

## **complaint**

Mr S has complained that Bank of Scotland plc has refused to refund him a deposit of £5,105 taken by a third party, which he says he didn't authorise.

## **background**

Ms S was interested in buying a property, and put in a bid for £31,000. The vendor didn't accept this, but did accept a higher sum of £32,000. Mr S has explained he didn't authorise for the deposit of £5,105 to be taken from his credit card in respect of the higher sum, and that he specifically told the merchant it wasn't to be. When he discovered it had been, he contacted Bank of Scotland to ask that the money be refunded. It looked into matters, but declined to do so.

Our adjudicator didn't recommend that the complaint should be upheld. This was because he didn't feel Bank of Scotland had had enough information to show the payment hadn't been authorised. He also noted that Bank of Scotland couldn't refund Mr S under section 75 of the Consumer Credit Act 1974, because the full cost of the goods fell outside the financial limits of that section.

Mr S disagreed, and said there's no evidence he authorised the payment.

His complaint's been passed to me for my final decision.

## **my findings**

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 agree with the adjudicator. Mr S gave his card details to the merchant for paying the deposit. He's explained that that was only for the £31,000 bid, which wasn't accepted. But a later increased offer of £32,000 was accepted, as is clear from the email chain I've seen. So on balance, I think Mr S would likely have authorised that the deposit be taken for this sum too, given that it was how he'd secure the property. Or in other words, he gave his card details so the deposit could be taken on his winning bid.

I'm aware that Mr S has explained he called the merchant three times to say it shouldn't take the deposit. But I've seen no evidence of this to persuade me, on balance, that this happened. The merchant has said Mr S didn't call it and I have no record of the calls.

Mr S also feels Bank of Scotland didn't adhere to its terms and conditions. These say:

*"You will not have to pay us anything for any unauthorised transactions on your account made by someone other than you or an additional cardholder unless we can show that you gave someone your card or security details to make the transaction."*

Mr S has explained that there's no evidence he gave authority for the deposit to be taken in respect of the higher, successful offer. But I think, on balance, that Mr S had given his authority for the deposit to be taken for a successful bid, for the reasons given above.

He's also pointed out that in one of its letters, Bank of Scotland refers to the transaction not being authorised. Although I accept this, and think the wording was unfortunate, I feel it was

in the context of the investigation not having been completed. Once it had been, Bank of Scotland changed its view. This was an exercise of its commercial judgment, and I don't feel this was inherently unreasonable, although it must have been very disappointing for Mr S.

I understand that Bank of Scotland has paid Mr S £100, as it accepts it didn't deal with his complaint as well as it should have. I feel this is fair.

**my final decision**

For the reasons given above, it's my final decision not to uphold this complaint. I make no award against Bank of Scotland plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 24 June 2016.

Elspeth Wood  
**ombudsman**