

The complaint

Mr H complains that Bank of Scotland plc (BoS) hasn't refunded him after he fell victim to a scam.

What happened

I have taken account of all that's been said by both parties. In setting out the background to this complaint I won't set out every detail about what has happened, instead summarising the key events and details.

Mr H was looking for a contractor that could repaint his house. He had some specific requirements and so was looking for a trade expert. He came across a limited company I'll refer to as A.

Mr H contacted A and a representative arrived at his house to assess the job and give a price. A deal was struck, and Mr H received an invoice for the proposed works.

The total cost was £16,500. Payment was to be made in three stages. A deposit of 25% was required up front and Mr H paid this on 2 February 2022, sending £125 followed by £4,000 by way of faster payment (bank transfer) from his account held with BoS.

The second stage payment was made after the walls of the house had been washed and treated with fungicide. Mr H sent the second stage payment of £4,125 on 6 June 2022. There were a few months between first and second stages as Mr H wanted to wait until the warmer months in anticipation of favourable weather.

Once this payment was made, A failed to complete the remainder of the work: repairs to the walls and the painting of the house. It kept promising to send a team to complete the work, but Mr H was repeatedly let down by A, with little in the way of explanation being provided.

At one point, in July 2022, a team did arrive on site to continue with the work but had the wrong colour paint and so soon left, without doing anything more. A later said the correct paint had been ordered and a team would be onsite soon. But no one ever returned to Mr H's house to complete the work.

Mr H eventually demanded a refund from A, and it agreed to repay the money he'd paid. But it never sent anything back.

Mr H contacted the supplier whom A said it had purchased the specialist paint from and was told it had no order that matched his details or descriptions.

Mr H contacted BoS to report that he'd been scammed. He explained all that had happened. He also complained to the bank he'd sent the money to. Mr H explained it was his belief that A had taken his money with the intent to defraud him and with no intention of completing the contract. He believes A completed the pressure washing and fungicide application (which he describes as being a very small proportion of the total job) to entice the second stage payment.

Following his complaints and his own investigations it was revealed that the name of the limited company on the recipient account didn't match the company name stated on the invoice. Instead, there was an additional word in the name of the limited company on the recipient account. He attempted to find a record of A at the address stated on the invoice, but there was no trace of the company ever having been registered or based there. He also

discovered A wasn't registered on Companies House, though the limited company name on the recipient account was. Mr H says this is all evidence that A set out to scam him from the outset.

Mr H also complained that BoS sent money to an account in a name different to that stated on his payment instruction, and that he received no warning that was happening. Linked to this, he's unhappy BoS repeatedly confirmed the money had gone to A, rather than telling him it had gone to a different account name.

Mr H believes BoS ought to refund his loss for these reasons.

BoS considered Mr H's complaint but said it wouldn't refund the money lost. It said it considered the matter between Mr H and A to be a civil dispute and not a scam. And on that basis, it said there were no grounds on which it could or would refund the money that had been sent. It said it had made no errors in sending the money at Mr H's instruction.

Mr H was unhappy with BoS' response and so referred his complaint to our service.

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.

Having done so, I'm not upholding it. I know this will come as a huge disappointment to Mr H. And in making this finding I'm not saying that Mr H hasn't lost out. He's clearly been very poorly treated by A. But I can't say that it's BoS that should bear responsibility for his loss. I'll explain why.

In setting out my findings, I'll not necessarily address every point made and argument raised. I have considered all that's been said, alongside all the evidence provided by both Mr H and BoS. I've then gone on to consider the key elements of the complaint and the overall outcome, taking a holistic approach.

Authorising the payments

It's first important to consider the starting position at law as to who bears responsibility for genuinely authorised payments made from an account. The Payment Service Regulations (2017) (the PSRs) set out that the customer is responsible for any such payments. And that position is confirmed by Mr H's account terms and conditions.

There is no dispute that Mr H authorised the payments. He set up the payee and instructed the sums to be sent. And so the starting position is that he is responsible for them.

Mr H has complained that the money was sent to an account in the name of a different company to that entered on his payment instruction. It is true that the name he gave – and which was stated on the invoice from A – did differ to that which was registered on the destination account. But this doesn't alter the position on authorisation.

When a payment instruction is created by the payer, the payee name will be requested by the sending bank (BoS in this case). But it isn't used in identifying the destination payment account or in the processing of the payment, by either the sending or receiving bank. Instead, the sort code and account number are used, in accordance with the PSRs. These are known as the unique identifiers.

The PSRs state in the glossary of terms:

“unique identifier” means a combination of letters, numbers or symbols specified to the payment service user by the payment service provider and to be provided by the payment service user in relation to a payment transaction in order to identify unambiguously one or both of— (a) another payment service user who is a party to the payment transaction; (b) the other payment service user's payment account;

And at regulation 90:

90.—(1) Where a payment order is executed in accordance with the unique identifier, the payment order is deemed to have been correctly executed by each payment service provider involved in executing the payment order with respect to the payee specified by the unique identifier

And so, where BoS has executed Mr H's payments using the unique identifiers provided, it has done what it was required to do under the relevant regulations. It didn't need to make sure the payee name matched too.

