

complaint

Mr G complains that Bank of Scotland plc (BoS) won't refund several transactions made on his credit card, which he says he didn't make or authorise.

background

Mr G's complaint involves a complicated background with several business and professional relationships relevant to what's happened. For ease of understanding the following table summarises who's who:

Mr G	The complainant and holder of the BoS personal credit card used to make the disputed transactions
Company I	An electrical engineering business for which Mr G was a Director
Company F	Mr G's financial brokerage business
Mr R	Mr G's employee – he worked for Company F
Company M	A building development firm for which Company F brokered a loan with Company A
Company A	A financial intermediary/commercial money lender that lent to Company M
Mr J	A Director of Company M and Company I

On 6 December 2017 someone using Mr G's Company F email address sent an email to Company A, which read:

"[Company M are having problems, I] contact you to see if you would be kind enough to leave the payment due today for payment late Monday afternoon as the problems should be sorted by then. If you are not happy with this, do let me know and I will make payment to you personally on my credit card ..."

On 11 December 2017 someone using Mr G's Company F email address emailed Company A with his BoS credit card details. The email read: *"as promised please find my credit card details so payment can be taken for the amount agreed ... please call me for security number"*. A transaction for £3,000 debited Mr G's account later that day in favour of Company A.

Company A sent an email to Mr R a week later, on 18 December 2017, which said:

"... I hope you're well and have passed on your requests for your credit card details not to be used in respect to payment on behalf of [Company M]."

A month later a transaction for £2,200 was made to a software publishing company using Mr G's BoS credit card. And another £3,000 debited the account to Company A. These transactions appeared on the statement dated 19 January 2018.

On 1 March 2018 another transaction, this time for £4,400, was made to Company A.

Later in March 2018 Mr G changed the name on his business bank account (not held with BoS) from "Mr G" to "Company F/Company M".

Someone on behalf of Company M wrote to Company A in March 2018 stating that Mr G's card had been used *"in error"*, and that the amount of £4,550 was now subject to a chargeback. They offered £27,500 to clear the loan and said no chargeback requests would

be made in respect to other card payments *“made on the company credit card of [Company M]”*. The amount of £4,550 related to a payment made on another of Mr G’s personal credit cards (that transaction, along with others, is the subject of a separate complaint that I’ll address in a separate decision).

According to the Companies House register Company M went into administration in early April 2018 (Mr G says this didn’t happen until later, on 19 April).

On 9 April 2018 Company A emailed Mr G’s employee, Mr R. They said that they’d accept £27,500 in full and final settlement of Company M’s outstanding loan. The offer was subject to no further chargebacks on credit card payments previously made. Mr G, on behalf of Company M, then paid Company A the final settlement amount from his business bank account.

On 19 April 2018 Mr G contacted BoS to dispute the payment to the software publishing company, and in July 2018 Mr G disputed the second and third payment to Company A (he didn’t include the first transaction for £3,000). In his letter dated 9 July 2018 he said, *“I have sent a number of notices to you on these matters and can only assume they have either been ignored or not received but find the later unlikely as notice was attached to payment”*.

BoS advised Mr G that he was out of time to raise chargeback disputes for these payments under the card scheme rules.

Mr G complained saying that he’d written to BoS after seeing his January 2018 statement asking them to cancel the card because he didn’t recognise the transactions and didn’t have time to telephone. He also explained that Company I’s Secretary had been helping him manage his finances.

BoS didn’t uphold Mr G’s complaint as they found no evidence he’d raised his disputes in time. They said if he’d had concerns about fraud he should have taken steps to cancel the card. Although they couldn’t find a recording of the relevant call, they apologised for any suggestion made by staff that he’d receive a refund of these transactions.

What Mr G told us

Mr G explained that his business, Company F, brokered a loan for a building firm, Company M. The loan came from Company A. He said that when Company M fell into financial difficulty, Company F were approached by Company A to help secure re-payment. He said he had no agreement with, or re-payment obligations to, Company A.

