

## **The complaint**

Mr F is unhappy that Bank of Scotland plc won't refund a payment he says he didn't make.

## **What happened**

Mr F disputed an unrecognised £800 faster payment with Bank of Scotland. He explained that he met up with people who used his phone to supposedly look at his photos – he thinks they managed to make the payment while distracting him.

After contacting the payee, Bank of Scotland ultimately declined to refund Mr F saying it was a civil dispute. That's because the payee visited branch and explained the payment was made to replace her phone after Mr F broke it.

Unhappy with Bank of Scotland's response, Mr F brought his concerns to our service to investigate. I sent my provisional findings explaining why I intended to uphold this complaint. Both sides replied to accept what I said.

## **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.

Given that both sides accepted my provisional findings, I see no reason to depart from what I said. For completeness, I've explained my reasons again below.

I've started by considering whether Mr F authorised this payment. This is relevant as, in line with the Payment Services Regulations 2017 (PSRs), he would generally be liable for payments he authorises – whereas Bank of Scotland would be liable for unauthorised payments.

The PSRs specify that authorisation depends on whether the payment was authenticated correctly – and whether the account holder consented to it. It doesn't appear to be in dispute that the payment was authenticated correctly (as in, the correct payment steps were completed). The dispute is over whether Mr F consented to it.

The PSRs go on to specify how consent is given. It must be in the form, and in accordance with the procedure, agreed between Mr F and Bank of Scotland. In practical terms, this broadly means Mr F consents to a payment if he completes the agreed payment steps.

Mr F says that someone else went through the steps to set up the faster payment using his phone, and they managed to use face ID to facilitate the payment without him realising what they were doing.

Bank of Scotland submit that Mr F went through the agreed steps and made the payment – and that ultimately, he wasn't scammed and this is a civil dispute.

I'm inclined to believe Mr F in what I accept is a finely balanced case. I have considered:

- The payee said she received the payment to pay for her phone, which Mr F broke trying to stop her from filming a date as he's married. But Mr F says he's not married (he's been divorced for some time). And overall, I've questions over whether a phone could've been broken beyond repair during the exchange described.
- I've also noted that the payment's reference was 'friend', something that doesn't seem to be connected to the payee's version of events.
- The payment was very quickly moved to another one of the payee's accounts, something that's very common with fraud.
- I've reviewed the payee's statements. I accept they've other accounts elsewhere, but I think it's noteworthy that it's only used for gambling and to receive government credits. It follows that I don't think they're persuasive evidence the payee wasn't involved in something untoward.
- The branch staff said the payee showed screenshots of messages from within the dating app to support her testimony, but that she couldn't show the original messages in the app as she was blocked. But the branch staff didn't take a copy of these for me to see. So given my other concerns, it's difficult for me to simply accept they were genuine.
- I'm also concerned why the payee would've had screenshots of the messages. Bank of Scotland submit it could've been in anticipation of a potential fraud claim. But I find it a coincidence that someone would have the foresight to know their bank might challenge them over a payment in the future, particularly as the messages apparently showed him willingly making the payment.
- Taking this all into account, I don't find the payee's version of events particularly persuasive.
- On the other hand, I acknowledge Mr F's testimony is unusual – frankly, I can understand how Bank of Scotland found is dubious that someone managed to engage face ID twice without him realising. But he's given a detailed account of how it happened. And while I acknowledge face ID is designed so that it's difficult to use inadvertently, that doesn't mean it can't happen – particularly given how quickly face ID works.
- Furthermore, I've seen no other evidence to support the likelihood that Mr F would make a false claim (for example, it doesn't seem he's submitted multiple fraud claims in the past).

Taking this all into account, I'm not persuaded that Mr F completed the steps to consent to the disputed payment. It follows that I consider it to be an unauthorised payment.

Bank of Scotland hasn't submitted anything to show why he ought not to be refunded for this in line with the PSRs. It follows I think it should put right his losses, alongside 8% simple interest per year to compensate him for the time he's been out of pocket.

I recognise Mr F is concerned by Bank of Scotland's handling of the matter and believes recommendations should be made to stop this happening to others in future. But my role is only to consider Mr F's individual complaint – and I can only direct Bank of Scotland to put things right for him. And while I acknowledge his upset over the matter, I also can't ignore that this is a particularly finely balanced and unusual complaint. It follows that I don't make a

further award to reflect his non-financial losses.

### **My final decision**

For the reasons I've explained, I uphold Mr F's complaint. Bank of Scotland plc must:

- Refund Mr F his losses from the disputed transaction.
- Pay 8% simple interest per year on this amount, from the date of the disputed payment to the date of settlement (less any tax lawfully deductible).

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 15 July 2024.

Emma Szkolar  
**Ombudsman**