

The complaint

Mr S is unhappy Bank of Scotland plc will not refund the money he lost as part of an authorised push payment (APP) scam.

Mr S brought his complaint through a representative, for ease I will refer solely to Mr S in this decision.

What happened

Both parties are familiar with the details of this case so I will not set them out in detail here. In summary, Mr S made the following faster payments to an online wallet he held elsewhere. He then moved the money into a cryptocurrency investment.

payment	date	amount
1	06/10/2022	£51
2	07/11/2022	£1,501
3	07/11/2022	£868
4	09/11/2022	£895
5	15/11/2022	£2,100
6	16/11/2022	£420
7	14/03/2022	£697

When Mr S was asked to pay a significant tax bill to access his investment he realised it was a scam and reported it to Bank of Scotland. This was on 18 April 2023.

Mr S says Bank of Scotland should have intervened as the payments were out of character for his account. It has failed to comply with the regulatory requirements to protect his money. And as English is not his first language he is vulnerable so additional measures ought to have been in place to prevent him from suffering any financial harm.

Bank of Scotland said it would not consider this as fraud as the payments were made to an account in Mr S's name.

Our investigator did not uphold Mr S's complaint. He said neither the pattern of the payments nor the values were such that Bank of Scotland ought to have intervened and spoken to Mr S prior to processing them.

Mr S disagreed and asked for an ombudsman's review. He said, in summary, the bank failed in its duty of care. It did not carry out adequate checks and had it issued a warning it could have prevented the scam. The bank ought to have identified Mr S as vulnerable due to his poor English and taken extra care. In failing to do so it had breached the Equality Act 2010. Finally as the volume of cryptocurrency investment scams has risen this alone ought to have triggered Bank of Scotland to block the transactions, pending further investigation.

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.

I have considered all the points raised by Mr S, and his representative, carefully. In keeping with our role as an informal dispute resolution service, and as our rules allow, I will focus here on the issues I find to be material to the outcome of Mr S's complaint.

There's no dispute that Mr S made and authorised the payments. Mr S knew why he was making the payments. At the stage he was making these payments, he believed he was moving money into his online wallet to then invest from there in cryptocurrency. I don't dispute Mr S was scammed and he wasn't making payments for the reason he thought he was, but I remain satisfied the transactions were authorised under the Payment Services Regulations 2017.

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

To reach my decision I have taken into account the law, regulator's rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time. To note, as the payments were made to another account in Mr S's name the principles Contingent Reimbursement Model (CRM) code do not apply in this case. This means I think that Bank of Scotland 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.

Here I need to decide whether Bank of Scotland acted fairly and reasonably in its dealings with Mr S when he made the payment requests, or whether it should have done more than it did.

I don't think Bank of Scotland needed to stop Mr S's payments and investigate further before processing. I'll explain why. Mr S had only made his first transaction on the account since opening on 17 June 2022 so there was a limited history. The first payment was low value, the second was over a month later and whilst higher, not of such value that I think it should have been stopped.

Looking at how the pattern of the remaining payments emerged, they also didn't follow a common pattern of scam transactions and were made over a period of around four months. The payments were not made in rapid succession and did not drain his account. Typically, Mr S either moved money into the account before making them, or had just received income from his self-employed trade. To Bank of Scotland, the transactions appeared to be genuinely authorised payments and Mr S had raised no concerns about any of the earlier payments. I also note during this time Mr S made other faster payments into the same online

wallet that he has not said were part of this scam. And I am not persuaded in the circumstances of this case that Bank of Scotland should have intervened solely because Mr S was moving money into an online wallet (in his name).

I note Mr S's comments that he was vulnerable as English was not his first language but in the context of my findings this vulnerability does not impact the assessment that Bank of Scotland did not act in error by failing to detect likely financial harm and stop the payments. I also note that the bank only became aware of Mr S's level of spoken English after he called to report this scam. It then added a language flag to his account.

With regards Mr S's claim that Bank of Scotland breached the Equality Act, it is for the Courts to determine if a business has acted unlawfully. Our role is to decide what's fair and reasonable in all the circumstances of each particular case. In reaching that decision, we will consider various factors including relevant law and what we see as good industry practice from the time.

So although it's for the Courts to say whether or not Bank of Scotland has breached the Equality Act 2010, I'm required to take it into account, if it's relevant, amongst other things when deciding what is fair and reasonable in the circumstances of this complaint. I did so as part of my review of this case but it does not change my conclusion..

In the round, I don't think Bank of Scotland acted unreasonably in processing the payments without making further enquiries. There is a balance to be struck between identifying payments that could potentially be fraudulent and minimising disruption to legitimate payments. If all payments such as the ones Mr S made were blocked while further enquiries were made, many genuine payments would be stopped which would cause significant disruption and delay.

In terms of recovery once Mr S had reported the scam, I find it is reasonable that as he had moved the money to an account he had sole control of, and then forwarded it on from there, there was nothing Bank of Scotland could reasonably do to retrieve any of the funds.

This means I am not instructing Bank of Scotland to refund any money to Mr S. This is a difficult decision to make, I'm sorry Mr S lost a considerable amount of money which was distressing for him. I can understand why he would like to be compensated for his losses. And I do accept Mr S has fallen victim to a sophisticated scam. But I can only consider whether the bank, which had no involvement in the scam itself, should be held responsible for what happened. For the reasons set out above I do not find Bank of Scotland can be held liable in the circumstances of this case.

My final decision

I am not upholding Mr S's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 30 October 2023.

Rebecca Connelley
Ombudsman