He also said the following:

- At the end of 2017, beginning of 2018, his *“account was being facilitated”* by staff working for Company M and Company I.
- A copy of his BoS credit card was kept in an office cabinet in case it was ever needed in his absence.
- Mr R, a colleague, was being *“bombarded”* with requests for payment by Company A so Mr G told Mr R *“to provide my card details as security”*.
- *“My personal card should not have been provided, but the business card”*.
- Mr R *“did not have permission to give my card details to anyone”*.
- *“My card was given without my knowledge or consent as security to the merchant”*.

- Company F paid the balance of Company M's loan *"on the strict understanding that the card payments were refunded ... the settlement paid was on the basis that all any [sic] transactions on my card were refunded."*
- *"I gave my card to one merchant as security, this did not authorise or sanction a payment to be taken and does not excuse the further payments which BoS should have prevented"*.
- Mr R was dismissed *"as a result of his actions"*.
- BoS allowed further transactions to Company A after he'd reported his dispute – he explained he contacted BoS on becoming aware of the first transaction as he didn't recognise the name Company A came up as on his credit card statement.
- He was told by BoS around 2 August 2018 that he'd receive a full refund of the disputed transactions.
- As neither Company A nor the software publishing company dealt with him directly or provided him with any goods or services he should be refunded.

Mr G also provided us with a letter from Company A to Mr G's legal adviser which said the transactions on his BoS credit card had been initiated on the understanding that the payments were being made by Company M. In that letter, Company A confirmed Mr G had never been indebted to them.

Our investigator's view

Our investigator didn't uphold Mr G's complaint. She thought it more likely than not Mr G had authorised the disputed payments or permitted his colleague/s to do so on his behalf. She said it was likely Mr G knew about the transactions and was happy with them at the time because he waited such a long time before disputing them. She didn't find any evidence that BoS had continued to allow payments to Company A after Mr G raised his dispute.

Mr G didn't accept this. He said he didn't give consent or have knowledge of someone else using his credit card. He explained that in the absence of the company credit card he'd said his personal credit card could be used so long as on each occasion his permission was asked first. He said at no time did he give authority for any staff to get the copy of his card from the cabinet where it was kept, without his knowledge.

He added that he'd had Mr R traced abroad and that he'd provide a statement about what happened. He said Mr R had admitted to providing Company A with Mr G's credit card details in error. Mr G said there is no reason he'd authorise the use of his card to pay someone else's debt. He provided a letter from Company I's Secretary addressed *"to whom it may concern"*, dated April 2018, explaining that the use of Mr G's credit card had not been authorised by him. She said she'd been appointed to ensure payment of Mr G's credit card bills while he was out of the country and that someone may have taken a copy of Mr G's credit card while she wasn't looking.

Further information

Due to the complex business and professional relationships involved in this case I asked Mr G to explain more about his business, his relationship with Company M, and who Mr R is.

Mr G explained:

- Company F sourced a business loan for Company M from Company A. He agreed to get involved with funding a large project on the basis that a new company would be

set up which they would take a stake in “so to ensure all repayments were made as any issues would affect our credibility with our lending partners”.

- Company M asked him to give Company A some form of security until some funds they were expecting cleared. Having been provided with proof of funds by Company I's Secretary (who was also employed by Company M) he told Mr R to reassure Company A that payment in full would be made.
- Mr R was an employee of Company F and was the account manager for Company M; he arranged the loan from Company A.
- He had looked to take over and run a number of contracts run by Company M and so changed the name on his business bank account in March 2018 to reflect Company M's name, as well as that of Company F, for continuity of invoicing. However, he didn't end up taking over any of Company M's contracts.
- He believes Mr R was pressured by Mr J to give Company A his credit card details to clear Company M's overdue payments.
- Company I's credit card should have been used, not his own.
- While Mr G was out of the office Mr R would have had access to Mr G's business email address and would have been able to send emails from there. He believes Mr R accessed his email and provided his card details to Company A.
- He doesn't know who gave his card details to the software publishing company but he suspects it was Mr R or “someone in the office”.
- Mr R didn't provide a promised statement, has left Company F and his mobile phone is no longer connected.
- The office where a copy of his card was kept was the shared office of Company M and Company I.
- His BoS card could be used for any business-related expense for Company F only.

