

## The complaint

Miss H complains about Bank of Scotland plc trading as Halifax.

She says that Bank of Scotland didn't do enough to protect her when she became the victim of a scam and would like Bank of Scotland to refund her the money she has lost.

## What happened

The details of what happened are well known to both parties, so I won't repeat this in detail here.

In summary, Miss H was approached via Instagram about an investment opportunity.

After looking at what had been posted on Instagram, she decided to invest. Miss H made several payments from other payment service providers, but when it came to withdrawing her supposed profit, she was told that she needed to pay more money in order to 'release' her supposed profit from the investment – and then that she needed to pay HM Revenue & Customs taxes on her 'profit' of £45,000.

Miss H then took out a credit card with Bank of Scotland to make the following payments to a money transfer service.

<b>Date</b>	<b>Payment</b>	<b>Amount</b>
14 July 2021	CC payment to World Remit	£752.99
20 July 2021	CC payment to World Remit	£5,652.99
3 August 2021	CC payment to World Remit	£802.99
	<b>Total</b>	<b>£7,208.97</b>

Miss H also made other payments from other providers, before realising that she had been the victim of a scam.

She called Bank of Scotland to report what happened and make a complaint. She said that it should have done more to protect her.

Bank of Scotland didn't uphold her complaint, so she brought it to this Service. Our Investigator looked into things but didn't think that the complaint should be upheld.

Miss H asked for an Ombudsman to make a final 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 this complaint for broadly the same reasons as our investigator. I know this will be very disappointing for Miss H, so I'll explain why.

It isn't in dispute here that Miss H has been the victim of a scam and has lost 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 banks, electronic money institutions (EMI's) and other payment service providers (PSP's) are expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations (PSRs) and the terms and conditions of the customer's account.

Miss H authorised the payments in question here – so even though she was tricked into doing so and didn't intend for her money to end up in the hands of a scammer, she is presumed liable in the first instance.

But this isn't the end of the story. As a matter of good industry practice, Bank of Scotland should also have taken proactive steps to identify and help prevent transactions – particularly unusual or uncharacteristic transactions – that could involve fraud or be the result of a scam. However, there is a balance to be struck: banks had (and have) obligations to be alert to fraud and scams and to act in their customers' best interests, but they can't reasonably be involved in every transaction

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.

This leads me to consider if Bank of Scotland acted fairly and reasonably in its dealings with Miss H when she authorised the payments from her account, and whether it could and should have done more before processing the payments.

Bank of Scotland blocked the first payment Miss H made and spoke with her on the phone about what she was doing. It has provided this Service with the call that took place and having listened to the call that took place, I am not persuaded that Bank of Scotland could have done anything to prevent the loss that took place here.

This is because when it spoke with Miss H, it enquired about what she was making the payment for, but Miss H wasn't honest about what she was doing. Rather than divulge that she was making the payment as part of an investment she had found on Instagram, she concealed the nature of the payment and told Bank of Scotland and told it that she was sending funds to family. Bank of Scotland asked her several times during the call if she was happy with the payment, and she confirmed that she was – and that she may also send further funds to her family member shortly.

Bank of Scotland also asked her if she thought she might be falling victim to a scam – but Miss H reiterated that it was fine, as she was sending money to family. She also enquired if she would have any similar issues if she wanted to make further payments. It confirmed that it couldn't say if any further payments would be flagged by its systems again and that it couldn't prevent this from happening.

I do think that the next payment Miss H made should have also triggered an intervention by Bank of Scotland, due to the amount of the payment being unusual for a new account - however, even though I think that Bank of Scotland should have got in touch, in order for me to uphold this complaint, I would also have to find that another intervention would have made a difference here. And I'm afraid I don't think that it would have. Miss H had already told Bank of Scotland that she intended to send further funds to family – so I think that she would have continued to tell Bank of Scotland this was what she was doing. And as they money was going to a payment transfer service; I think that it would have believed what she told it.

So, I am not persuaded that any further intervention would have prevented her loss.

I have also considered whether Bank of Scotland is required to refund the payments Miss H made under section 75 of the Consumer Credit Act Consumer Credit Act 1974. But I don't think it is.

As a starting point, it's useful to set out what the Act actually says:

*75(1) If the debtor under a debtor-creditor-supplier agreement falling within section 12(b) or (c) has, in relation to a transaction financed by the agreement, any claim against the supplier in respect of a misrepresentation or breach of contract, he shall have a like claim against the creditor, who, with the supplier, shall accordingly be jointly and severally liable to the debtor...(3) Subsection (1) does not apply to a claim...*

1. *under a non-commercial agreement,*
2. *so far as the claim relates to any single item to which the supplier has attached a cash price not exceeding £100 or more than £30,000*

To summarise there must be:

1. a debtor-creditor-supplier agreement falling under section 12(b) or 12(c); and
2. a transaction financed by the agreement; and
3. a claim for misrepresentation or breach of contract related to that transaction;
4. but not a claim which relates to any single item which the supplier has attached a cash price below £100 or in excess of £30,000

Miss C had an agreement with the scammer – but made her payments via World Remit, a separate payee. So, this breaks the debtor-creditor-supplier chain that must exist for a claim to be successful.

I am very sorry for the situation Miss H now finds herself in. She has been tricked and manipulated by a cruel scam, and I know this has left her feeling upset and embarrassed by what has happened. But in order for me to uphold this complaint, I would need to find that Bank of Scotland could have done anything to prevent her loss, and I don't find that it could on this occasion.

**My final decision**

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H to accept or reject my decision before 5 June 2024.

Claire Pugh  
**Ombudsman**