

The complaint

Mr and Mrs S complain about AIB Group (UK) Plc.

They say that AIB didn't do enough to protect them when Mr S says he became the victim of a scam.

What happened

In September 2016, Mr S received an email from H – an investment company offering binary options trading. Mr S had considered investments of this type before as he knew they were growing in popularity and promised lucrative returns.

Mr S clicked on the link provided in the email and was impressed by the company website. He says he found it to be extremely professional and detailed.

After reading through the website, Mr S felt he understood how the investment worked and decided to look into the opportunity further. He entered his details into the website and received a call the same day.

Mr S was again impressed with the professional nature and knowledge of the person who contacted him on behalf of H and was persuaded to begin investing and downloaded Anydesk onto his computer.

Mr S invested with H over a period of around 18 months from his AIB account, along with payments made from two other banks.

Mr S made a total of forty-two payments from his AIB account, totalling £160,735.73.

Mr S also received payments of £15,000 from H and £1,759.78 from TP which Mr S also made payments to through his investment journey.

Initially, Mr S says that he didn't feel pressured by H's representative, however, as time went on, he was told that he wouldn't be able to access his profits until he had met a certain threshold.

Mr S didn't want to pay any more money – and he says that communication with H came to an abrupt end. He attempted to make contact, and log into his trading account but was advised that H was no longer trading.

Mr S believed that he had been scammed by H – and complained to AIB. He said that it should have intervened in the payments he made, and that it could have prevented the loss by doing so.

AIB didn't uphold his complaint.

Unhappy, Mr S brought his complaint to this Service. Our Investigator looked into things but didn't think that the complaint should be upheld.

They said that they were not persuaded that Mr S had been the victim of a scam – and that H was incorporated in Belize and regulated by the International Financial Services Commission (IFSC) at the time Mr S made the payments – and so AIB didn't need to intervene in the payments.

Mr S and his representatives replied to our Investigator, and said that Mr S had been refunded payments made to the same investment by his other bank, and that Mr S did not have the requisite capacity to be making investments – and this would have been clear had AIB spoken with him

Our Investigator explained that while Mr S had been refunded by the other bank this did not have any bearing on this complaint – and that although Mr S may have been susceptible to scams, as he hadn't been scammed this wasn't relevant.

They also said that Mr S hadn't made AIB aware that he had issues making investment decisions.

Mr S remained unhappy – so the complaint has been passed to me to make 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.

Having done so, I've decided not to uphold this complaint, for broadly the same reasons as our Investigator. I know that this will be disappointing for Mr and Mrs S, so I'll explain why.

Not every complaint referred to us and categorised as a binary options or forex trading scam is in fact a scam. Some cases simply involve high-risk investments that resulted in disappointing returns or losses. Some binary options platforms may have promoted these products—which are unregulated—using sales methods that were arguably unethical and/or misleading. However, whilst customers who lost out may understandably regard such acts or omissions as fraudulent, they do not necessarily meet the high legal threshold or burden of proof for fraud, i.e., dishonestly making a false representation and/or failing to disclose information with the intention of making a gain for himself or of causing loss to another or exposing another to the risk of loss (Fraud Act 2006).

Banks and other Payment Services Providers (“PSPs”) have duties to protect customers against the risk of financial loss due to fraud and/or to undertake due diligence on large transactions to guard against money laundering (see below). But when simply executing authorised payments, they do not have to protect customers against the risk of bad bargains or give investment advice — and the Financial Conduct Authority (“FCA”) has confirmed that a fraud warning would not constitute unauthorised investment advice (see its predecessor's 2012 consultation paper on investment fraud).

So, the first question to resolve is whether H was a fraudster – and if Mr S was the victim of a scam.

Having examined the information I've been provided with – I am not sufficiently persuaded that Mr S has been the victim of a scam for the following reasons;

- H was incorporated in Belize and regulated by the International Financial Services Commission at the time Mr S made the payments – this would be an unusual step for a scammer to take

- There were no Financial Conduct Authority (FCA) or International Financial Services Commission (IOSCO) warnings about H at the time Mr S made the payments. If H was operating as a scam, then I think it likely it would be listed as such
- Mr S paid into the investment over a period of 18 months – I would expect that a scammer would attempt to relieve an individual of their funds over a quicker period
- There was a gap of nearly a year between some of the payments during which time Mr S was still in contact with the supposed scammer
- The initial payments made were made directly to H, rather than an attempt to conceal that Mr S was paying H, or via another method such as Cryptocurrency
- Mr S received relatively high value payments from H – and while I know that these don't compare with the amount Mr S paid into the investment, they were still significant, and I don't think a H would have made such payments back to Mr S if it had been operating a scam

I have also considered the letter Mr S and his representative have provided from his GP and if this makes a difference here. I understand that Mr S's GP considers that after Mr S suffered from a stroke in 2014, there were concerns that this may have had an impact on his cognition and that this may also have had an impact on his ability to make investment decisions.

However, I can't see that AIB was ever made aware of this – so I don't think that it could have known that Mr S was potentially a vulnerable person. And while Mr S's representatives have suggested that this would have been clear if AIB had contacted him about the payments, I'm afraid I don't agree. AIB did block some of the payments – and it spoke with Mr S. He told them that he wanted to make the payments – and they were released. And I can't say that Mr S presented as a vulnerable person during these interactions – so I don't think that AIB would have had any concerns.

To conclude, I'm not persuaded H was operating a scam given high the legal threshold or burden of proof for fraud. And taking everything into consideration, I'm not persuaded that H was in fact a fraudulent company.

As explained previously, AIB's duty is to guard against the risk of fraud and scams; it is not to give investment advice or protect consumers from bad bargains. Ultimately, I think it's most likely Mr S paid a legitimate company. To that end, I cannot safely conclude that the bank acted unfairly or unreasonably by not intervening to ask questions about the transactions before processing them.

I empathise with the fact Mr S invested significant sums into a product that hasn't gone to plan. But this does appear to be a legitimate investment opportunity that has gone wrong, rather than an investment scam.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S and Mrs S to accept or reject my decision before 28 November 2023.

Claire Pugh
Ombudsman