

Complaint

P, a limited company, complains that Bank of Ireland (UK) Plc didn't reimburse him after he fell victim to a scam. P is represented by its director, Mr M. For simplicity's sake, I'll refer to Mr M throughout the text of this decision.

Background

Mr M wanted to construct a home office building. He found a contractor online and contacted them. The contractor gave him a plan and quoted a price of £15,000. Mr M agreed that he would pay £7,500 up front and then the balance on satisfactory completion of the work.

However, I understand the contractor failed to carry out the agreement. They visited Mr M's home and began work on constructing the foundations for the building. The work was repeatedly delayed. After this went on for some time, the contractor told Mr M that he couldn't complete the job after all. Mr M asked for his deposit to be refunded.

When the contractor didn't refund the money to him, Mr M contacted Bank of Ireland and told it he'd fallen victim to a scam. I've seen evidence to suggest that there are several other victims of the same individual and he is currently subject to criminal proceedings. Bank of Ireland looked into his complaint but said it wouldn't pay a refund. It said Mr M had authorised the payment and so it thought it fair for him to be held liable for it. Mr M had specifically pointed out that, although he believed he was paying the contractor's business account, the account he paid was a personal one. It responded in the following terms:

I appreciate that the beneficiary of your transfer was not as you instructed however we do not offer a Confirmation of Payee check when a new payee is added. As such, it is your responsibility to confirm that all account details are correct with the intended beneficiary prior to sending a payment.

Mr M was unhappy with the response he received from Bank of Ireland and so he referred his complaint to this service. It was looked at by an Investigator who didn't uphold it. The Investigator said that the transfer in question wasn't unusual or out of character and so Bank of Ireland couldn't reasonably have been expected to be concerned about the risk of fraud. Mr M was unhappy with the Investigator's conclusions and so the complaint was passed to me to consider.

Mr M specifically queried what investigation had been carried out into the contractor's bank account and was unhappy that the Investigator didn't appear to have looked into this. After the case was passed to me, I made enquiries on that point. The contractor's bank account was also operated by Bank of Ireland and so it shared relevant information with me regarding the opening and operation of that account. I've set out the findings on that point below.

Findings

I've considered all the available evidence and arguments to decide what's fair and

reasonable in the circumstances of this complaint.

I issued my provisional findings on this complaint on 31 May 2023. I wrote:

It is common ground that Mr M authorised the payment. Under the Payment Services Regulations 2017, he is presumed liable for the loss at first instance. However, this is not the end of the story. Bank of Ireland was also under a range of obligations related to protecting customers from fraud. Broadly summarised, it was expected to be on the lookout for unusual or out of character transactions that were indicative of a fraud risk. It shouldn't have processed such payments without first making some enquiries to satisfy itself that Mr M wasn't at risk of financial harm due to fraud.

There is a voluntary code known as the Contingent Reimbursement Model which asks its signatories to reimburse customers who fall victim to scams, subject to a range of exceptions. However, I'm afraid Bank of Ireland is not a signatory to that code and so Mr M doesn't benefit from any of its provisions as far as these payments are concerned.

The question I have to consider then is whether Bank of Ireland ought to have recognised that there was an increased risk of fraud when Mr M made the transfer of £7,500. We now know with the benefit of hindsight that it's likely this was a scam. However, I don't think there were any clear indicators from the bank's perspective that the risk of fraud was higher with this payment.

I can't reasonably conclude the payment was out of character. Mr M made a £12,000 payment to HMRC the same month and another payment of £22,000 a little over six months prior to the scam. A transfer of £7,500 wouldn't have stood out. For that reason, I don't think Bank of Ireland could've been expected to intervene and question that payment with Mr M before processing it.

Even if I concluded differently on that point and found that it should've paused the payment and called Mr M first, it's not clear what difference that would've made. At the time, there was no reason to suspect that the person he'd contracted with was anything other than legitimate. There was a trading history and the contractor had provided a sufficiently detailed specification for the job.

Mr M says that, if it had been brought to his attention that he was making the payment to a personal account rather than a business one, he wouldn't have proceeded with it. He says that Bank of Ireland should've brought this to his attention at the time. However, Bank of Ireland wasn't covered by the Confirmation of Payee process at the time and so there wouldn't have been any way for it (or Mr M) to know for sure the name of the owner of the destination account.

