

The complaint

Mr C and Mrs C hold a current account with Bank of Scotland plc. In March 2022, a fraudster tricked Mr C into paying just over £7,000 from this account to buy a motorbike which Mr C never received.

Mr C thinks that Bank of Scotland should have spotted the fraud and stopped him making the payment. It didn't, so he wants it to refund him the money he lost.

(Although Mr C and Mrs C brought this complaint to us jointly, most of the relevant events only involved Mr C, who also handled most of the correspondence. I have therefore generally referred to Mr C alone in most of this decision).

What happened

Mr C found the motorbike for sale online and contacted the “*seller*”, who turned out to be fraudulent. They discussed the motorbike via email, and the fraudster convinced Mr C that the bike was real, and he was a genuine seller. They agreed the price.

The fraudster gave Mr C details of an account he held with a payment service provider to which he should send the money. The account was overseas, but the fraudster gave Mr C convincing reasons for this. Mr C tried to send the money through the counter service in one of Bank of Scotland's branches, but the payment failed and was returned. (Mr C did not lose any money as a result of this attempted payment, but it provides context and background to what happened afterwards).

Mr C contacted the fraudster about the failed payment and the fraudster provided him with different account details, with a different payee, but again for an overseas account. Around five days after Mr C's first attempt to pay, he went back to the Bank of Scotland branch and tried again, still using the counter service. This time the payment went through.

The fraudster had told Mr C that he would send the motorbike to him through a courier service, but the bike never arrived. When Mr C realised he had been the victim of fraud he went back to the Bank of Scotland branch and asked if it could get his money back for him. It tried to do so but failed.

One of our investigators has already looked into Mr C's complaint and didn't recommend that Bank of Scotland should refund him any money. Mr C didn't agree with the investigator's findings and asked for his complaint to be reviewed. So, it has come to me as an ombudsman to make 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.

Firstly, I would like to say how sorry I am to hear about what happened to Mr C at the hand of the fraudster. As well as causing financial loss, frauds are always very upsetting, and Mr C has my sympathy for the harm the fraudster caused him.

There are two main points to Mr C's complaint, the first is whether Bank of Scotland should have spotted the fraud and stopped him sending money to the fraudster, and the second is whether it should have done more to recover his money once he told it about the fraud.

Should Bank of Scotland have spotted the fraud and stopped the payment?

There is no doubt that when Mr C made the payment, he only did so because of the dishonesty of the fraudster, but he effectively instructed Bank of Scotland to send the money for him. Frauds of this type are often called *Authorised Push Payment (APP)* frauds.

While banks are normally expected to act on their customers' instructions, APP frauds are a significant concern in the banking industry and at the time of Mr C's payment, I would have expected Bank of Scotland to be looking out for anything noticeably unusual. And if it saw anything worrying about a customer's payment, or pattern of payments, I would have expected it to check if the payment was legitimate by asking the customer questions about it to help the customer judge if it could be a scam. The decision to go ahead or not would then normally lie with the customer.

Both parties agree that Bank of Scotland considered Mr C's payment to be unusual and that its counter staff checked it with him before proceeding. But they disagree about the nature of the questions which Bank of Scotland asked and the value of its checks. Bank of Scotland considers its checks to have been proportionate and appropriate for the circumstances, but Mr C doesn't. He thinks that Bank of Scotland should have been more "*rigorous*", and that if it had been, it would have discovered the fraud and he would have stopped the payment.

Obviously, I can't tell exactly what questions Bank of Scotland asked Mr C, what answers he gave and what else the conversation covered. On some points, Mr C and Bank of Scotland disagree directly. For example, Bank of Scotland has told us that Mr C said he knew the person who was selling the motorbike, but Mr C has told us that this is "*ludicrous and untrue*".

Bank of Scotland has sent us a checklist of some of the questions it says it asked and also described some of the conversation. Amongst other things, I consider it likely that Bank of Scotland asked Mr C why the details of the account had changed after his first attempt to send the payment, and why he was buying the motorbike without having seen it. (Indeed, it has told us that it asked the second question several times). Bank of Scotland has told us that Mr C said the new account belonged to a friend of the seller and that he knew the motorbike was genuine without having seen it. It has said that overall Mr C was "*very insistent that everything was OK*" and so it followed his instruction to send the payment.

Mr C has suggested some alternative questions that Bank of Scotland could have asked. I accept it *could* have asked these. However, in the circumstance of this complaint, I think the questions it did ask and the discussion it seems to have had amounted to reasonable checks.

Mr C has also said that Bank of Scotland should have checked the invoice the fraudster had sent him and had it done so, it would have spotted the fraud. I don't agree with this. I have seen a copy of the invoice and I am not convinced that it was sufficiently unusual to look fraudulent to Bank of Scotland.

Similarly, Mr C has also said that Bank of Scotland should have called the Police before sending the payment. While there are certain circumstances where banks can, and should, call the Police, I don't think this was justified in this case.

So, considering what both parties have told us, I think that Bank of Scotland made proportionate checks before sending Mr C's payment, and didn't have sufficient grounds to stop it when he said he wanted to go ahead.

Did Bank of Scotland do enough to try to recover Mr C's money after he reported the fraud?

When a customer reports a fraud to a bank, I expect the bank to try to reclaim the money the customer has lost from the beneficiary's account. However, recovering money from fraudsters like this can be extremely difficult, as they usually move it away from the receiving bank very quickly. So, time is of the essence.

In Mr C's case, as he didn't discover he was a victim of fraud until he knew he wasn't going to receive the motorbike, he didn't report the fraud to Bank of Scotland until well after he had sent the payment. Bank of Scotland then seems to have tried to recover his money almost immediately, but by that time it had little prospect of success. It failed as the fraudster had already moved the money beyond its reach.

So, in summary, I think the checks which Bank of Scotland made before sending Mr C's payment were reasonable and proportionate to the circumstances. And I also think that by the time Mr C told Bank of Scotland he was a victim of fraud, it was already too late for it to get his money back for him. So, while Mr C has my sincere sympathy, I do not think Bank of Scotland was responsible for his loss.

My final decision

For the reasons I have set out above, I am not upholding Mr C and Mrs C's complaint about Bank of Scotland plc. I am not going to tell it to give them any money back.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C and Mrs C to accept or reject my decision before 31 October 2023.

Steve Townsley

Ombudsman