

## The complaint

Mr R complains that Bank of Scotland plc trading as Intelligent Finance ('Intelligent Finance') won't refund the money he lost when he fell victim to a scam.

## What happened

Mr R says that he saw workmen completing work at his neighbour's house and enquired about having work done at his property. A member of the team from a company I'll refer to in this decision as L visited Mr R and asked about the work he would like to be completed and agreed to return the following day to complete it. Workers for L attended Mr R's property and worked all day and cut down trees and pressure washed Mr R's garage roof. Mr R paid £600 in cash for that work and says it was completed to a satisfactory standard.

Mr R also wanted L to lay a new drive. He was asked to pay £7,400 upfront for materials so that the work could be done the following week. He was asked to pay the personal account of a female. When Mr R questioned this, he was told it was the sister of one of the workmen. This was on a Friday evening, so Mr R says he set up a faster payment to leave his account on Monday (3 April 2023) and work was due to begin on 18 April. The workmen gave an excuse for not attending and Mr R thought he was the victim of a scam so contacted Intelligent Finance to report what had happened on 18 April 2023.

Intelligent Finance didn't agree to reimburse Mr R. It said that he had a civil dispute with L and should contact Trading Standards. Intelligent Finance also said that Mr R didn't complete any research before making the payment or check any reviews.

Mr R was unhappy with Intelligent Finance's response and brought a complaint to this service.

### *Our investigation so far*

The investigator who considered this complaint recommended that Intelligent Finance refund Mr R's full loss of £7,400 plus interest. He was satisfied that Mr R was the victim of a scam and said that Intelligent Finance couldn't fairly rely on any of the exclusions to reimbursement set out in the Lending Standards Board's Contingent Reimbursement Model Code ('CRM Code'). In reaching this conclusion the investigator referred, amongst other things, to the fact Mr R had seen that L completed work at a neighbour's property and L completed other work satisfactorily at his property.

Mr R made some additional points and Intelligent Finance asked some questions around why the investigator reached the conclusion this is a scam rather than a civil dispute. The investigator responded but Intelligent Finance hasn't replied.

The complaint was passed to me, and I issued a provisional decision recommending that Intelligent Finance refund 50% of Mr R's loss. In the "*What I've provisionally decided – and why*" section of my provisional decision I said:

*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, I'm required to take into account relevant law and regulations; regulatory rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.*

*I'm sorry to hear about the situation Mr R has been left in. He has paid a considerable sum of money for work that wasn't completed. I don't have the power to decide any dispute between Mr R and L though. My role is limited to looking at whether Intelligent Finance has treated Mr R fairly.*

*In broad terms, the starting position is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. There's no dispute here that Mr R authorised the payments.*

*The CRM Code provides protection to scam victims. Under the CRM Code, the starting principle is that a firm should reimburse a customer who is the victim of an APP scam (except in limited circumstances). But the CRM Code only applies if the definition of an authorised push payment (APP) scam, as set out in it, is met. I have set this definition out below:*

*"...a transfer of funds executed across Faster Payments...where:*

*(i) The Customer intended to transfer funds to another person, but was instead deceived into transferring the funds to a different person; or*

*(ii) The Customer transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent."*

*The CRM Code is also explicit that it doesn't apply to private civil disputes. The wording in the code is as follows:*

*"This Code does not apply to:*

*b) private civil disputes, such as where a Customer has paid a legitimate supplier for goods, services, or digital content but has not received them, they are defective in some way, or the Customer is otherwise dissatisfied with the supplier."*

*In other words, the CRM Code isn't a general protection for customers against non-receipt of goods or services. It only applies if it can reasonably be established that there was the intent to defraud the customer from the outset and that the high bar required for criminal fraud would likely be met.*

*Determining whether a rogue trader ever intended to provide a service can be difficult to establish and is case specific. The fact that L initially completed work to Mr R's satisfaction (which he paid for in cash) makes this initially appear to be a civil dispute. This is a finely balanced case but, overall, I consider there's enough going on here to say that Mr R was the victim of a scam and so the CRM Code applies.*

*There are a number of legitimate businesses with names similar to L. The only evidence I have of the name of the landscaping company Mr R thought he was dealing with is from a text message Mr R received which starts, "Hiya its [L] I have got your ladders", which was sent after the work Mr R paid for in cash had been completed. I can't see that the telephone number this message was sent from had any connection with any of the genuine companies I have looked at.*