There is a system called Confirmation of Payee (CoP) which has been implemented across the industry and which was in place at the time Mr H made his payments. This will check the payee name entered on the payment instruction against the receiving account. The system should then confirm if the account names match, are a close match, or do not match at all. Sometimes it might not be possible for such a check to be completed. In such cases the system report that is what's happened.

CoP isn't used by an account provider to process a payment or locate the payee account, (on either the sending or receiving side). And the check is often only carried out the first time a new payee is established. It is ultimately the customer's decision whether to proceed or not, even when the check confirms the payee and account names don't match at all.

It is possible an account provider *might* use the information to pause a payment so the instruction might be checked. But there isn't an outright requirement for this to happen.

I know Mr H has said that he received no notification from BoS that the payee and account name differed in any way. And he's pointed to other technical difficulties, confirmed by BoS at other times, as evidence for its systems not working properly.

It's impossible for me to say for sure what happened when Mr H created the payee for the first time. I accept Mr H didn't know the payee name and account name differed. But the evidence I have does show that a CoP check was completed with a 'maybe a match' result being supplied. This evidence dates back to the time the transaction was made, with the check having been recorded as having taken place less than three minutes before the first payment went through.

Given the evidence available, and not discounting Mr H's other experiences of BoS' systems, I'm persuaded it's more likely than not the CoP check did happen, and the result was displayed as 'maybe a match'. The fact the evidence shows the result was 'maybe a match', and that we know the payee name entered by Mr H was indeed a close match to the account name, supports this position; it shows a check was undertaken and the correct response was provided.

However, even if it wasn't, I would still be making the finding that the payments were properly executed by BoS, and there wouldn't be grounds for me to say the bank ought to refund based on a possible mistake here.

There's some further context I'll provide on this finding when I cover some of the other key considerations in the next section of this decision.

Before I move on though, I will also comment on Mr H's point about BoS confirming in writing that he'd made payments to an account that matched the name entered onto the payment instruction. I believe he's made this point having looked over his account statements and payment instructions where the name of A is given. However, the name given here only reflects what was entered in the payment instruction by Mr H. It isn't a reflection or confirmation of the full account name registered with the receiving bank. And so this doesn't impact the outcome of the complaint.

Did BoS fairly and reasonably find Mr H has a civil dispute with A, rather than it being a case of him having been scammed?

Mr H's complaint is that A knowingly and deliberately set out to defraud him by taking his money with no intention of completing the work it was contracted for. And so it becomes necessary for me to consider whether Mr H has been the victim of a scam or whether, as BoS says, he has a civil dispute with A on the grounds it has failed to deliver the goods and services promised. This will then determine what protections may or may not apply, including the Lending Standards Board's Contingent Reimbursement Model (CRM) Code. That Code is in place to see the victims of scams refunded in most circumstances. But it doesn't apply to all payments made by a customer, including where the circumstances don't meet the definition of a scam.

I'm satisfied BoS' conclusions on this point are fair and reasonable. I don't find there is enough evidence to meet the high legal threshold for saying a scam – a criminal offence – has taken place. Instead, I'm persuaded A was a genuine company that has failed to deliver the goods and services it was paid for.

In making these findings I've taken account of the fact that the name stated on the invoice differed from the account name paid. And, that the name given on the invoice doesn't exist in its own right as a limited company.

But what's clear is that the director of A (based on its Companies House entry and connected to the receiving account) was the person that visited Mr H's property and provided a quote for the work. Mr H said as much in correspondence dated 7 February 2023. Mr H did later say, after one of our investigators issued findings, that he only became aware of this director in July, when he arrived on site with the incorrect paint. But I believe the February letter is more likely to be accurate, given it is more contemporaneous.

A was then paid (albeit with a differing payee name) and the money reached the intended account, based on the account number and sort code provided. A then sent workers to Mr H's property, as agreed, and work commenced.

So Mr H's intention was to pay A (accepting the difference in name) for work, payment was made, and the planned work commenced. Those doing the work were those that had visited the site and provided Mr H the quote for the works and the receiving account details. It can't fairly and reasonably be argued that there was no connection between the parties involved. The payment made to the account details given triggered the commencement of the work. The payments sent by Mr H weren't maliciously misdirected to a completely unconnected account.

I then must consider what A's intentions were. Mr H first sent it money in February 2022 but didn't wish for work to start until the summer. If A's intention was to scam Mr H from the outset, then it could simply have never turned up or communicated with him again. The fact that A did come back and carry out some work is then not indicative of an intent to deceive and scam him from the outset.

I can see Mr H's point, where he says A only came back to complete a small part of the required work – the wall washing -- to trigger the next payment. He attests this was to secure the extra £4,125 for minimal additional work. And so I've considered other evidence and information that's available.

I've seen copies of A's account statements from before, during, and after Mr H's involvement with it. Along with the Companies House records, this shows A was an established company, engaged in providing the services as contracted for with Mr H. There is evidence of payments to the type of supplier to be expected from a company involved in such services.

