

The complaint

Mr O complains about Bank of Scotland plc.

He says that Bank of Scotland didn't do enough to protect him when he became the victim of two investment scams and would like Bank of Scotland to refund him the money he has lost as a result.

What happened

Mr O was looking for an investment opportunity online and entered his details into a website. He was contacted by two separate individuals offering investments. One scam was supposedly for 'Platinum Fund' (with payments being made to payee HQ), and one was funded through cryptocurrency.

Mr O was persuaded to invest in both. I have listed the payments below. The first two payments listed are direct payments to a scam, and the following payments to crypto exchanges to fund the second scam.

Date	Payee	Amount	Payment type
26 May 2020	HQ	£225.10	Card payment
28 May 2020	HQ	£1,798.07	Card payment
3 August 2020	MP	£358.10	Card payment
17 August 2020	MP	£2,392.04	Card payment
2 September 2020	B	£3,744.20	Card payment
14 September 2020	B	£86.20	Card payment
14 September 2020	B	£239.01	Card payment
		Total	£8,842.72

However, Mr O then realised he had been the victim of a scam – and complained to Bank of Scotland. He said that Bank of Scotland failed to protect him from the scams and that while he didn't deny authorising the payments, that Bank of Scotland should have known that he was dealing with a scammer and intervened.

Bank of Scotland didn't uphold his complaint – so Mr O brought his complaint to this Service. Our Investigator considered things but didn't think that the complaint should be upheld.

Mr O asked for an Ombudsman to make a decision, so the complaint has been passed to me.

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 Mr O's complaint. I know this will be disappointing for him, so I'll explain why.

It isn't in dispute here that Mr O has been the victim of a scam and has lost a significant amount of money as a result. However, even when it is clear that a scam has taken place, and an individual has been tricked out of their money, it doesn't necessarily follow that a business will need to refund the money that has been lost.

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider having been good industry practice at the time.

In broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. And I have taken that into account when deciding what's fair and reasonable in this case.

However, taking into account the law, regulator's rules and guidance, relevant codes of practice and what I consider having been good industry practice at the time, I consider Bank of Scotland should fairly and reasonably:

- Have been monitoring accounts and any payments made or received to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams.
- Have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer.
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or make additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

In this case, I need to decide whether Bank of Scotland acted fairly and reasonably in its dealings with Mr O when he authorised payments from his account or whether it could and should have done more before processing them.

Did Bank of Scotland act fairly and reasonably in Mr O's case?

In my opinion, the payments in question just weren't sufficiently unusual, uncharacteristic or suspicious to reasonably say Bank of Scotland should not have processed them without first getting in touch with Mr O to ensure they were legitimate and not related to a scam. The values of the individual transactions were not particularly high – and spread out over a significant period of time. And when compared with Mr O's normal account activity, they do not stand out as unusual, as there were other payments for similar amounts being made on the account.

And while I understand that the second scam involved payments to legitimate cryptocurrency exchanges – it should be noted that not all payments made for crypto are a result of a scam. In this case, I don't think where the payments were headed ought to have automatically triggered Bank of Scotland's attention.

Considering all of this, as Bank of Scotland didn't interact with Mr O prior to the payments being made, and I think the payments weren't so unusual that they ought to have contacted him prior to them being processed, I don't think they missed an opportunity to prevent the payments before they were sent.

Recovery of the payments

After the payments were made, I wouldn't reasonably expect Bank of Scotland to do anything further until it had been notified there was a scam.

The only recourse for potential recovery of the funds for the payments made by debit card would be via the chargeback scheme. Chargeback is a process by which disputes are resolved between card issuers (here, Bank of Scotland) and the merchants involved, (here, HQ, MP and B).

However, a chargeback in these circumstances would likely never have been successful.

The payments that were made to HQ for the Platinum Fund would only be able to be returned via chargeback if Mr O could provide specific evidence under the VISA chargeback rules – which I don't think Mr O would be able to provide.

And a chargeback in respect of the payments made to MP and B would also be very unlikely to succeed. This is because MP and B are legitimate crypto exchanges and provided the services that Mr O requested of them – which was the purchase of crypto. The subsequent transfer of the crypto to a different wallet is therefore a separate matter.

I do have sympathy for the situation that Mr O has found himself in – he has been cruelly scammed out of money. However, the loss that he has suffered is ultimately caused by the scammers themselves – not Bank of Scotland. And I can't ask Bank of Scotland to refund this loss to Mr O when I don't think that it has done anything wrong

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 3 November 2023.

Claire Pugh
Ombudsman