

The complaint

Mr S complains that Bank of Scotland plc (“BOS”) won’t refund over £134,000 he lost to an investment scam.

What happened

The details of this complaint are well known to both parties, so I won’t repeat everything again here. In brief summary, Mr S fell victim to an investment scam after seeing an advert about cryptocurrency investments with the broker “Safe Markets” (“the scammer”). He was encouraged to invest and, between December 2017 and March 2019, made numerous payments totalling over £134,000 to the payees “Binmarket”, “BO Trader” and “Luno”, as well as several large international payments, which were all part of the scam.

Mr S realised he had been scammed when he was being asked to make further deposits in order to withdraw his money. He reported the fraud to BOS, and it agreed that it could have done more to prevent the scam when he made an unusually large international payment of £49,000 on 8 February 2019. So, it offered to refund £36,500 in total (amounting to 50% of the final three international payments he made as part of the scam) plus 8% interest, along with £250 compensation for the poor service Mr S had experienced.

Mr S didn’t think this offer was fair as it didn’t cover his total losses, and he thought that BOS could have prevented the scam sooner. So, he referred the matter to this service.

Our investigator thought that BOS’s offer of settlement was fair. She thought it could have intervened sooner on 10 January 2018 when Mr S’s account saw a significant increase in spending. But she didn’t think any earlier intervention would have ultimately stopped Mr S from making payments, as there was no FCA warning about the broker at that point, and he also hadn’t found anything adverse about them either when carrying out his own research.

However, by the time he came to make the £49,000 payment, the investigator agreed that BOS could have prevented any further loss if it had intervened at this point. She was also satisfied that it could reduce compensation by 50% as a result of Mr S’s own contributory negligence. Mr S disagreed, so the matter has been escalated to me to determine.

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 agree with the conclusions reached by the investigator as I’m satisfied BOS’s offer of settlement in this case is fair. I’ll explain why.

It isn’t in dispute that Mr S has fallen victim to a cruel scam here, nor that he authorised the disputed payments he made to the scammer via debit card and bank transfer. The payments were requested by him using his legitimate security credentials provided by BOS, and the starting position is that banks ought to follow the instructions given by their customers in order for legitimate payments to be made as instructed.

It's also accepted by BOS that it could have ultimately prevented any further loss if it had intervened, so I don't intend to explore this point in great detail. What remains in dispute, however, is the point at which it should have intervened, as well as the extent to which Mr S should share responsibility for his loss.

Intervention and scam prevention

In terms of *when* BOS should have intervened, I accept it should have arguably questioned Mr S sooner than the £49,000 payment on 8 February 2019. There were multiple large payments made from his account on 10 January 2018, for example, which I think ought reasonably to have been regarded as suspicious.

However, as the investigator has pointed out, there was no FCA warning published about Safemarkets at this point. Evidence would also suggest that it was even operating under the name of 'Leverate Financial Services' at this point, which Mr S would have discovered were regulated by CySEC if he had carried out any further research. Mr S had also been able to make successful withdrawals, which would have likely reassured him the investment was legitimate. I'm also mindful that Information relating to how cryptocurrency investment scams operated was also not widely known in early 2018. So, taking all of this into account, I don't think it would have been readily apparent that Mr S was falling for a cryptocurrency scam if BOS had intervened earlier and spoken to him in January 2018. And it seems that any further research he could've carried out at this point would not have likely led him to believe he was being scammed.

The account activity following these payments also did not appear overly unusual. However, by the time Mr S came to make the international payment of £49,000 on 8 February 2019, I'm satisfied this was out of character and unusual enough to have warranted another intervention from BOS to probe further as to the nature of the payment, which the bank has accepted. By this point, an FCA warning had been published about Safemarkets, and there were various other warnings online about people who had been scammed. So, it seems likely that a scam warning from BOS with instructions to carry out further research at this point would have likely revealed the scam and prevented any further loss. As such, I think its offer to refund the international payments made from this point onwards is fair.

I appreciate there is another payment made between the international transactions of £876.81 to Luno on 11 February 2019. However, Mr S's statements show that he had two large credits for over £9,000 paid back into his account from Luno in both May and July 2019. He has confirmed that these were credits from the scammer. As such, I don't consider it would be fair and reasonable to expect BOS to refund the Luno payment that was made after it should have intervened on 8 February 2019, given this has since been refunded.

Contributory negligence

Mr S doesn't think it is fair that BOS is only refunding 50% of the international payments as a result of his own contributory negligence. There's a general principle that consumers must take responsibility for their decisions. And I have duly considered whether it's fair and reasonable for him to bear some responsibility for his loss, which I'm satisfied he should in these circumstances.

Mr S has said he was promised that he could trade 'risk free' if he paid enough money to reach the platform's 'platinum level'. I understand that Mr S may not have been an experienced investor. But I can see that he did have some prior experience, having invested before in Halifax's share dealing in 2017. So, he would've at least had enough experience that he ought reasonably to have known that a promise of 'risk free' investing was too good to be true. This should have been enough cause for concern even for someone with no prior

investment experience, but it doesn't appear that Mr S acted upon any of these concerns to verify the legitimacy of what he was being promised.

By the time Mr S came to make the international payment of £49,000, this also marked a significant escalation in the amount he was investing, and I think it would have been reasonable to expect him to have carried out further checks before parting with such large sums – particularly given the time that had passed since he started investing with Safemarkets. If he had done so, he would have then likely come across the FCA warning, as well as other negative reviews of the broker online, which could have revealed that he was being scammed.

Therefore, I'm satisfied that Mr S's lack of due diligence and failure to question what he was being promised contributed to his loss, such that it would be fair and reasonable for him to share joint responsibility with BOS. I therefore think it's fair for the bank to have deducted 50% from the redress it has paid.

Recovery

I've also considered whether BOS did enough to try and recover the funds after the fraud was reported. In terms of the debit card payments, Mr S did not report the fraud to BOS in time for a chargeback dispute to be raised, so it wouldn't have been able to pursue any such claim. And in terms of the international payments, I can see that BOS attempted to recover the money, but was informed that no funds remained, which isn't surprising given the time that had passed by the time the fraud was reported.

Compensation

Finally, I also understand that Mr S was unhappy with the service he received from BOS after reporting the fraud. I appreciate the experience would have been frustrating, but BOS has already offered £250 for the delays and poor service he received, which I'm satisfied is fair for the distress and inconvenience he likely suffered in this instance.

I appreciate this will likely come as a disappointment to Mr S, and I'm sorry to hear he has been the victim of a cruel scam. However, I'm not persuaded that BOS can fairly or reasonably be expected to pay any further compensation than it has already offered in these circumstances, so I will not be asking it to take any further action.

My final decision

For the reasons given above, I do not 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 7 December 2023.

Jack Ferris
Ombudsman