*I think it's relevant in this case that Mr R has nothing in writing from L. He wasn't provided with a business card, a written estimate or an invoice for the work that was initially completed – which is unusual for a legitimate business. I also think that a legitimate business would have a business account, or, in the case of a sole trader, the name of the trader would match the name of the account. Mr R was provided with the bank card of a female and told to use the sort code and account number on it as this was the account of a workman's sister. This is highly irregular.*

*Mr R says that L didn't have a marked van as would be expected of an established business and he was blocked from contacting the number he had for L soon after payment was made.*

*This service has contacted the bank that received Mr R's funds. Whilst I'm unable to share any details about a third party account, I'm not persuaded the account activity matched that of a genuine business or that it's more likely than not that materials were bought as agreed with L.*

*I appreciate that there is no evidence of a criminal prosecution in this case or that the police took any further action. Whilst evidence of this nature can be really helpful in determining whether someone has been the victim of a scam, I don't think that the lack of this evidence is determinative. The police are more likely to investigate and take further action when more than one victim comes forward with a similar story, but Mr R hasn't suggested this was the case.*

*I have acknowledged that initial work was completed to a satisfactory standard. In this case, on the balance of probabilities, I consider this was done to persuade Mr R to part with further funds for work that L had no intention of completing.*

*Having decided that Mr R is the victim of a scam, I've gone on to consider whether Intelligent Finance should have reimbursed Mr R under the provisions of the CRM Code and whether it ought to have done more to protect him from the possibility of financial harm from fraud.*

*The CRM Code requires firms to reimburse victims of APP scams like this one unless it can establish that it can rely on one of the listed exceptions set out in it. Under the CRM Code, a bank may choose not to reimburse a customer if it can establish that:*

- The customer made 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.*
- The customer ignored what the CRM Code refers to as an "Effective Warning" by failing to take appropriate action in response to such an effective warning*

*There are other exceptions that are not relevant to this case.*

*I've thought carefully about whether Mr R had a reasonable basis for believing L was a legitimate business. I appreciate that other work (gardening and guttering) was completed to a satisfactory standard but think there were enough red flags here that ought reasonably to have concerned Mr R and led him to complete further investigations. I note that Mr R didn't pay L as soon as the other work was completed but delayed the payment, so he wasn't under pressure to make the payment and had the opportunity to satisfy himself of L's legitimacy. I've also considered the following points:*

- Mr R didn't contact any other companies to get quotes before deciding to engage L so had no gauge of whether the price provided by L was reasonable.*
- There was no name or logo on L's van to indicate L was a genuine company. Given this, I think Mr R should have sought some form of reassurance that L really was a genuine company offering the services he needed.*
- Mr R didn't receive a quote for the work that L was going to do or an invoice for the work that had been completed, which is unusual. I understand Mr R was also told that L didn't provide invoices. Genuine firms supply invoices, so I think Mr R ought reasonably to have had concerns about this.*
- One of the biggest red flags was that Mr R was asked to pay the account of a female who wasn't present and was told it was a worker's sister. This isn't how genuine businesses operate and ought reasonably to have led Mr R to be more cautious about what he was being told.*
- Mr R didn't complete any research into L to check it was a legitimate company or look at any reviews. He has said he saw L working at a local address, but he had no contact with the owner, meaning he didn't receive a recommendation.*

- Mr R has said L's name was on a skip at a local address, but skips can be hired so this didn't mean the workmen were from L.

Even though I've provisionally decided that Intelligent Finance can fairly rely on an exception to reimbursement, under the CRM Code Mr R may still be entitled to a 50% refund. The CRM Code sets out standards for firms – that is, what firms are expected to do to protect customers from the risk of fraud and scams. Where those standards are not met, the firm may be expected to compensate its customer to some degree. One of those requirements is that, where the firm has (or should have) identified that its customer is at risk from a scam, it should provide that customer with an Effective Warning, within the meaning of the CRM Code.

I'd normally like to see account statements for at least the six month period before the scam transaction. I only have statements in this case from December 2022 so have based my provisional decision on the statements I have. If Intelligent Finance disagrees with my provisional decision, it should provide additional statements. Mr R should be aware that these may change the outcome of this complaint.

I'm satisfied that Intelligent Finance should have recognised the £7,400 transaction was out of character and provided a warning to Mr R that met the minimum standards required by the code. The transaction was significantly larger than previous transactions on the account and was to a new payee so I think Intelligent Finance should have identified a possible scam risk. I appreciate that Mr R had made a significant transfer to an account in his own name but consider this should be treated differently to a transfer to a third party.

