

The complaint

Mr T complains that Bank of Scotland plc (“BOS”) have failed to refund the money he lost as part of an investment scam.

Mr T has a representative but for ease of reading I will mainly just refer to Mr T.

What happened

The details of this complaint are well known to both parties, so I will not repeat everything again here. Instead, I will focus on giving the reasons for my decision.

In summary though, Mr T was contacted on social media by a person I will call B. B persuaded Mr T to make a number of payments between March and April 2022 to crypto exchanges, the funds were then sent onto B. These payments were a mixture of debit card payments and faster payments and totalled over £200,000.

Mr T asked BOS to refund these payments as he believes BOS should have done more to prevent him from being scammed. BOS did not agree with this.

One of investigators looked into this matter and he thought that as BOS had intervened multiple times and provided a number of scam warnings any further interventions or warnings would not have stopped the scam. So, he did not think that BOS should refund the transactions in question.

Mr T did not agree with this and therefore his complaint has been passed to me to issue a decision.

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 T authorised the disputed payments he made from his BOS account, The payments were requested by him using his legitimate security credentials provided by BOS, and the starting position is that BOS ought to follow the instructions given by their customers in order for legitimate payments to be made as instructed.

However, I've considered whether BOS should have done more to prevent Mr T from falling victim to the scam, as there are some situations in which it should reasonably have had a closer look at the circumstances surrounding a particular transaction. For example, if it was particularly out of character.

I can see that there were phone calls on multiple occasions between BOS and Mr T because some of the payments that he made were out of character and were flagged by BOS. I have listened to the calls that were made. Amongst other things Mr T said the following;

- He is acting on his own behalf and was not being asked to make the transactions
- He had not been asked to forward the fund to a third party and was the only one with access to the account.
- He had been recommended by a friend
- He had done his own research

These answers meant that BOS did not think that Mr T was being scammed. So, it gave him a general warning about the dangers of crypto investing on a number of occasions. I think that BOS should possibly have given a more detailed warning about the common features of crypto scams. But I can see that prior to BOS's intervention Mr T's other bank did provide a specific warning about these dangers – and these more detailed warnings didn't stop the scam. So, I don't think that a more detailed warning would have altered Mr T's decision to carry on with the transactions.

I should also add that I have considered the chats between the scammer and Mr T. The relationship between the two of them had developed to the point that Mr T trusted the scammer and considered them as a friend and so overall I think a detailed warning would not have altered Mr T's actions.

I've also thought about whether BOS could have done more to recover the funds after Mr T reported the fraud. In this instance in relation to the debit card payments the only way of recovering the funds would be to attempt a chargeback

The chargeback scheme is a voluntary scheme set up to resolve card payment disputes between merchants and cardholders. The card scheme operator ultimately helps settle disputes that can't be resolved between the merchant and the cardholder.

Such arbitration is subject to the rules of the scheme, meaning there are only limited grounds and limited forms of evidence that will be accepted for a chargeback to be considered valid, and potentially succeed. Time limits also apply.

The service provided by the crypto exchanges was to provide crypto which it did. So, I don't think that a chargeback would have been successful in this instance.

BOS are also under no obligation to refund the money to Mr T under the Contingent Reimbursement Model (CRM) Code either, as the Code does not apply to debit card payments or transfers which the payer has effectively made to themselves. In this instance the payments were sent to an account in Mr T's own name and therefore the CRM does not apply.

I note Mr T's representatives' comments in relation to Mr T being a vulnerable consumer but from what I can see I don't think that BOS was or should have been aware of this until after the scam. So, I don't think BOS need to give Mr T a greater duty of care during the scam.

I appreciate this will likely come as a disappointment to Mr T, and I'm very sorry to hear he have been the victim of a cruel sophisticated scam. However, I'm not persuaded that BOS can fairly or reasonably be held liable for his loss in these circumstances.

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 T to accept or reject my decision before 5 April 2024.

Charlie Newton
Ombudsman