I also asked Mr G to explain why he's often communicated with us from a personal email address (i.e. one not associated with Company F) in the name of Mr R. Mr G explained that he diverts his emails to Mr R when he's not in the office and so his replies to our emails will sometimes come out from Mr R's personal email.

Other available information

To better understand the relevant relationships I've looked to publicly available information such as the edited electoral roll, historic domain registration records, the Companies House register, and also information we hold on file. I think the following information is relevant:

- There are some records relating to Mr R that can be linked to Mr G – for example, records for Mr R give Mr G's home address – in 2015 and 2018.
- Records suggest Mr G uses several variations of his name.
- Website domain registration records show Mr R, not Mr G, as the registered owner of Company F's website.
- Mr G was a Director of Company I until May 2018. Company I's previous registered address was the subject of a charge registered against Company M.
- Company I shared at least three company officers with Company M.
- Mr G has previously made a witness statement for court proceedings giving his address as an address which was the registered address of Company M from August 2017 to April 2018.
- In that witness statement, dated June 2018, he said he'd agreed to be a personal guarantor for another of Company M's loans for a short period, and that he'd made payments towards that loan when Company M faced difficulties.

- The signature of Mr R's Company F email address gave a mobile telephone number which is the same number Mr G has given us to contact him on.
- Mr G corresponded with us from Mr R's personal email address (i.e. not one associated with Company F) in February 2019, July 2019 and August 2020.
- Mr G has disputed another transaction on a different personal credit card to Company A – this happened in January 2018.

my provisional decision

I issued a provisional decision on 23 October 2020. In that decision I acknowledged that when considering what is fair and reasonable, I am required to take into account: relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time. I'll set out the relevant considerations below.

Of particular importance to my decision about what is fair and reasonable in the circumstances of this complaint, are the Payment Services Regulations 2009 (the PSR 2009) and 2017 (the PSR 2017) which apply to transactions like the ones Mr G disputes. The PSR 2009 applied to transactions made before 13 January 2018, and the PSR 2017 apply to transactions made on or after that date. Among other things the PSR 2017 include the following (similar wording was used in the PSR 2009, Regulation 55):

Regulation 67 of the PSR 2017 explains:

67.—(1) A payment transaction is to be regarded as having been authorised by the payer for the purposes of this Part only if the payer has given its consent to—

(a) the execution of the payment transaction; or

(b) the execution of a series of payment transactions of which that payment transaction forms part.

Whether a payment transaction has been authorised or not is important because account holders will usually be liable for payments they've authorised and, generally speaking, banks will be liable for unauthorised payments.

Where credit is involved, as in this case, the PSR 2017 (and the PSR 2009) make provision for the Consumer Credit Act (CCA) 1974 to apply in place of certain sections of the PSR. These provisions can't be excluded by the account terms. A consumer's liability for payments involving a credit facility is therefore set out in section 83 of the CCA 1974.

Section 83 of the CCA 1974 says that a consumer isn't liable for "*any loss arising from use of the credit facility by another person not acting, or to be treated as acting, as the debtor's agent.*"

The PSR 2017 also include information relevant to when a payer wishes to revoke a payment order. Regulation 83 (in the PSR 2009, Regulation 67) says:

83.— ... (2) In the case of a payment transaction initiated ... by or through the payee, the payer may not revoke the payment order after ... giving consent to execute the payment transaction to the payee ...

Terms and conditions of Mr G's account

The terms and conditions of the credit card agreement included the following:

“A2. Using your credit

We will provide you with a card and security details soon after opening your account. You must keep them safe as they give access to your credit ...

“B2.1 Keeping your card safe

You must:

- follow instructions we give you that we reasonably consider are required to protect your card and security details from unauthorised use;*
- not use your card for anything illegal or for any business purpose;*
- not let anyone else give instructions or access information on your account unless there is a separate arrangement with us or they are a [Third Party Provider];*
- keep your card secure and protected from damage;*
- if there is a place for signature, sign your card as soon as you receive it; and*
- do all you reasonably can to prevent anyone else finding out your security details.”*

Having set out the relevant considerations in 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. Having done so, I’m not minded to uphold Mr G’s complaint. I’ll explain why.

