

The complaint

Mr S complains that Bank of Scotland plc didn't do enough to protect him when he was the victim of an investment scam.

Mr S is being supported by a representative, but for ease, I'll refer to Mr S throughout this decision.

What happened

The background to this complaint is well known to both parties, and so I'll only refer to some key events here.

In 2017 Mr S was contacted by an investment company (who I'll refer to here as 'D'). 'D' introduced Mr S to an investment opportunity into a company (which I'll refer to here as 'W'). The investment involved the purchasing of bonds to subscribe to a fixed income bond in relation to property investment. Neither 'W', nor the investments it offered, were regulated by the Financial Conduct Authority (FCA).

Mr S has said he carried out no checks into the investment with 'W' – instead relying on the advice and information provided by 'D'. He says 'D' *'sweet talked'* him into investing and offered an extra percentage on the interest if he invested.

On 15 May 2017 Mr S made two in-branch transactions of £25,000 each into the investment from his Bank of Scotland account to a company (which I'll refer to here as 'C'). Mr S says he received returns on the investment for about nine months. But then he was told payments would be delayed and he's received nothing further.

In October 2022 Mr S, via his representatives, complained to Bank of Scotland. Mr S said Bank of Scotland should've intervened in the two payments before allowing them to be processed. And if it had, his loss could've been prevented.

Bank of Scotland didn't uphold Mr S's complaint. It believed Mr S was involved in a civil dispute – not a scam. It said information from the time indicated that 'D', 'W', and 'C' were all genuine companies, and 'C' was regulated by the FCA.

Bank of Scotland confirmed the two payments had been made in branch. Given the passing of time, it had no record of what was discussed or what checks were carried out. But from the information available at the time, Bank of Scotland didn't think the payments would've flagged as a concern, or that any intervention it made would've made a difference.

Bank of Scotland tried to recover the lost funds from the receiving bank – but no funds remained.

Unhappy with Bank of Scotland's response, Mr S referred his complaint to the Financial Ombudsman. He maintained he'd been the victim of an investment scam. And if Bank of Scotland had intervened when he made the payments, he said his loss could've been

prevented.

One of our Investigators considered the complaint but didn't uphold it. He concluded that Bank of Scotland should've spoken to Mr S about the payments – given they were made in branch and represented unusual account activity. But our Investigator didn't think any intervention by Bank of Scotland would've prevented Mr S's loss. He also thought Bank of Scotland had done enough to try and recover the lost funds.

Mr S didn't agree and asked for an Ombudsman to issue a final decision. He maintained the investment was a scam and agreed that Bank of Scotland should've intervened when he made the payments. But he thought that intervention would've made a difference and prevented his loss.

Mr S said Bank of Scotland should've asked him about 'D' – at which point he would've disclosed he'd been cold called. And on checking the FCA register – Mr S said Bank of Scotland would've discovered 'D' was unregulated and unqualified to provide financial advice.

Mr S also said Bank of Scotland should've alerted him to the fact that such investments are high risk and only advisable for high-net-worth individuals or experienced investors – of which he said he is neither. Mr S said if he had known this information – he wouldn't have pursued the investment.

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.

Having done so, I've decided not to uphold this complaint. I know this is not the answer Mr S was hoping for and so this will come as a disappointment. I'm really sorry to hear about the situation he's found himself in, and I can understand why he'd want to do all he can to recover the money he lost. But I need to decide whether Bank of Scotland can fairly and reasonably be held responsible for Mr S's loss. Overall, I've decided that it can't be. I'll explain why.

I accept the transactions Mr S made were authorised payments. So, under the Payment Services Regulations 2009 and the terms and conditions of his account, Mr S is presumed liable for the loss in the first instance.

However, taking into account what I consider to have been good industry practice at the time, I consider Bank of Scotland should fairly and reasonably:

- Have been monitoring accounts and any payments made or received to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams.
- Have had 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). This is particularly so given the increase in sophisticated fraud and scams in recent years, which financial institutions are generally more familiar with than the average customer.
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

So, taking all of this into account, I need to decide if Bank of Scotland acted fairly and reasonably in its dealings with Mr S when he made the two £25,000 payments, specifically whether it should've done more than it did before processing the payments – and if it had, would that have made a difference. I also need to decide if Bank of Scotland ought to have done more than it has already done to recover the funds.

