

## The complaint

Mr J has complained that C Hoare & Co (Hoares) won't refund the money he lost in what he says was a scam.

## What happened

In 2020 and 2023, Mr J paid £1,350 and £450 respectively to a merchant who sold sports tickets. He was introduced to the merchant on the recommendation of a travel agent. The merchant only provided some of the first set of tickets, and none of the second set.

A couple of months after the 2023 payment, Mr J reported this to Hoares as being a scam. Hoares tried to recover the money from the receiving banks, but were unsuccessful.

Hoares didn't think they were liable for Mr J's loss, believing this to be a civil dispute between Mr J and the merchant.

Our investigator looked into things independently and didn't uphold the complaint. Mr J appealed, so the complaint's been passed to me to decide.

I sent Mr J and Hoares a provisional decision on 25 January 2024, to explain why I didn't think the complaint should be upheld. In that decision, I said:

*First, I appreciate that Mr J lost a good deal of money here, missed a significant sports event he'd paid for, and had his confidence knocked by the merchant, for which he has my sympathy. I appreciate why he feels his money should be returned. It's worth keeping in mind that it's the merchant who's primarily responsible for what happened, and who really owes Mr J his money back. But I can only consider what Hoares did. Having carefully considered everything that both sides have said and provided so far, I can't fairly hold Hoares liable for Mr J's loss. I'll explain why.*

*It's not certain whether the merchant in question really was scamming Mr J, and it's a very serious allegation that's been made here. Mr J was introduced to the merchant by a trusted travel agency, rather than cold called or approached in any suspicious way. The merchant appears to be a legitimate company which has traded for years, I've not found any warnings or negative press that would indicate they are illegitimate, and they did actually provide some of the tickets paid for. While it may seem odd that the merchant asked Mr J to pay an individual for resold tickets, that doesn't necessitate that this was a scam as opposed to e.g. maladministration – not least as ultimately Mr J was supposed to be getting the tickets from that individual.*

*I don't have any substantive or conclusive evidence that the merchant was intentionally defrauding Mr J, as opposed to, for example, running into supply issues, administrative problems, or financial difficulties, or generally facing any range of management or competence issues. And Hoares are not generally responsible for an unaffiliated merchant failing to provide goods, nor for protecting Mr J from poor service by merchants.*

*With that said, even if I accept that Mr J was definitely scammed, I'm afraid I still could not reasonably tell Hoares to reimburse him.*

*It's not in dispute that Mr J authorised the payments involved. So under the Payment Services Regulations, he is liable for the loss in the first instance. And broadly speaking, Hoares had an obligation to follow his instructions – the starting position in law is that banks are expected to process payments that a customer authorises them to make. Further, while there is a code for reimbursing funds lost to scams, it is voluntary, and Hoares are not signed up to it, so it doesn't apply here.*

*Hoares should have been on the lookout for payments which could be the result of fraud or scams, to help prevent them. But a balance must be struck between identifying and responding to potentially fraudulent payments, and ensuring there's minimal disruption to legitimate payments. And in this case, the payments involved were not so unusual or out of character that Hoares needed to intervene. They were not nearly large enough that I'd expect Hoares to be inherently concerned about them, and were small compared to other genuine spending of Mr J's. They were only two payments, made several years apart, rather than a series of many rapid payments. They were made within the UK, to established banks, and they did not drain Mr J's account – each time, there was a very healthy balance left over. Ultimately, these were payments which had been authorised by Hoares' genuine customer, and there wasn't anything sufficiently suspicious about them to necessitate intervention by Hoares.*

*Next, I've considered what Hoares did to try to recover Mr J's money after he told them he thought this was a scam. I can see that Hoares contacted the receiving banks in question, in reasonable time. Unfortunately, the requests to the receiving banks were not successful. And I'm afraid this is not surprising, given that the merchant appears to have been facing cashflow issues, and given the time it took to report the payments. After all, it's a common tactic for scammers to move on the money as quickly as possible, before the victim realises what happened. So if this was a scam, it was not likely Mr J was going to be able to recover the funds after all the time that had passed. And there's nothing more that Hoares could reasonably do here.*

*So while I'm very sorry to hear about what happened to Mr J, I don't currently think Hoares should be held responsible for his loss. And so based on what I've seen so far, I can't fairly tell Hoares to refund Mr J's money in this case.*

*I said I'd consider anything else anyone wanted to give me – so long as I received it before 8 February 2024. But neither party sent me anything new to consider.*

### **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.*

Neither side have sent me any new evidence or arguments. So having reconsidered the case, I've come to the same conclusion as before, and for the same reasons as set out in my provisional decision above.

### **My final decision**

For the reasons set out, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 11 March 2024.

Adam Charles  
**Ombudsman**