Taking into account the above relevant considerations, I think the key question here is whether Mr G, or someone that can be treated as acting as his agent, made the disputed transactions.

Authorisation isn’t limited to transactions for which explicit permission has been given; BoS would also be entitled to hold Mr G liable for any transactions which were done by someone to whom he gave authority to act on his behalf. In other words, if a payer has permitted the use of his payment instrument by a third party (an agent) so that it looks to the bank like the payment transaction has been authorised by the payer, the payment can be considered authorised for the purposes of the PSR 2009 and 2017.

That isn’t to say that Mr G would be responsible for any transactions where the payment instruction received by the bank is indistinguishable from one he gave actual authority for. For example, a payment transaction carried out by someone who’d stolen Mr G’s card details would still rightly be described as unauthorised, even though it might have the same appearance from the bank’s perspective as a genuine transaction.

The important consideration here is what part Mr G played in permitting the transactions he disputes. So, I’ve thought about whether Mr G authorised these transactions himself or whether by his actions Mr G held Mr R, or another agent, out as having his authority to make payment transactions using his credit card.

The first thing to say is that Mr G’s relationship with Company M seems to be more involved than he initially suggested. He wasn’t just a broker or ‘middle man’ between

Company M and a creditor, but someone who seems to have felt some obligation to ensure the repayment of Company M's loan. And there's evidence he was interested in the fortunes of Company M. He's used a registered address of Company M as his own in the past, there's evidence he agreed to act as personal guarantor for another loan, and he's said he was planning to take over some of Company M's business at one point. That's why he changed the name of his business bank account to include Company M's name. In these circumstances I'm minded to think that the emails to Company A, purporting to be from Mr G and offering credit card payments towards Company M's debt, are likely to be genuine.

Mr G has said that the emails are not genuine and that they were probably sent by one of his colleagues, Mr R. But I'm not persuaded that's likely. I say this because I can't see a reason why Mr R would have needed to pose as Mr G. Mr R was already in communication with Company A as the relevant account manager. And he had Mr G's permission to offer a credit card to Company A as security even if there was some confusion about which one. So, posing as Mr G to offer Company A 'security' for Company M's loan would have been unnecessary.

Aside from alleging that the emails aren't from him, Mr G has been inconsistent about who gave his card details to Company A as 'security'. He's said that his card was given to Company A without his knowledge and consent, but he's also said he gave his card "as security". This inconsistency has added to my finding that the emails are, more likely than not, from Mr G.

Another aspect of this case that leads me to think Mr G knew about and authorised the disputed payments is the length of time that passed before he disputed them. The transactions happened between December 2017 and March 2018 but there's no evidence that Mr G raised his disputes until April 2018 (the transaction to the software publishing company) and July 2018 (the transactions to Company A). There's similarly no evidence that BoS allowed further payments to Company A after Mr G had raised his dispute. And when he did dispute the payments to Company A, he didn't initially dispute the first one – the one that took place on 11 December 2017.

I think this delay might be due to the fact that negotiations between Company M and Company A, and Mr G/Company F were ongoing until April 2018. From the correspondence I've seen it seems that the figure for settling Company M's loan was reached on the understanding that there would be no further chargebacks on credit card payments previously made. Why Mr G then decided to approach BoS in July 2018 about refunding the payments to Company A, I can't be sure. Perhaps he'd been reassured that he wouldn't need to pursue chargebacks because he'd be refunded by Company M.

But Company M went into administration on 4 April 2018. I can also see that Mr G made a witness statement for court proceedings in mid-late 2018, and that statement suggested his relationship with Mr J/Company M had begun to breakdown. So, by July 2018 I expect Mr G had lost any hope of recouping his money from Company M.

As I've said, I'm minded to think it's more likely than not Mr G gave his actual authority for Company A to initiate payments on his BoS credit card. However, if I'm wrong about that, and it was "someone in the office" that provided his card details to Company A, I still don't think the transactions could be fairly categorised as unauthorised. This is because Mr G left a copy of his BoS personal credit card in the

office for his colleagues to use. He's said a copy of his credit card was kept in an office cabinet in case it was ever needed in his absence. He explained that his personal credit card could be used for Company F business-related expense so long as on each occasion his permission was asked first.

