

The complaint

Mr C and Ms B complain that Handelsbanken plc ('HB') won't refund money they lost in a scam.

There is a related complaint brought by Ms B and Mr C's company (which I will refer to as A) – which is about the same scam. To give clarity, this decision refers to the background and facts of both, but I've come to my decision in the individual circumstances of each complaint.

What happened

What Mr C and Ms B say:

Ms B wanted to complete some roofing work on her house – for repairs and the installation of four windows. She wanted to get this done as she had had previous delays in the house refurbishment and the roof was leaking. She wanted to get it completed as winter was approaching – she had a young son. Because of this, she felt vulnerable.

Ms B had a personal mortgage agreed with HB, and the final tranche of £28,000 was due to be drawn for building work.

Mr C and Ms B found a building company to do the work – which I will call Z. Z quoted a price of £20,600 and wanted a 50% deposit. A and Ms B paid the deposit of £10,300; and later agreed to pay a further £3,240 for further works agreed. A total of £13,540 was paid for the deposit and further work as follows:

Current Account - A

Date	Payments/ Account activity	Beneficiary
16 August 2021	£6,300	Z
17 August 2021	£6,300 – from Ms B personal account	A

Current Account – Ms B:

Date	Payments/ Account activity	Beneficiary

17 August 2021	Credit: £28,000 – mortgage drawdown	Ms B current account
17 August 2021	£6,300 – transfer to A	A
19 August 2021	£4,000	Z
30 September 2021	£3,240	Z

A and Ms B made online payments to Z. On 16 August 2021, £6,300 was paid from A's current account with HB. On 19 August 2021, £4,000 was paid from Ms B's personal account with HB, and a further amount of £3,240 was paid on 30 September 2021. This complaint deals with the payment made by Ms B for £7,240 – the other payments made by A are the subject of the related complaint.

Z failed to start any of the agreed work. On 30 September 2021, three of the four windows were delivered, but not the fourth. Therefore, allowing for the three windows that were delivered, Ms B said the loss was a total of £12,310 (between her personal account and A).

She said she had every reason to believe Z was trustworthy. He had come recommended by friends who had used his services, as had other friends of theirs. Ms B's husband had walked past another project in the area that Z was apparently working on and had seen Z's banner and workmen there. She later became aware that that work proved to be a scam. She said she took reasonable steps to ensure the payments were legitimate and that she was dealing with a legitimate person and company. She was sent an invoice from Z showing the company name, account details and address. Z's website showed the same details as the invoice.

She reported what happened to Action Fraud and Trading Standards. Trading Standards confirmed the address given by Z was bogus, Z wasn't registered the address it said it was, and it wasn't registered at Companies House. Trading Standards confirmed Z was acting fraudulently.

Ms B said that the episode was traumatic and stressful for her and her family. They had been duped by someone they thought they could trust; the building work was delayed (and had been so before). Ms B said the family were left in a severe state of psychological, emotional, and physical stress for months. The house was left with a broken roof during part of the winter, and the house couldn't be properly heated. They believed it had an effect on their young son, who also showed signs of anxiety. The work wasn't completed (by another contractor) until January 2022, and in the meantime, there was scaffolding at the house for five months, and she had to pay for a pavement licence (£550 per month) and scaffolding inspections (£90 per week). Ms B had to borrow £12,000 from a family member to complete the work with another contractor.

Ms B wrote to HB in January 2022 - she said she had been dealing with a fraudster. The payment from A's account and from her personal account had been approved by HB and had passed their checks. She said she and A should be reimbursed for the payment.

What HB say:

HB said Ms B had been quoted £20,600 for the completion of the work and was asked for a deposit of 50% for materials. £10,300 was paid - £6,300 from A's account and £4,000 from Ms B's account. A further £3,240 was paid by Ms B in September 2021 for the cost of four

windows, as Z said it needed the money as it hadn't been paid for a previous job.

HB said the online payment by Z was properly authorised and consented to by A and Ms B – as they were made in accordance with the bank mandate. Once Ms B raised her concerns with HB, they contacted the recipient bank but there were no funds left to return. HB didn't uphold the complaint.

Our investigation so far:

Our investigator issued two views. She firstly /Ms B said Z intended to scam A and Ms B and not provide the service paid for. So HB should refund £6,300 plus simple interest of 8% p.a. She said the payment was out of line with normal account activity and HB should've asked probing questions. If they had, the scam would've come to light.

HB didn't agree and argued:

- HB had agreed a mortgage loan of £158,000 to Ms B for the total work being done on her property. Funds had been drawn down over a period to pay various contractors.
- £28,000 remained to be drawn in August 2021. Ms B transferred £6,300 of the remaining mortgage monies to A, which were used to pay Z.
- Ms B would've received warnings about potential scams when making the online payment. Ms B had made payments from her account to building contractors. For example, there were payments of £4,921.13 and £1,506.85 in September 2020. She'd also paid building contractors substantial amounts from her other current account. So – the payment wasn't unusual.
- When Ms B asked to draw down the final tranche of £28,000, she showed Z's invoice for the deposit of £10,300 and a supporting email from the architect. HB said Ms B advised a member of staff that she had done her own due diligence on Z. She had met him, checked his website, seen his previous work and had got recommendations from more than one person.
- HB said it didn't need to intervene and question the payments.