Was this a scam?

As our Investigator has explained, whether Mr S was the victim of a scam, or a failed investment, is a difficult point to resolve conclusively – particularly given the passing of time here. But for the purpose of this decision, I don't need to make a finding on that point. Instead, I'm focusing on whether Bank of Scotland could've prevented Mr S's loss based on the information available at the time he made the two payments.

Should Bank of Scotland have intervened before processing the payments?

Where there's interaction between a bank and its customer in relation to a payment, we'd expect the bank to take this opportunity to find out more about the nature of that payment.

Mr S made both £25,000 payments in branch, and so there was an opportunity for a discussion to take place. This, coupled with the fact the payments represented what I'd consider to be unusual account activity (from looking at Mr S's bank statement), suggests to me that Bank of Scotland should've questioned Mr S about the nature of the payments before they were processed.

Would intervention by Bank of Scotland have made a difference and prevented Mr S's loss?

I can see from Bank of Scotland's records that both payments were approved in branch and recorded as a '*high value amount*'. And so, I think it's likely some discussion about the payments took place. But because these payments were made in 2017, neither Bank of Scotland nor Mr S have any notes or recollections of what was specifically discussed or if any warnings were given.

So, I've had to think about what Bank of Scotland is *likely* to have asked Mr S and what responses he is *likely* to have given.

The investment was marketed as high-risk. Mr S has said Bank of Scotland should've discussed this with him – in line with his investment experience and available funds. But it was not Bank of Scotland's role here to provide Mr S with financial advice.

Although the payments were being made to an FCA regulated company ('C') - I would've still expected Bank of Scotland to have asked Mr S how he found out about the investment, and I believe Mr S would've said he was cold called by 'D'. I'd then have expected Bank of Scotland to have asked more questions of Mr S – specifically about his relationship with 'D', what he understood about the investment with 'W', and what checks he'd done.

Given Mr S has told us he'd done no checks, I think it's likely Bank of Scotland would've encouraged him to do so. But I don't think there were enough hallmarks of a scam at this stage for Bank of Scotland to have carried out checks itself or to have refused to process the payments.

If Mr S carried out checks, I'm not persuaded this would've given him any obvious cause

for concern. Whilst the status of the companies involved here is more unclear five years on from when Mr S invested (with 'C' no longer operating nor FCA regulated and 'W' having gone into administration), there were no regulatory or other credible warnings about 'D', 'W' or 'C' in May 2017. And 'C' was, at that time, authorised and regulated by the FCA.

I think it's also likely Mr S would've told Bank of Scotland he had a brochure from 'W' about the investment, which appeared entirely genuine. And he has said that he fully trusted the advice being given by 'D', who offered enhanced incentives to convince him to invest. I'm also mindful that Bank of Scotland have referenced the fact Mr S was advised against making the investment by his wife but decided to proceed. This further demonstrates Mr S's confidence in the advice he was getting from 'D'.

With that in mind, any further questions Mr S put to 'D' following advice from Bank of Scotland or any concerns he had in relation to whether 'D' was regulated to provide financial advice, were more likely than not to have resulted in 'D' offering Mr S reassurances.

In addition, given it seems Mr S was investing in products that required no regulation at the time – a lack of regulation around an individual offering advice on those products would not obviously appear unusual or concerning to either Mr S or to Bank of Scotland.

All this suggests to me that it's more likely than not Mr S would've proceeded with the transactions – even if Bank of Scotland had alerted him to the risks involved and the checks he should make.

And I'm not persuaded any information provided by Mr S would've led to Bank of Scotland refusing to make the payments. I think it would've taken something more credible, like regulatory warnings about 'W' or 'C', to have concerned Bank of Scotland or made Mr S pause and think more about his decision to invest.

Taking everything into account, I think any action from Bank of Scotland is unlikely to have made a difference. So, I don't think it's fair or reasonable to hold Bank of Scotland accountable for Mr S's loss.

I'd still expect Bank of Scotland to do all it could to try and recover the lost funds – even though the likelihood of recovery was slim given five years had passed. I can see Bank of Scotland contacted the beneficiary bank as soon as it knew about Mr S's loss. But had confirmation that no funds remained.

Bank of Scotland acted promptly here to try and recover the lost funds and so I can't say it should've done anything more.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision **before 5 September 2023**.

Anna Jackson
Ombudsman