By permitting his colleagues, including Mr R, to use his BoS credit card in this way, I consider that Mr G gave them the status of his agents. If his colleagues went further than Mr G intended by providing his card details to Company A and the software publishing company, I can see why Mr G feels wronged. But I think it's fair that BoS hold him liable for the spending of those persons he made his agents.

I also note that Mr G has given us conflicting information about Mr R. He's said that he dismissed Mr R after he became aware that Mr R had given Company A his BoS credit card details (in 2018). He's also said that Mr R is no longer contactable. Yet Mr G has used a personal email address of Mr R's to correspond with us as recently as August 2020. His explanation is that he diverts his emails to Mr R when he's not in the office. But diverting emails to a colleague you've dismissed and who you suspect of causing you a significant financial loss seems an odd thing to do.

Because of this I've thought carefully about whether Mr R is actually an alias for Mr G. This would explain why Mr R seems to own the domain name for Company F and has given Mr G's home address as his own in the past. It would also explain why Mr G has corresponded with us from Mr R's personal email address. If Mr R is an alias of Mr G then in either guise I think he gave his consent to these transactions. But if he's not, and Mr R is a genuine employee of Company F, it's clear that they are very closely connected. And I think these connections increase the likelihood Mr G permitted Mr R to make these transactions on his behalf.

Finally, I've considered the email Company A sent to Mr R on 18 December 2017, which referred to a request for Mr R's credit card details not to be used in respect to Company M. But I don't find this email sufficient evidence that Mr G asked for his BoS credit card not to be debited by Company A in January 2018 and March 2018. If he had made this request I think he'd have been quicker to challenge the transactions which came after the date of that email. And as I've said, there is no evidence that Mr G disputed these payments until July 2018.

Overall, I provisionally find that Mr G, either directly or through those he'd given the status of his agent, gave his consent to the execution of the payment transactions he disputes. I therefore find BoS is entitled to hold him liable for them."

responses to my provisional findings

In response to my provisional decision BoS agreed with the outcome and said they had nothing further to add.

Mr G didn't accept what I'd said. He said leaving his card details in the office should not make him liable for the transactions, and added that he "*did not expect the abuse of [his] credit card to be carried out by people [he] trusted*". He said Mr R is not his alias and explained that the domain name for Company F's website is registered to Mr R because Mr G doesn't "*get involved in such matters*".

He reiterated that the settlement figure Company M agreed with Company A was reached on the basis that previous payments made by Company M, either on the company card or a personal card, would be charged back to the cards. He also provided some further evidence.

Telephone calls

Mr G provided an itemised telephone bill for his home landline relating to the period 11 January to 9 February 2018. He said this proves he called BoS, *"in respect to the concerns I had over the unauthorised transactions with merchants I had never had any dealings with."* The telephone bill included calls to numbers associated with BoS on 13 January, 20 January, 29 January and 3 February.

For reference, the disputed transactions debited Mr G's account on 11 December 2017, 8 January 2018, 12 January and 1 March.

I asked BoS about these calls, but they were unable to locate any recordings or notes from those dates. They explained that the calls don't appear on the credit card system. They said it's possible Mr G called them on these dates, spent some time on hold and ended the calls before speaking with staff. But they also explained that they changed their telephony system in 2018, and that not every call to them is recorded.

Statement from Mr R

Mr G also submitted a statement from Mr R, acquired through a private detective. In the statement Mr R said:

- He worked for Company F and from the offices of Company I.
- He worked with suppliers who requested payment and was asked *"to use the company credit card as security, in Mr G's name, whilst he got [the company secretary/Mr J] ... to directly settle these liabilities."*
- *"At no time did I intend to use the personal credit card of Mr G, and only used the details as provided to me by [the company secretary] ... I am of the view that Mr G's card was deliberately provided to me ..."*
- He didn't make all of the disputed transactions and Mr G was not aware of them either.
- *"... the card details must have been provided by someone else in the office, who had access to the credit cards of Mr G without his knowledge and consent."*

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 do not uphold Mr G's complaint.

