

## **The complaint**

Ms A is unhappy that Bank of Scotland Plc won't reimburse money she says she lost to a scam.

## **What happened**

Ms A was looking to purchase a number of mobile phones on a popular online marketplace. She found a seller and placed an order for various items. I understand that at least one of the phones was successfully received. The seller explained that they could source more phones at reasonable prices. Ms A agreed to purchase a batch of phones, believing that she could sell the phones at a profit in another country. Ms A made two payments for the phones, totalling £4,420, a few days apart in February 2018.

Unfortunately, the phones didn't arrive and the seller stopped responding to Ms A. Ms A says she reported the matter to BOS at the time but didn't raise a complaint until several years later.

BOS said that it had considered the complaint in line with the Lending Standard's Board Contingent Reimbursement Model Code ("CRM Code") even though the event predated the introduction of the CRM Code, which requires signatories like BOS to reimburse victims of APP scams like this one in all but a limited number of circumstances. However, it didn't think that Ms A had taken sufficient care when making the payments, so it declined to reimburse her.

Ms A referred the matter to our service but one of our investigators didn't uphold her complaint. They didn't think that BOS ought to have recognised the payments she made as being suspicious. But, even if they had, it's unlikely that BOS would have had any concerns about the transactions, given that Ms A had already successfully received an item from the seller.

Ms A didn't agree, she thought that the payments, considering her previous account activity, ought to have stuck out as being unusual and should have caused BOS to contact her before they processed the payments.

As no agreement could be reached, the case was passed to me for a final 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.

The starting point in law is that Ms A is responsible for payments she's authorised herself. As noted, the events here pre-date the introduction of the CRM Code and I cannot take its provisions into account. But taking into account the law, regulators' rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider BOS should fairly and reasonably have been on the lookout for out of

character and unusual transactions and other indications that its customer might be at risk of financial harm from fraud.

I'm afraid that I cannot agree that these payments ought to have caused BOS significant concern. The first payment was for just over £3,000 and, although a little higher than payments she'd made in the previous six months, it wasn't such an unusual or out of character amount that it ought to have caused BOS significant concern. The payments were also several days apart and the second payment was smaller than the first, so I cannot see that BOS would have been able to identify a concerning pattern.

So, I don't think that BOS ought to have picked up on the transactions as unusual. But, even if it had discussed the payments with Ms A, it's difficult to see why it would have been concerned about them as Ms A had already successfully received a phone from the seller and her friend had visited the seller's home.

Finally, I've thought about whether BOS could have recovered Ms A's money. I can't see that it made any attempt to do this, but I can also see no record of Ms A having reported the matter to BOS in 2018. Given the time that has now passed, I can't see that BOS would have any realistic possibility of recovering her funds and I don't think it is reasonable to expect BOS to now attempt recovery. And, even if Ms A did raise a claim with BOS at the time, given there appears to be a gap between Ms A making the payment and deciding that she'd fallen victim to a scam, it seems unlikely any funds would have remained in the recipient account.

I know this will be very disappointing for Ms A but I do not find that BOS are responsible for her loss.

### **My final decision**

For the reasons I've explained, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms A to accept or reject my decision before 5 January 2024.

Rich Drury  
**Ombudsman**