

The complaint

Mr B is unhappy that National Westminster Bank Plc, trading as Ulster Bank, will not refund the money he lost as the result of an authorised push payment (APP) scam.

Mr B has brought his complaint through a representative. For ease of reading I will refer solely to Mr B in this decision.

What happened

Both parties are familiar with the details of the scam so I will provide only a summary here. On 21 September 2018 Mr B invested £20,000 in mini-bonds following a call from company A. He received this after completing an online inquiry form. He recalls the caller was well-informed and professional, always making any follow-up call as agreed. He received a formal contract and went through Know Your Customer (KYC) checks before proceeding. He transferred the money using faster payments via his online banking. On 5 October 2018 Mr B received his first return on the investment of £237.50. But he then struggled to contact the caller from company A and started to see negative reviews about it online. He says he realised he had been scammed by November 2018.

Ulster Bank rejected the fraud claim Mr B made on 28 January 2019. He raised a complaint with the bank on 11 April 2022, it did not issue a final response letter.

Our investigator did not uphold Mr B's complaint. He said Ulster Bank did not need to have done anything more when Mr B made the payment. It was not unusual activity for his account and so did not warrant further checks. Mr B challenged this saying the similar payments were also investment scams so Ulster Bank should not have relied on them as part of his typical spending pattern.

Our investigator did not change his view saying the beneficiaries of the payments Mr B referenced were either regulated firms at the time or providing unregulated mini-bonds. He has seen no evidence Ulster Bank should have been aware Mr B was concerned about any of these payments at the time of this transaction.

Unhappy with this assessment Mr B asked for an ombudsman's review.

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 am not upholding Mr B's complaint. I'll explain why.

There's no dispute that Mr B made and authorised the payment. Mr B knew why he was making the payment. At the stage he was making this payment, he believed he was investing in bonds. I don't dispute Mr B didn't receive what he thought he would, but I remain satisfied the transactions were authorised under the Payment Services Regulations 2017.

It's also accepted that Ulster Bank has an obligation to follow Mr B's instructions. So in the first instance Mr B is presumed liable for his loss. But there are other factors that must be taken into account.

To reach my decision I have considered the law, regulator's rules and guidance, relevant codes of practice and what was good industry practice at the time. To note, as the payment pre-dates the Contingent Reimbursement Model (CRM) code its principles do not apply in this case. This means I think that Ulster Bank should have:

- been monitoring accounts and payments made or received to counter various risks, including fraud and scams, money laundering, and the financing of terrorism.
- had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (amongst 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, taken additional steps or made additional checks before processing a payment, or in some cases declined to make a payment altogether, to help protect its customers from the possibility of financial harm.

I don't think the payment was out of character for Mr B's account. I can see in the 12 months prior to this payment he had made multiple payments of similar amounts. Mr B argues that they were also investment scams, but I cannot see Ulster Bank was on notice of this possibility in September 2018. As the investigator said, the payments Mr B referenced as other instances of fraud were either to regulated firms at the time or to firms providing unregulated mini-bonds. And I can only reasonably expect it to respond to information it had at the time. This means I find that it was reasonable for Ulster Bank not to carry out further checks before processing this payment.

However, even if this was not my finding, I am not persuaded an intervention from Ulster Bank would have stopped Mr B from making the payment. I say this as he has told us he was actively seeking investment opportunities at the time; he was impressed by the caller's knowledge; and found the contract and KYC checks to authenticate the opportunity. I think he would have been able to answer a proportionate level of questions from Ulster Bank such that it would not have thought Mr B was at risk of financial harm. I note he would have seen an online warning about investment scams as he made the payment and this did not deter him. I would also remind Mr B that when simply executing authorised payments, banks do not have to protect customers against the risk of 'bad bargains' or give investment advice.

At this time investment scams were often characterised by rates of return that were too good to be true and by receiving the opportunity to invest via a cold call or an unsolicited offer, with significant pressure applied to 'act now'. Mr B's testimony does not marry with any of these risk indicators.

And there is no record of any published regulatory warning about company A until May 2019. So it seems at the time of the event there would have been no public information that Ulster Bank ought to have been aware of and reacted to. It's also notable there were no warnings at that time about mini-bonds as a product. The FCA published more information about mini-bonds in May 2019 and highlighted some risks involved with investing in such instruments. But this information was published nearly eight months after Mr B made his payment.

The FCA temporarily banned the mass marketing of speculative mini-bonds to UK retail consumers from January 2020, whilst it consulted on permanent rules. It made the temporary ban permanent the following year. So I don't think Ulster Bank could have been

reasonably aware of any risks given that this information was published over two years after Mr B made his payment.

I have then thought about whether Ulster Bank did what this service would expect to recover the funds once Mr B made a claim in January 2019. Given the length of time that had passed recovery from the receiving bank was unlikely, but I can see Ulster Bank attempted to do so in a timely manner. It was told no funds remained.

It follows for the reasons set out above I cannot fairly hold Ulster Bank liable for Mr B's losses.

My final decision

I am not upholding Mr B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 2 August 2023.

Rebecca Connelley
Ombudsman