank of Scotland inform him the Financial Conduct Authority (FCA) added a warning about the broker firm on 5 August 2020 and it isn't regulated. Mr H says he knows this and when told about bad reviews online he says these are likely small investors which he isn't. Warnings are given to Mr H about the use of a broker but he decides to make the payment. Given the expectations of banks in 2020 with regard to interventions, I think Bank of Scotland did enough during this call. It asked open questions, insisted Mr H answered them and provided appropriate warnings which were relevant to the scam Mr H was falling victim to and he decided to make the payment.

Bank of Scotland has decided to partially refund Mr H from and including payment 8 in the table above as it feels it could have done more at this time with regards to scam education. This payment was made nine days before the call on 16 September 2020. I agree had Bank of Scotland done more at this time, like it did in the call I've described, it likely would have obtained more information from Mr H which would likely have resulted in the same online information about the broker firm coming to light. And Bank of Scotland would have had a better understanding of the circumstances and risks involved. I'm not satisfied it would have prevented further losses given the call on 16 September 2020 didn't positively impact Mr H and he continued to invest significant sums. But Bank of Scotland has decided it could have done more to educate Mr H and presumably uncovered the scam if it had, so I will proceed on that basis.

Finally, the reason I'm not persuaded additional probing would have made a difference when payment 2 was made is because at that time the FCA didn't have a warning about the broker firm and the multiple negative online reviews came later too. So even if Bank of Scotland had obtained the name of the broker firm from Mr H it wouldn't likely have impacted his decision to make the £25,000 payment when there was far less negative information online about the firm, because he continued to make a much larger value payment of £100,000 when he was made aware of the negative online presence.

Bank of Scotland has offered to refund 50% of Mr H's losses from payment 8. I've considered this deduction under contributory negligence, and I agree with Bank of Scotland's deduction for Mr H's role in what happened. The returns were too good to be true even for someone with little investment experience. I think the prospect of making £25,000 within a week when investing in a volatile market, as shown in the communication with the scammer, should have caused Mr H to pause and consider what he was being told. I also think being told he was investing in stocks and shares but that payments needed to be made in cryptocurrency should have been a concern for Mr H.

Additionally, early in the scam Mr H is given an advance to invest, this should have struck him as unusual, particularly when the scammer advanced Mr H far more than was agreed. I therefore think it's reasonable to hold Mr H equally liable for his losses and so Bank of Scotland can fairly reduce Mr H's refund by 50%.

I'm sorry to disappoint Mr H further, but I've thought carefully about everything that has happened, and with all the circumstances of this complaint in mind I don't think Bank of Scotland needs to refund his money in full or pay any compensation. I realise this means he's out of pocket and I'm really sorry Mr H lost this money. However, for the reasons I've explained, I don't think I can reasonably ask Bank of Scotland to refund him in full.

Recovery

I've thought about whether there's anything else Bank of Scotland could have done to help Mr H.

Scammers typically move money on quickly to avoid having it returned to their victims and Mr H contacted Bank of Scotland about the scam in 2024. Given the time between the payments being made and the fraud being reported to Bank of Scotland I don't think there was much chance of successful recovery of Mr H's funds.

Putting things right

Bank of Scotland's offer is £162,500 which is 50% of Mr H's losses from and including payment 8. And £43,132.06 which it said is interest for the time he didn't have the funds. This totals £205,632.06.

My final decision

My final decision is that I direct Bank of Scotland plc to pay Mr H £205,632.06 if it hasn't already.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 28 August 2025.

Charlotte Mulvihill
Ombudsman