There is also evidence of numerous other customers paying A money. But there have been no other scam claims raised against A across the same period in which payments were made by Mr H, suggesting it was operating as a legitimate business and a going concern. It seems unlikely – and it would certainly be very uncommon – for an otherwise legitimate

company to decide to scam just one of its customers. It's not an impossibility, but it is highly improbable.

It's also true A didn't cut-off contact with Mr H once the payment was made in June 2022, as I'd otherwise expect to see in a scam case. Communication was maintained, with appointments being made to attend Mr H's property. The vast majority of these visits didn't happen.

It's my understanding workers did arrive on site in July 2022 but had the wrong paint and so completed no work on the day. But there appears to have been a willingness to continue with the work that day, albeit it didn't happen and most probably as a result of A's mistakes (in buying the wrong paint). Again, these don't stand out as the actions of a fraudster. There would be little benefit, only risk, in continuing to engage with Mr H and turning up at his home if the intention was always to disappear with his money.

It seems what followed was a series of broken promises: to complete the work and to return money to Mr H. There was also an assurance from A that the correct paint had been ordered. It can be accepted that there were possibly – if not probably – a series of untruths and even lies from A. And clearly that is poor practice for a business and very much immoral. But it doesn't present firm evidence that A's intention was to scam Mr H at the time he made payment to it.

It's possible A had become a failing business, struggling to survive around the time Mr H made the payment in July. It may have become short-staffed or over-stretched. It may have even decided that it simply didn't want the job anymore. But these, and any number of other reasons, wouldn't amount to A having scammed Mr H. They instead represent a breach of contract, perhaps even a deliberate one. Such a breach of contract is a civil dispute between the parties involved.

I'll turn now to some of the specific arguments made by Mr H.

It's fair and reasonable to say the name given on the invoice is very similar to the name on the receiving account. There is just one additional word in the full company name on the account. It isn't uncommon for limited companies to accept payments into an account that differs from the name they trade under. Sometimes the account name will be completely different.

I can understand why Mr H believes this is evidence of deception on A's part. But I'm not persuaded it's strong evidence of a scam. I can't say why A presented the name in this way. But there would appear to be little benefit in doing so, in terms of attempting to deceive people into parting with money for work A never intended on carrying out.

In making that finding I've considered interventions like the CoP check would quickly reveal a difference in names. But, even more closely related to A's circumstances, are the website and email addresses used by the limited company. Those sources show a name that is longer than that given on the payment instruction, and closely linked to that given on the receiving account. And so, I'm not persuaded there was a deliberate attempt to conceal the true name of the company, rather than it being a more straight-forward business choice, perhaps made for convenience. Had there been such an attempt to conceal the identity of the company, I'd expect to see greater efforts being taken to do so, rather than linked details being presented on the same invoice as the payee name. And a Companies House check on the name given on the invoice would have revealed it wasn't the actual company name too.

It appears none of the differences across the payee name given by A on the invoice, the name on the website, and the email addresses which were being used were questioned by Mr H at the time. That's despite those differences being quite clear. I'm then left to question what difference it might have made even had the differing given payee name and the actual account name been even more explicitly highlighted. Or even had the payment been

rejected by BoS on the basis of only a partial account name match. I appreciate Mr H has expressed a strong view that he wouldn't have proceeded with payment, and I can accept that might have been the case. But it seems more likely than not he would have reverted to A to question the differences, which could have been explained in quite a straightforward manner and would likely then have led to payment being made, rather than the whole contract being abandoned by Mr H.

I've factored in the use, on the invoice, of a different address to that which A was in fact registered at. Mr H has said he could find no link between A and that address, having even asked a local business that trades nearby. I've also searched, and it is true an obvious link isn't available. But this still doesn't persuade me A was out to scam Mr H from the outset. Not given all the other evidence available. From looking at A's account statements and some of the businesses linked to directors of A, there are hints of a connection to the address given on the invoice. And so it does still remain possible it was being used as at least a correspondence or forwarding address. There are many legitimate companies that will use such an address in such a way. Some will have a registered address that the company has very little connection to, sometimes referred to as a Registered Office service.

Mr H has provided several explanations he's found as to what defines a purchase or invoice scam. And these refer to the non-delivery of goods and services. It's clear that Mr H hasn't been provided the goods and services he paid for. But for this to be defined as a scam, it must be clear that the intention of the supplier was always deceitful. And that there was never any intention to supply the goods and services. I'm not persuaded that is the case here, instead my finding is that A's intentions were legitimate at the time payments were made but with it then becoming unwilling or unable to fulfil the contract.

All the above leads me to conclude that BoS has acted fairly and reasonably in finding that the payments made by Mr H don't meet the definition of an APP scam. It follows BoS' decision to not refund him under the CRM Code is also fair and reasonable. And there are no other grounds on which I can fairly and reasonably say BoS ought to bear responsibility for his loss.

My final decision

I don't uphold this complaint against Bank of Scotland plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 30 May 2024.

Ben Murray
Ombudsman