

complaint

Mr S complains about the actions of Bank of Scotland Plc (BOS) when he was the victim of a scam in which he was tricked into buying a stolen car.

background

The detailed background to this complaint is well known to both parties. So, I'll only provide an overview of some key events here.

On 13 March 2019 Mr S bought a car from a private seller that he'd seen advertised online. Mr S split his payments between two accounts that the seller provided (both were sent from his account with BOS). In each case he also first sent a £1 'test' payment. Mr S then sent two payments for £11,800 – one went to a bank I'll refer to as 'N' the other to an account that was also with BOS.

Mr S returned home with the car and initially all appeared well. On 23 March 2019, N let BOS know that they had concerns about their customer's account activity following the payment Mr S had sent. They'd asked their customer questions but wanted some clarity from Mr S as to the purpose of the payment. They said they'd placed a block on their customer withdrawing those funds whilst seeking further information.

Upon receipt of this information from N, BOS checked the account held with them into which Mr S had paid half the money. But by this point, Mr S' funds had already been withdrawn. BOS also contacted Mr S and shared what N had said. Mr S confirmed that he had paid the money towards the purchase price of a car, which he had in his possession. But he explained he was yet to receive the original log book and was concerned that something might be amiss. He asked BOS to tell N not to release the funds to their customer.

A couple of days later Mr S had made further enquiries with the DVLA about the outstanding logbook. He says the seller had told him they'd contacted the DVLA, but the DVLA had no record of this. On that basis, he asked BOS to report this as an authorised push payment scam ('APP'). BOS initially reported this to N (and took steps in relation to the account held with them). But they later withdrew the APP notification, concluding that Mr S had the vehicle he'd paid for and there was (at that time) no evidence it was stolen or that any other scam or fraud had taken place. So on that basis they couldn't report this as a case of fraud, Mr S had parted with money and had a car in return.

Around this time Mr S had done even more to try to clarify the situation with the car. This included taking it to his local police station. They didn't examine his vehicle but checked it against their database and told him all appeared to be ok.

Around a month later, the police seized the car from Mr S' home address. It had come to light that the car was stolen, and it was a 'clone' of a genuine vehicle, this is why the extensive previous checks had appeared in order.

BOS notified N of the update but by this time the funds had been released to their customer and withdrawn. Mr S complained. He was unhappy that he'd specifically asked for the funds to be held and they hadn't. He feels that between BOS and N, someone should take responsibility for his loss.

One of our investigators considered this complaint and in summary didn't think BOS had done anything wrong. So, she didn't recommend that they ought to refund Mr S. Mr S disagreed and asked for an ombudsman to review his complaint. In March 2021 I issued a provisional decision in which I said:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I accept that Mr S has been the victim of a cruel and sophisticated scam and that he's acted in good faith throughout. What I need to consider is not whether Mr S has been a victim of crime – I accept he has. But whether (in the context of our services jurisdiction) BOS are responsible for any acts or omissions that mean they ought to reimburse his loss.

On the morning of the payments Mr S contacted BOS to inform them of his intent to make large payments from his account later that day. He explained he was travelling by train to purchase a car that he'd then be driving home. He didn't want the payments stopped, leaving him stranded. And in further conversations Mr S had with BOS, he explained in detail, all the checks he'd done to satisfy himself that the car he was purchasing was genuine.

It isn't in dispute that Mr S himself instructed these payments through his online banking and I consider these to be 'authorised payments'. And whilst BOS do have the ability to stop payments where they have grounds for suspecting fraud or the misappropriation of funds, I don't think they had reason to do so in this case. Mr S provided a valid reason for the payments and given the extensive checks he'd made, I don't think that even if BOS had intervened that they could have said anything at that point that would have resulted in the discovery that the car he was buying, was actually stolen. The car was later checked with the police, and the true status of the car still wasn't discovered. So overall, I don't think BOS were at fault for allowing these payments to be made.

Once N had contacted BOS, they spoke to Mr S to confirm the nature of his payments. This was 10 days after the payments had been made. BOS noted that the money paid into the beneficiary account with them, had already been withdrawn. BOS initially reported this to N as APP fraud, shortly afterwards they withdrew this and said that Mr S had received goods (the car) for his payments. And despite Mr S' suspicions, there was no evidence (at that time) that the car was stolen or that he'd been a victim of fraud.

I don't think these actions by BOS were unreasonable or unfair based on the information available to them at that time. There can be serious consequences for one bank telling another that a payment has been made as a result of fraud or a scam. So, a bank must have good grounds for believing this. The money that was sent on 13 March 2019 arrived in the beneficiary accounts the same day. The transactions had already taken place. So, this isn't a case of trying to stop a pending payment or similar. It was a case where N had placed a temporary hold on that money (that was already in that account) until they were satisfied their customer was entitled to it and were checking with BOS why the payment had been made.

So whilst I can well understand Mr S' frustration that his gut feeling (which was later proven to be correct) that something was wrong, wasn't acted upon. There simply wasn't enough objective evidence at that time to support that a genuine transaction had not taken place and to justify BOS reporting to N that the payment was as a result of a fraud or scam. Mr S was in possession of the car, the car registration was even checked with the police and initially

found to be ok. Even though Mr S had said the DVLA had confirmed they'd not heard from the seller, this isn't sufficient to show that he'd been a victim of fraud. Ultimately, Mr S had sent money and had received a car. And I appreciate he took all the reasonable steps he possibly could have done, but at that time he was unable to evidence that fraud or a scam had taken place or that more than a delay in receiving the original log book was what was happening.

Once the car was confirmed by the police as stolen, BOS acted promptly by informing N. But as already mentioned by the time this happened, all of Mr S' funds had already been withdrawn from both accounts.

Mr S has also questioned whether BOS did all they should in allowing the beneficiary account with them to be opened by a scammer. And whilst I can't share the detail of the evidence provided by BOS or the third party's information with Mr S, I am satisfied that there was nothing surrounding the opening of the account that could have prevented his loss. I don't believe BOS missed an opportunity to prevent the fraud in this way.

I'm sorry to hear Mr S has been a victim of crime in the way he has. But as I don't think BOS are responsible for his loss, I can't fairly ask them to reimburse all or part of it."

Mr S acknowledged receipt of my provisional decision but didn't provide any further comments. BOS didn't respond to my provisional decision. Now both sides have had an opportunity to comment, I can go ahead with my decision.

my findings

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. As neither party had any further comments or evidence for my consideration, I see no reason to deviate from the outcome set out in my provisional decision.

my final decision

For the reasons outlined above, 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 15 May 2021.

Richard Annandale
ombudsman