

The complaint

Mr O is unhappy Bank of Scotland plc ("BoS") won't refund him the money he lost as a result of a scam.

What happened

In January 2021, Mr O made two payments totalling £5,500 to purchase two tractors and have them shipped to Sudan. Mr O has told us that he spent around 3 months searching for tractors online when he was contacted by the seller in question via a third-party website. The seller sent Mr O a link to their website which he promptly visited. Mr O says the website looked professional and legitimate. He said it detailed 150 positive reviews left by previous customers and this persuaded him that the seller was genuine.

Mr O informed the seller that he was looking for a specific brand of tractor. He's told us that he hadn't bought tractors before but he'd heard that this was a good brand/model. Mr O then discussed the sale of the tractors via text message – screenshots of which he has provided to this service.

Mr O says he didn't discuss the mileage of the tractors with the seller and was simply told they had '*good mileage*'. Mr O was sent several pictures of the tractors, and he's also told us that he was sent a video showing the tractors engines being started – although he hasn't been able to provide us with a copy of this.

The seller initially quoted £3,000 for each tractor including shipping to Sudan. But this was later reduced to £2,750 for each tractor, including international shipping, once the seller became aware that Mr O planned to purchase two. The seller told Mr O the cost of the shipping amounted to £1,200. Mr O has told us that he didn't compare shipping costs to check whether this was a reasonable amount to pay.

The seller provided Mr O with their account details and advised him to make a bank transfer as they didn't have a payment facility on their website. The seller went on to say that when making the transfer, Mr O may be informed by his bank that the recipient's account name doesn't match the name of their company. The seller explained that this was because the company name was quite long, too long to fit into the box, and that Mr O should just click through the process and continue with the payment. Concerned that he might struggle to make the payment himself, Mr O went into his local branch.

Mr O has said branch staff checked the company for him and confirmed that the name and company registration number matched. He's also told us that he was told by branch staff that all of the payment details matched and branch staff proceeded to make the payment on his behalf.

After payment was made, the seller told Mr O that the tractors would take just over two weeks to reach their destination. The seller also sent Mr O shipment tracking details but when Mr O tried to use them, they didn't work. Mr O tried to get in touch with the seller to query this but they didn't respond. Mr O then attempted to go to the seller's

website but it was unavailable. At this point, Mr O realised he had been scammed and contacted BoS.

Following an investigation, BoS said Mr O should bear some liability for the total loss under the CRM code. It accepted that it may not have done all it could to protect Mr O and so accepted 50% responsibility for his losses – refunding Mr O £2,725.00 plus 8% simple interest and some additional compensation. However, BoS thought Mr O should bear responsibility for the remainder.

It said that Mr O had failed to verify the company or the person he was speaking to. BoS said it had researched the company that Mr O had thought he was dealing with itself and it was readily apparent that the legitimate company sold work-wear, not agricultural machinery. It went on to say that Mr O had also failed to complete any checks on the proposed third-party shipping company either. BoS said the price of the tractors was not in line with the market value and that the price was too good to be true. It also pointed out that Mr O had opted to make the transfer despite knowing that the payee name likely didn't match. In summary, BoS believed that Mr O had failed to show the requisite level of care in making the payments to the seller - without a reasonable basis for believing that the payments were for genuine goods or services or that the person with whom he transacted with was legitimate.

Finally, BoS said it had contacted the receiving bank within two hours of being notified of the scam but the receiving bank confirmed that no funds remained in the beneficiary account. So it couldn't do anything more to recover Mr O's funds.

Mr O didn't want to accept the offer of 50% put forward by BoS and he asked us to look into his complaint. Our investigator didn't uphold the complaint as he wasn't persuaded Mr O had a reasonable basis for believing he was paying a genuine person for genuine goods or services – he felt the price of the tractors was 'too good to be true'. And so he didn't ask BoS to increase its offer.

Mr O disagreed and as an agreement has not been reached, Mr O has asked for the matter to be referred to an ombudsman.

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.

In broad terms, the starting position is that a payment service provider is expected to process payments that its customer authorises, in accordance with the Payment Services Regulations 2017 (PSRs), which apply to this complaint, and the account terms and conditions. But where a customer made a payment as a result of the actions of a scammer, it may sometimes be fair and reasonable for a payment service provider to reimburse its customer, even though the payment was authorised.

