

The complaint

Mr D complains that Marks & Spencer Financial Services Plc (“M&S”) failed to refund money that he lost as part of an investment scam.

Mr D has brought his complaint via a representative but for the sake of readability I will refer just to Mr D.

What happened

Limited information has been provided about the scam itself, but my understanding is that a scammer that I will call B persuaded Mr D to make a number of payments to various companies to “invest” in commodities.

It seems that B told Mr D that he was making substantial “profits” from the investments. My understanding is that he was unable to withdraw these “profits”.

Mr D raised a complaint with M&S as he believed that it should have stopped him from making the payments in question.

One of our investigators looked into this matter and they decided that the transactions were not sufficiently out of character to warrant an intervention by M&S and that there was no other means of M&S recovering the funds.

Mr D did not agree with this and therefore his complaint was passed to me to issue a final decision.

This decision will only be addressing whether M&S should have prevented the scam and if it should make a refund of the transactions because of this. I note concerns have been raised about a Section 75 claim and an issue relating to financial difficulties, these concerns will need to be raised directly to M&S in the first instance so it can investigate these issues.

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 for the following reasons:

It isn’t in dispute that Mr D authorised the disputed payments he made using his M&S credit card. The payments were requested by him using his legitimate security credentials provided by M&S, 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.

However, I’ve considered whether M&S should have done more to prevent Mr D from falling victim to the scam, as there are some situations in which a bank should reasonably have had a closer look at the circumstances surrounding a particular transfer. For example, if it was particularly out of character.

The payments were not of such a large amount that they would represent a significant deviation from what would be considered as Mr D's 'usual' account activity. I accept the payments did represent larger payments than Mr D usually made but not sufficiently so in my opinion to have necessitated an intervention from M&S.

So, having considered the payments Mr D made, I'm not persuaded there was anything that ought reasonably to have triggered M&S's fraud monitoring systems or that would have indicated he was in the process of being scammed. I therefore do not consider there to have been any obligation on M&S to have intervened any further.

I've also thought about whether M&S did enough to attempt to recover the money Mr D lost, as there are some instances where credit card transactions can be refunded through making a chargeback claim. But in this case, a chargeback would not have been successful given this timescale involved. In relation to the main other means of recovering the funds a Section 75 claim as I have already said, this would need to be directed to M&S in the first instance.

I appreciate this will come as a disappointment to Mr D, and I'm sorry to hear he has been the victim of a cruel scam. However, I'm not persuaded that M&S can fairly or reasonably be held liable for his loss in these circumstances.

So, I do not uphold Mr D's complaint. As it seems an outstanding balance may still be due. I would remind M&S of its regulatory obligation to treat Mr D fairly and with forbearance if necessary.

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 D to accept or reject my decision before 12 January 2024.

Charlie Newton
Ombudsman