Our investigator then issued a second view. This said the payment wasn't suspicious or unusual and there was no need for HB to have intervened.

Mr C and Ms B asked that an ombudsman look at A's complaint. Mr C also made the point that HB had promised that they would carry out due diligence on the contractor when a payment was to be made to them – to ensure they were a trustworthy and bone fide operator. Mr C said HB said that was to be part of the service they promised. He said the responsibility lay with HB to check out Z and therefore the payments should've been flagged and questioned.

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.

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm 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 time.

The Lending Standards Board Contingent Reimbursement Model Code doesn't apply in this case. This is because HB is not a signatory to the Code.

I'm sorry to hear that Mr C and Ms B have lost money in a cruel scam. It's not in question that Ms B authorised and consented to the payments in this case. She made the online payments of £4,000 and £3,240. So Ms B is presumed to be liable for the loss in the first instance.

So, in broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. And I have taken that into account when deciding what is fair and reasonable in this case. But that is not the end of the story. 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 HB should fairly and reasonably:

- Have been monitoring accounts and any payments made or received to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams.
- Have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer.
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or make additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

I need to decide whether HB acted fairly and reasonably in its dealings with A when it made the payment, or whether HB should have done more than it did. I have considered the position carefully.

Firstly, I considered whether it would've been reasonable to expect HB to have intervened in the payment made by Ms B. I looked at whether the payments of £4,000 and £3,240 were unusual enough for HB to do that.

In doing so, there's a balance to be struck: HB has obligations to be alert to fraud and scams and to act in their customers' best interests, but they can't be involved in every transaction as this would cause unnecessary disruption to legitimate payments. In this case, I think HB acted reasonably in processing the payments.

I can see that the payment wasn't out of line with the normal account activity of Ms B. There were payments to builders or contractors in September 2020 - £4,921.13 and £1,506.85.

I can see there were other large payments of £1,188.23 and £1,249.05 (September 2020); £8,596.02, £1,640.27, £3,744.20, £3,540.05, £1,800 (October 2020); and £1,472 (December 2020). So – in the context of Ms B's normal account activity, the size of the payments made to Z weren't out of character.

Therefore - I don't think it would've been reasonable to expect HB to have intervened and questioned the payment.

The payment was also consistent with the payments being made for the work being done on Ms B's house – and HB had provided a mortgage to her to finance this. And – I can see that there was a drawdown of Ms B's mortgage at the same time.

Ms B had asked for the drawdown of the final tranche of her mortgage on 16 August 2021. She wrote to HB to ask that that took place and the email said “ *We are going ahead with the roofing work now as part of our build, and attached is an invoice for the 50% deposit for that roofing work, for James to approve. Could you arrange for us to draw down the final tranche of the loan.*” £28,000 was drawn from Ms B's personal mortgage, credited to Ms B's current account and she then made the payments to Z. So – the payment was consistent with the work being done on Ms B's house, and which was being financed by HB.

I also saw the payment authorisation completed by HB when Ms B called them to make the payments of £6,300 and £4,000. This recorded that she spoke to HB and confirmed she was happy to make the payments to Z.

So - in this case, I don't consider HB acted unfairly or unreasonably in allowing the payments to be made. Whilst I understand the loss has had a big impact on Ms B, I don't consider the payments were so out of character that HB ought reasonably to have had concerns that Ms B may be the victim of a scam.

Did HB say they would check Z's credentials?

I've considered what Mr C said to us – that HB promised to carry out due diligence on Z. He says that HB had a responsibility to check that Z was a legal entity and that its registered address was legitimate. He says - if HB had done so and informed them that Z was bogus, they wouldn't have made the payments. And Mr C also referred to a statement made by our investigator that HB would've checked out Z.

I was concerned by this and so asked HB more. They told us they would never undertake to check out a contractor in the way Mr C described. They said that isn't part of what they offer as a bank, nor would they be qualified to do so.

I asked to see HB's customer notes to see if there was any reference to such a commitment by HB, but I couldn't see anything. I can see that no checks on Z were carried out by HB. We asked for recordings of calls – to see if there was a conversation about this point - but HB told us they didn't retain them at that time.

HB wanted to approve the drawdown of funds from Ms B's mortgage loan, and they required confirmation from an architect each time. I've seen the correspondence between HB and the architect – which confirmed the drawdown of the mortgage on 16 August 2021 was supported by the architect - to ensure the amount to be drawn was appropriate for the work done or to be undertaken. But – that's not the same as HB carrying out due diligence on Z.

I think what HB have said here is reasonable – and I agree that it would be very unusual for a bank to do what Mr C has said. So – I don't think that means HB should've checked the credentials of Z as Mr C has said.

Recovery:

I've also gone on to see what HB did to try to recover the money. Ms B contacted HB in January 2022, and at that stage HB contacted the recipient bank. But by that time, no funds were left in the account with them. I've seen the evidence the recipient bank gave to HB. So – HB did all they could here.

I was sorry to hear that the work wasn't carried out as Ms B wanted. This must have been very disappointing and frustrating – and I sympathise with that Ms B and her family have gone through. It has cost her a lot of money. I know that my decision will be disappointing, but I'm not asking HB to do anything here

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C and Ms B to accept or reject my decision before 14 September 2023.

Martin Lord
Ombudsman