Under the Lending Standards Board's Contingent Reimbursement Model (the CRM Code), which BoS is a signatory of, it should reimburse customers who are victims of authorised push payment scams, except in limited circumstances.

In considering this, I have taken account of whether BoS ought to have reimbursed Mr O under the provisions of the CRM Code, and whether it ought to have done more to protect

him from potential financial harm from fraud. The Code also places a level of care on Mr O, and so I have also considered whether he met this.

The CRM Code

The CRM Code requires payment service providers to reimburse customers who have been the victims of authorised push payment (APP) scams like this, in all but limited circumstances. It is for BoS to establish that a customer failed to meet a requisite level of care under one, or more, of the listed exceptions set out in the CRM Code.

Those exceptions are:

- The customer ignored an effective warning in relation to the payment being made.
- The customer made the payment without a reasonable basis for believing that:
 - the payee was the person the customer was expecting to pay;
 - the payment was for genuine goods or services; and/or
 - the person or business with whom they transacted was legitimate

There are further exceptions within the CRM, but these aren't applicable here.

Did Mr O have a reasonable basis for belief?

Under the CRM Code, BoS can choose not to reimburse Mr O if it doesn't believe he took the requisite level of care to ensure he had a reasonable basis for belief that the person/business he was paying was legitimate and for genuine goods or services. It isn't enough for Mr O to believe that he was paying a legitimate person/business for genuine goods or services, he had to have *a reasonable* basis for that belief.

Mr O says he he did look at the seller's website online before proceeding to make the payments and was able to read numerous positive reviews that persuaded him the company was legitimate. However, I haven't been able to locate this website. And when the name of the company is entered into a search engine online, it becomes quickly apparent that the company in question does not supply tractors. And so, I'm not satisfied that reviewing the seller's website goes far enough for Mr O to have met the requisite level of care, particularly given what was being offered. I'll explain why.

The seller had told Mr O he would provide two tractors and ship them to Sudan for £5,500. I have looked at similar models of tractors available in the marketplace at the time and it appears that the make and model in question cost around £9,000. This is the price for one tractor alone - it does not include shipping costs. And so the quote provided by the seller is considerably lower than market value, and I agree with BoS that it was too good to be true and should've reasonably caused Mr O some concern.

But Mr O hasn't provided any evidence to show he carried out any sort of due diligence before deciding to send his money to the company – over and above reviewing the website he had been sent the link to. For example, he readily accepted that he wouldn't be able to view the tractors in person. And only requested to arrange an appointment to view them after payment had been made. It doesn't appear that Mr O took any steps to verify the tractors themselves or asked to have sight of proof of ownership. Mr O has also told us that he didn't make any steps to verify the third-party shipping company.

So, whilst I acknowledge that Mr O was ultimately persuaded by what the seller had told him, I'm satisfied that he ought reasonably have carried out more checks before making

the payments – there were a number of red-flags here that should've reasonably given some cause for concern. So, having taken everything into account, I'm satisfied Mr O should've done more to ensure that what he was being told by the seller was genuine before he sent money to them in order to meet the required level of care under the CRM Code. Had he done so, I don't think he would've proceeded to make the payments. And so I can't fairly say that met Mr O met his requirements under the CRM Code, and I think this made a difference here.

Mr O should get 50% of his losses reimbursed even if he didn't have a reasonable basis for belief, if BoS didn't meet its obligations under the CRM Code either. One of those obligations is to give an effective warning – one that is understandable, clear, impactful, timely and specific – if it identifies a scam risk in a payment journey.

In its response to Mr O's complaint, BoS has told us it cannot be certain what took place in branch, whether Mr O was appropriately questioned about the transfers or whether a scam warning took place when it should've done and so it has already offered to reimburse Mr O 50% of his losses – the same amount I would award if I found any warnings weren't effective. And so it seems to me it has already offered what Mr O would be entitled to under the CRM Code.

It follows that I find the offer made by BoS – to reimburse 50% of Mr O's loss to be fair and I don't require it to do anymore.

My final decision

For the reasons given, my final decision is that Bank of Scotland plc has already made a fair offer in resolution of this complaint. Bank of Scotland plc should pay this amount to Mr O – if it hasn't already done so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 28 January 2022.

Emly Hanley
Ombudsman