

The complaint

Mr N complains that Bank of Scotland plc (“BOS”) hasn’t protected him from losing money to a scam.

What happened

The background to this complaint is well known to both parties, so I won’t repeat everything here. In brief summary, Mr N has explained that in September and October 2023 he made 12 payments from his BOS account for what he thought was a legitimate investment. Mr N made the payments from his BOS account first to Coinbase, before they were moved on from there to the scammers. The payments totalled £3,330 and appear on Mr N’s BOS account statements as follows:

11 September 2023	Coinbase	£500
18 September 2023	Coinbase	£500
3 October 2023	Coinbase	£500
3 October 2023	Coinbase	£300
5 October 2023	Coinbase	£350
6 October 2023	Coinbase	£400
9 October 2023	Coinbase	£300
9 October 2023	Coinbase	£200
9 October 2023	Coinbase	£240
9 October 2023	Coinbase	£10
9 October 2023	Coinbase	£10
9 October 2023	Coinbase	£20

Mr N received credits into his BOS account from Coinbase over the same period of £540, making his total loss £2,790.

Mr N subsequently realised he’d been scammed and got in touch with BOS. Ultimately, BOS didn’t reimburse Mr N’s lost funds, and Mr N referred his complaint about BOS to us. As our Investigator couldn’t resolve the matter informally, the case has been passed to me for 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’ve decided to not uphold Mr N’s complaint. I’ll explain why.

First let me say I have no reason here to doubt Mr N has been the victim of a scam. He has my sympathy. Ultimately, however, Mr N has suffered his loss because of fraudsters, and this doesn’t automatically entitle him to a refund from BOS. It would only be fair for me to tell BOS to reimburse Mr N his loss (or part of it) if I thought BOS reasonably ought to have prevented the payments (or some of them) in the first place, or BOS unreasonably hindered

recovery of the funds after the payments had been made; and if I was satisfied, overall, this was a fair and reasonable outcome.

Prevention

I'm satisfied Mr N authorised the relevant payments. BOS would generally be expected to process payments a customer authorises it to make. And Mr N is presumed liable for the loss in the first instance, in circumstances where he authorised the payments. That said, as a matter of good industry practice BOS should have taken proactive steps to identify and help prevent transactions – particularly sufficiently unusual or uncharacteristic transactions – that could involve fraud or be the result of a scam. However, there are many payments made by customers each day and it's not realistic or reasonable to expect BOS to stop and check every payment instruction. There's a balance to be struck between identifying payments that could potentially be fraudulent, and minimising disruption to legitimate payments (allowing customers ready access to their funds).

In this case, BOS didn't intervene in any of the payments, and I've thought carefully whether I think it instead reasonably ought to have done. I think BOS ought to have realised at the time Mr N made his payments that cryptocurrency related transactions carry an elevated risk of them being related to fraud or a scam. But in this case, I don't think the payments, taken individually or together, were sufficiently unusual in size for Mr N's account to reasonably say BOS should have intervened, but failed to, in the payments before it followed Mr N's instructions to send them.

The first payment on 11 September 2023 was for £500, an amount that I couldn't reasonably say ought to have stood out, and given Mr N had previously, in the last year, made transfers for the same amount. I note also that Mr N received a £500 credit from Coinbase the same day as this first payment, effectively bringing his total outlay to Coinbase by the end of 11 September 2023 to zero.

The second payment, which was made on 18 September 2023, was also for £500. For the same reasons as the first payment, I can't reasonably say this should have stood out to BOS.

Then, between 3 and 9 October 2023, Mr N made ten further payments to Coinbase totalling £2,330. Given the number of these payments, and their frequency, I have thought carefully about whether I think BOS should have intervened at any stage before following Mr N's instructions to send the payments. But I don't think it would be unusual for those legitimately investing in cryptocurrency to sometimes send payments like this reasonably close in time. The block of four payments between 3 and 6 October 2023 totalled £1,550. And the block of six payments on 9 October 2023 totalled £780.

I've thought carefully about whether the elevated risk BOS ought to have attached to cryptocurrency related payments means that it ought reasonably to have intervened at this point. But the key question here is whether these payments, taken individually or collectively, were *sufficiently* unusual or suspicious such that intervention ought reasonably to have been warranted. Not all payments related to cryptocurrency are made as a result of fraud or a scam. But had Mr N continued to make payments to Coinbase in such number and frequency, increasing the total amount paid, my decision might have been different. But based on the payments that *were* actually made in this case, I'm not satisfied I can fairly say they were sufficiently unusual or suspicious – given the balance I've mentioned banks need to strike between identifying payments that could potentially be fraudulent and allowing customers ready access to their funds – to say BOS ought to have done more here.

Recovery

After the payments were made, I don't think BOS could reasonably have recovered them. This is because the only potential avenue for BOS to recover the funds would have been, when Mr N notified it he'd been scammed, to contact Coinbase. But I understand by then the funds had already been sent on from Coinbase to the scammers. So I'm satisfied BOS couldn't reasonably have recovered these payments once they had been sent.

I understand Mr N is out of pocket and I'm really sorry he's been scammed. However, I can't reasonably tell BOS to refund him in circumstances where I don't think it unreasonably failed to prevent the payments, or to recover them.

My final decision

For the reasons explained, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 13 March 2024.

Neil Bridge
Ombudsman