

## The complaint

Miss T complains that Bank of Scotland plc trading as Bank of Scotland (BoS) is refusing to refund her the amount she lost as the result of a scam.

Miss T is being represented by a third party. To keep things simple, I will refer to Miss T throughout my decision.

## What happened

The background of this complaint is well known to all parties, so I won't repeat what happened in detail.

In summary Miss T received a message randomly via WhatsApp from someone claiming to be from a recruitment company. This person confirmed Miss T would be interested in a job and passed her on to a college (X) who said she would be working for "Moni Growth".

The role included setting up an account and uploading products to a website. Miss T was offered a salary and commission but each time she earned commission she was required to make a payment to release it.

This process worked several times and Miss T did receive small withdrawals that gave her confidence the job was legitimate.

However, later in the scam Miss T was required to make larger payments, and X warned her that she could lose all her money if she didn't make the payments. After making several large payments and not being able to make a withdrawal it was clear that Miss T had fallen victim to a scam.

Miss T made payments to individuals (via Binance) and to Binance directly for the purchase of cryptocurrency before passing this to X. The following are a list of payments Miss T made:

Date	Payee	Payment Method	Amount
5 December 2022	Binance	Debit Card	£39.00
5 December 2022	Binance	Debit Card	£39.00
5 December 2022	Individual (via Binance)	Transfer	£280.00
5 December 2022	Individual (via Binance)	Transfer	£179.60
5 December 2022	Individual (via Binance)	Transfer	£179.60
5 December 2022	Individual (via Binance)	Transfer	£534.20
6 December 2022	Individual (via Binance)	Transfer	£833.00
6 December 2022	Individual (via Binance)	Transfer	£994.80
6 December 2022	Individual (via Binance)	Transfer	£1,700.00
6 December 2022	Individual (via Binance)	Transfer	£1,082.19
6 December 2022	Binance	Transfer	£1,082.19
7 December 2022	Individual (via Binance)	Transfer	£5,022.80
8 December 2022	Binance	Debit Card	£850.00
12 December 2022	Binance	Debit Card	£5,000.00
12 December 2022	Binance	Debit Card	£5,000.00

13 December 2022	Binance	Debit Card	£5,000.00
21 December 2022	Binance	Debit Card	£700.00
21 December 2022	Binance	Debit Card	£837.00

Our Investigator didn't think Miss T's complaint should be upheld. Miss T disagreed, so this complaint has been passed to me to decide.

### **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.

It has not been disputed that Miss T has fallen victim to a cruel scam. The evidence provided by both Miss T and BoS sets out what happened. What is in dispute is whether BoS should refund the money Miss T lost due to the scam.

#### *Recovering the payments Miss T made*

Miss T made payments into the scam via debit card and the method of transfer.

When payments are made by card the only recovery option BoS has is to request 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.

Miss T was dealing with X, which was the business that instigated the scam. But Miss T didn't make the debit card payments to X directly, she paid a separate cryptocurrency exchange (Binance). This is important because BoS would only have been able to process chargeback claims against the merchant she paid (Binance), not another party (such as X).

The service provided by Binance would have been to convert or facilitate conversion of Miss T's payments into cryptocurrency. Therefore, Binance provided the service that was requested; that being the purchase of the cryptocurrency.

The fact that the cryptocurrency was later transferred elsewhere – to the scammer – doesn't give rise to a valid chargeback claim against the merchants Miss T paid.

When payments are made by transfer BoS has limited options available to it to seek recovery. The only option it had was to ask the receiving payee to send back any funds that remain in the payee's account. Miss T has explained that she transferred funds to Binance and these funds were then sent to the scam. So, I am satisfied BoS would not have been able to recover the payments as no funds would remain.

#### *Should BoS have reasonably prevented the payments Miss T made?*

It has been accepted that Miss T authorised the payments that were made from her account with BoS, albeit on X's instruction. So, the starting point here is that Miss T is responsible.

However, banks and other Payment Services Providers (PSPs) do have a duty to protect against the risk of financial loss due to fraud and/or to undertake due diligence on large

transactions to guard against money laundering.

The question here is whether BoS should have been aware of the scam and stepped into question Miss T about the payments she was making. And if it had questioned Miss T, would it have been able to prevent the scam taking place.

Miss T was making payments to a new payee, so I'm not surprised some of these payments did trigger BoS's fraud prevention systems and it did step in on several occasions. Miss T spoke to BoS several times on the phone and was even asked to go into a branch before a payment could be processed.

When Miss T spoke to BoS she confirmed she was buying crypto for investment purposes, that it stayed in her Binance account, she hadn't been advised by anyone else to make the payments and she had checked the FCA register.

None of the above information was correct and it's clear that Miss T was willing to provide misleading information to BoS to have the payments approved.

BoS could have stepped in on other occasions when Miss T tried to make payments related to the scam but considering the misleading information provided by Miss T on multiple occasions, I think it's unlikely Miss T would have given more honest answers to its questions and been able to uncover the scam that was taking place.

Overall, I don't think BoS missed an opportunity to prevent the scam and it is not responsible for Miss T's loss.

### **My final decision**

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss T to accept or reject my decision before 6 March 2024.

Terry Woodham  
**Ombudsman**