Intelligent Finance say that as the transaction was made online it didn't provide a warning. The requirement to provide an effective warning applies irrespective of whether a payment is made online, by telephone or in person. As Intelligent Finance says it didn't provide any form of warning, I'm satisfied it didn't meet its standards. In these circumstances, the CRM Code provides that Mr R should be reimbursed 50% of his loss.

When Mr R made the payment, Intelligent Finance should fairly and reasonably also have had systems in place to look out for unusual transactions or other signs that might indicate that he was at risk of fraud (among other things). I consider the £7,400 payment was unusual and out of character, for the reasons I have set out above. The significance of this finding is that I consider Intelligent Finance should pay interest on the 50% refund from the date of loss rather than from the date it made its decision not to reimburse.

When scams are reported firms should contact the bank that received the funds promptly to try to recover them. Intelligent Finance didn't do this because it deemed this to be a civil dispute. I've had the opportunity to see the receiving account statements and am satisfied this delay hasn't had an impact as funds were removed before Mr R reported what had happened to Intelligent Finance.

Overall, I provisionally think Mr R is the victim of a scam and that under the CRM Code he should be reimbursed 50% of his loss.

Intelligent Finance accepted my provisional findings, but Mr R did not. He raised various points about the lack of investigation by the police and how banks apply the CRM Code. Mr R also disagreed with my reasons for applying an exclusion to reimbursement. He said that he didn't know what more he could have done as he provided relevant information to the police and tried to speak to his neighbour who wouldn't answer his door.

Mr R commented specifically on the reasons I had given for not reimbursing in full and said they wouldn't stand up in court. He discussed the fact that L and his team left his house at around nine in the evening after completing the initial work and questioned what checks or research he could have done over the weekend when everything was closed. He felt that the price given by L was fair and said he wasn't under a legal obligation to get alternative quotes. And whilst L's van was unmarked, Mr R said most of the vans in the area are. In

respect of payment to an individual who wasn't present, Mr R said that he was told L didn't have a business account and it was a question of trust.

### **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 reviewed the responses I have received, my final decision is the same as my provisional decision, and for the same reasons.

On balance I'm persuaded Mr R was the victim of a scam. But I think it would be fair to apply one of the exceptions to reimbursement set out in the CRM Code because Mr R didn't have a reasonable basis for believing he was transacting with a legitimate business.

Mr R has raised points about why this isn't a civil dispute, but I won't go into these as I've already determined that although it's finely balanced, Mr R is the victim of an APP scam. The police investigation, or lack of, isn't something for this service to consider, and the points Mr R has raised about the actions he took after the scam aren't relevant when assessing his basis of belief at the time the payment was made.

Mr R says that because L's team left his property on a Friday evening, he was unable to complete any research that night or over the weekend. There were checks Mr R could have completed at any time though. In any event, Mr R delayed his payment so that funds left his account after the weekend and the work wasn't due to start for a few weeks.

The biggest red flag I raised in my provisional decision was the fact Mr R was asked to pay an account in the sole name of a female who wasn't present. I would expect a genuine business to have a business account to track its income and expenses, but Mr R has said that a representative of L advised it didn't have such an account. Particularly given that Mr R had nothing in writing from L and no business card, and Mr R was told that L doesn't give invoices, I consider he ought to have been concerned about transferring such a large amount of money to an unknown third party in a way that is outside of what I consider to be normal business practice. Mr R says he relied on trust, but I consider the trust was misplaced.

Some of the factors I have raised above swayed me in deciding that Mr R was the victim of a scam rather than determining that a legitimate trader failed to provide a service (which isn't covered by the CRM Code).

Whilst Mr R says L initially completed satisfactory work, I don't have any evidence in respect of this. L didn't provide an estimate, invoice or written communication outlining the work that was done and Mr R paid using cash he had available. And Mr R didn't complete any research into L before this work was started.

Overall, the only indication that Mr R had that L was a genuine company was that he says he saw a canvas skip which bore L's name at a neighbour's property. But Mr R didn't pay that business. Taking everything into account, I'm satisfied a 50% payment under the CRM Code is fair.

### **My final decision**

For the reasons stated, I uphold this complaint and require Bank of Scotland plc trading as Intelligent Finance to:

- Reimburse £3,700; and
- Pay interest on the above amount at the rate of 8% simple per year from the date of loss to the date of settlement.

If Bank of Scotland plc trading as Intelligent Finance considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr R how much it has taken off. It should also give Mr R a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 22 May 2024.

Jay Hadfield  
**Ombudsman**