

## **The complaint**

Mr S complains that Bank of Scotland plc won't refund money he lost as the result of a scam.

## **What happened**

The circumstances which led to this complaint are well-known to both parties, so I won't repeat them in detail here. But, in summary, I understand them to be as follows.

Mr S saw a private advert for a bike on a well-known online marketplace. He contacted the seller directly and agreed to buy the bike for £750. To secure the sale Mr S agreed to send a deposit of £500, which Mr S paid through online banking on 8 August 2022. But unknown to him at the time he was dealing with a fraudster. Mr S realised he'd been scammed when he was given details of a postcode, from where the bike was to be collected, that he couldn't locate and when the seller ignored his messages.

Bank of Scotland tried to recover the money from the beneficiary bank (the bank to which the payment was made), after Mr S reported the matter to it. But unfortunately no funds remained.

The case was considered under the Contingent Reimbursement Model Code (CRM code). Bank of Scotland accepted Mr S had been scammed and it could have done more to intervene, as it recognised the payment Mr S made, for £500, was not typical compared to how he usually ran his account. But it thought he was also partly responsible. So it refunded only 50% of the money Mr S lost – a total of £250.

Unhappy that Bank of Scotland didn't refund the full amount he had lost, Mr S then brought his complaint to our service and one of our investigator's looked into things. Our investigator thought there was enough going on that Mr S ought to have had concerns and that he should have taken further steps before making the payment. Our investigator also considered Mr S circumstances, but didn't think they prevented Mr S from being able to protect himself from this type of scam.

Mr S didn't agree with our investigator's opinion. As agreement couldn't be reached the complaint has now been passed over 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.

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 to be good industry practice at the time.

Bank of Scotland is a signatory of the CRM Code, which requires firms to reimburse customers who have been the victims of Authorised Push Payment scams, like the one Mr S has fallen victim to, in all but a limited number of circumstances. One such circumstance might be when a customer has ignored an effective warning. Bank of Scotland has refunded 50% of Mr S's loss, accepting that it could have intervened when Mr S made the payment, as the payment wasn't usual, compared to how Mr S typically ran his account. So it recognised, under the provisions of the CRM code, it should bear some responsibility for Mr S's loss. As Bank of Scotland has provided a partial refund to reflect this - there is no need for me to consider this point further.

A second circumstance in which a bank might decline a refund is, if it can be demonstrated that the customer made the payments without having 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.

In considering these points, account should be taken of all of the circumstances of the case, including the characteristics of the customer and the complexity of the scam. So, I've considered what steps Mr S took to reassure himself about the legitimacy of the individual selling the bike and whether it was reasonable for him to proceed with the payment.

When looking at similar models and make of bike in the market at the time – I think the bike being sold to Mr S was under the retail value by at least 50%. Mr S has said that he'd been looking for a bike of this kind for some time. He recognised the price of the bike, at £750 was cheap, and has said he knew the price would be upwards of £1,600, he also thought the bikes registration plate was unusual, and that in itself, might be worth something.

I find that the price itself was too good to be true from the outset - to the extent that it ought to have raised significant doubt in Mr S's mind. In his submissions Mr S has said that he thought the seller may have wanted to make a quick sale, so he thought he'd take a chance.

Given Mr S himself thought the bike was so cheap, I would've expected him to have been more wary and to have applied more caution before proceeding with the payment. But, by his own admission, Mr S didn't carry out any checks on the bike himself or make any substantial attempts to protect himself as I would've expected him to do – such as, for example, taking steps to research the seller or verify they were genuine, asking to see the vehicles documents, checking to see the seller owned it and had a right to sell it, checking MOT documents.

Mr S has told us his circumstances made him vulnerable. The CRM Code talks about customers being reimbursed in full, despite exceptions (such that I have outlined above) applying, if the individual was vulnerable to the extent that they were unable to protect themselves from the scam. So, I have also considered what the CRM Code says about vulnerability and when it might lead to a full refund, even if Mr S hasn't met his requisite level of care.

I've thought carefully about what Mr S has told us. When considering the relevant part of the CRM Code, it says:

*A Customer is vulnerable to APP scams if it would not be reasonable to expect that Customer to have protected themselves, at the time of becoming victim of an APP scam,*

*against that particular APP scam, to the extent of the impact they suffered. This should be assessed on a case-by-case basis.*

So I've considered whether there are vulnerabilities present to such an extent that Mr S was unable to take steps to identify the scam he fell victim to or to recognise steps he might take to test the legitimacy of what he was being told by the fraudster. To do so I must consider the details of the scam, Mr S's actions throughout, and the wider circumstances.

I don't doubt what Mr S has said about his medical conditions. But I've not seen anything to suggest that because of his condition Mr S was unable to protect himself from this particular scam. Mr S wanted to purchase a bike – a decision he proactively made. He found the advert on an online marketplace for the precise model of bike he wanted and he contacted the seller, offering to pay a deposit, with the balance on collection of the bike. He also recognised the price was low and took the decision to take a chance. Given this, I'm not persuaded that it would be unreasonable to expect Mr S to have protected himself against the particular scam he fell victim to. And so I don't find that Bank of Scotland needs to refund Mr S's entire loss under the vulnerability clause of the code.

Finally, I've gone on to think about whether Bank of Scotland did what it should've done once it was aware this was a scam. In order for me to be able to fairly ask Bank of Scotland to refund the money to Mr S, I need to be satisfied that Bank of Scotland should have acted sooner in trying to recover the money. And if I don't think it acted soon enough, I need to decide whether it made any difference.

Here, I can see Bank of Scotland raised the matter with the receiving bank but unfortunately it wasn't able to recover the money. I'm persuaded Bank of Scotland tried to recover the money within a reasonable time frame. Sadly, it is quite typical with these types of scams for fraudsters to move money away from the beneficiary account, straight after the payments are made, presumably to frustrate the efforts at this type of recovery.

Mr S has my considerable sympathies. He's found himself in an unenviable situation where he has lost money to a fraudster. And I understand the whole experience has been deeply upsetting for him and I don't underestimate his strength of feeling. But overall, for reasons explained I'm persuaded that the offer Bank of Scotland has already made, to refund 50% of the money lost, is fair and reasonable considering the circumstances of this case. So I don't think Bank of Scotland has to refund any more of the money Mr S lost.

### **My final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 12 December 2022.

Stephen Wise  
**Ombudsman**