Bank of Ireland was also the operator of the recipient's bank account. As a result, it had several obligations additional to the ones I've described above. It needed to carry out appropriate checks on the prospective customer when opening a new account, be on the lookout for activity on that account that might suggest it was being used for fraud and also to act quickly once on notice that fraudulently obtained funds have been paid into it.

From the evidence it has shared with us, I can see it completed identification checks in line with its regulatory obligations and I don't think there was anything at the time that could've reasonably alerted it to the fact that the account it was opening might later be used in connection with fraud.

I've also reviewed the statements for the account. Taking into consideration the nature of the account and its expected use, I don't think that Mr M's payment crediting the account, nor the spending of those funds would have given Bank of Ireland cause for concern to the extent that I'd say it ought to have intervened.

I also looked at whether Bank of Ireland did what it needed to do once it was on notice that Mr M had fallen victim to a scam. I've seen data on the payments made from the receiving account. Mr M's funds were dispersed or transferred to other accounts within two weeks. It wasn't until some time later that Mr M realised this was a scam and so recovery of his funds was no longer possible.

I don't want to downplay or diminish the fact that Mr M appears to have fallen victim to a cynical fraud. However, my role here is only to look at the actions and the inactions of the bank. Having done so, I'm not persuaded that it could've been expected to prevent the fraud.

Mr M disagreed with my provisional decision. He wanted to know:

- What checks had been carried out by Bank of Ireland before allowing the fraudster to open his accounts?
- Why did my provisional decision only refer to one of the accounts when the fraudster had both a business account and a personal account with Bank of Ireland?
- Do the checks carried out by Bank of Ireland record that the fraudster was declared bankrupt in another country and is the subject of a criminal investigation for fraud committed there too?
- Did Bank of Ireland carry out any searches of public domain records, criminal records databases or a credit check?
- Did Bank of Ireland carry out any enhanced customer due diligence checks, particularly given that the fraudster had only recently returned from overseas?

He also argued that Bank of Ireland's failure to have signed up to the CRM Code or the Confirmation of Payee process left him (and other customers) more exposed to the risk of fraud. Overall, Mr M explained that he considered deficiencies in Bank of Ireland's systems and controls left him unprotected from fraud of this kind.

Following Mr M's response to my provisional decision, I asked Bank of Ireland to provide evidence regarding the business account in addition to the information it had already shared with us about the personal account to which Mr M made the payment.

The requirements for a bank when opening a new customer account are specified in legislation – specifically, The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017. Those regulations say that Bank of Ireland needed to “*verify the identity of the customer ... before the establishment of a business relationship ...*”

From the evidence provided to me, the fraudster completed an application form and provided two forms of identification (a driving licence and a passport). The address on the driving licence matched the one he gave on the application form. The same procedure was followed for the opening of both the personal and the business account.

There is no automatic expectation that a firm should carry out detailed additional checks of

the sort Mr M has asked about. The regulations set out the circumstances under which a bank must apply enhanced customer due diligence and none of these applied to the receiving account holder. There is a catch-all provision in the regulations that says enhanced customer due diligence should be applied in any case *“which by its nature can present a higher risk of money laundering or terrorist financing.”*

I’m afraid I don’t think there was anything that ought to have put Bank of Ireland on notice of the risk that either account would eventually be used to receive fraudulent funds nor anything about the way either account was used on an ongoing basis that suggested its customer had started to use the account for criminal purposes. For those reasons, I don’t think it did anything wrong in carrying out standard customer checks when opening the two accounts.

Finally, I appreciate the point that Mr M has made regarding the fact that Bank of Ireland isn’t signed up to the CRM Code. But the Code is voluntary and I can’t apply its provisions to any bank that hasn’t signed up. Overall, while I know that Mr M will be hugely disappointed by the outcome, I’ve not seen anything to persuade me to depart from the findings I set out in my provisional decision.

Final decision

For the reasons I’ve explained above, I don’t uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask P to accept or reject my decision before 25 August 2023.

James Kimmitt
Ombudsman