For all the reasons set out in my provisional decision (reproduced above) I still think it's more likely than not that Mr G either made the disputed transactions himself or, by his actions, authorised someone else to make them.

I remain of the view that Mr G's complex relationship with Company M and his interest in Company M's fortunes, make it more likely than not the emails sent to Company A from Mr G's email address, offering payment on his personal credit card, are likely to be genuine.

Although there's been inconsistency in what he's said, Mr G has indicated a number of times that *he* gave his card to Company A as "*security*". I think he did so in the expectation that Company M would reimburse him from funds it was about to receive.

I've thought carefully about whether the telephone bill evidence Mr G has provided shows that he disputed the payments to Company A, or the software publishing company, earlier than April 2018 (software publishing company) and July 2018 (the payments to Company A). If he did dispute them close in time to when they happened that might indicate that someone did them without his involvement.

It is unfortunate that BoS can't provide any detail of what these calls were about. But that doesn't mean I must assume they were about disputing the payments. Because the calls to BoS listed on Mr G's itemised bill took place on or after 13 January 2018, I accept it's possible that he called to dispute the first payment to Company A, the payment to the software publishing company and the second payment to Company A. He might even have asked that no further payments be allowed towards Company A. But if that's what happened, I'd expect BoS to have at least some notes about at least one of these calls on the credit card system. I'd also have expected Mr G to react more swiftly when the third payment to Company A debited his card on 1 March 2018.

But the credit card contact notes have no entries between 27 November 2017 and 26 February 2018 except for an automatic memo about an address change. And the card issue history shows that there were no new cards issued for this account between September 2017 and 18 May 2018. So, although I can't say what Mr G called BoS about on 13 January, 20 January, 29 January or 3 February. I'm not persuaded it was to report any unauthorised use of his card.

I also note that Mr G told BoS that after noticing the payments on his January 2018 statement he sent them a letter to cancel the card because he didn't have time to call. That's inconsistent with what he's now saying the telephone bill evidence shows. It also strikes me that there were £5,200 of disputed payments on that January statement. So, writing would be an unusually relaxed way to raise fraud concerns. And if he did call or write to BoS, I'd question why Mr G didn't follow that contact up because it would have been obvious to him that BoS hadn't cancelled his card. I can see that it continued to be used for transactions towards the end of January 2018 and in February.

I'm also mindful that Mr G continued to have a professional relationship with Company M into March and April 2018 – this is when he changed the name on his business bank account to include Company M's name and paid the settlement figure to Company A through that bank account. And I think it's unlikely he'd have done that if he'd really had no knowledge of the transactions, had disputed them with BoS, and thought Mr R had been pressured or duped into using his personal credit card to repay Company M's loan.

So, on balance, I'm still not persuaded that Mr G disputed any payments towards the software publishing company or Company A before April 2018 and July 2018 respectively. This delay contributes to my finding that it's more likely than not Mr G knew about these transactions at the time and gave his actual authority for them.

Turning to the statement Mr G has provided from Mr R, I don't find this sufficient evidence to change what I said in my provisional decision. Although I accept the statement indicates Mr R is not an alias for Mr G, I still think, if someone other than Mr G made these

transactions, it was a colleague or colleagues who Mr G had clothed with his apparent authority to transact by allowing them to access and use his personal card.

Mr G hasn't been consistent in what he's said about the access colleagues had. But what he's said suggests they had access and his permission to use the card in a limited way, and went beyond what he expected. He's described what happened as an "*abuse of trust*". But not knowing about the transactions, doesn't mean the transactions on the BoS card were unauthorised. I still think Mr G permitted Mr R and other colleagues to use his card. If they then mixed up which card they used for which transaction or made more transactions than Mr G was aware of, I think that's a risk Mr G exposed himself to.

In conclusion, on the balance of the evidence, I think it's more likely than not that Mr G made or otherwise authorised the transactions that he disputes. On that basis, I find BoS's refusal to refund Mr G fair and reasonable.

my final decision

My final decision is that I do not uphold Mr G's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 9 March 2021.

Beth Wilcox
ombudsman