

The complaint

Mr A is unhappy that Bank of Scotland (trading as Halifax) hasn't refunded him after he fell victim to a scam. He bought a car which turned out to be stolen. The bank has said this is a civil dispute, rather than a scam.

What happened

Mr A went to view a car he was interested in buying from a private seller in November 2020. Mr A was happy with the car and was presented with the logbook during the viewing. He also carried out an HPI check which came back clear. He decided to buy the car and sent two payments totalling £6,000 to the account details he was given by the seller.

He got the car home and was able to tax it. But shortly after he saw an advert online for what appeared to be the same car, with the same registration. He contacted the seller who confirmed they had the car on their driveway. So Mr A contacted the police.

The police inspected the car and discovered that the registration had essentially been cloned, with the chassis number altered. The police said it was a sophisticated deception and that the car was actually stolen, and so they confiscated it.

Mr A tried to contact the seller but found he'd been blocked and so couldn't discuss with him or follow up in any way.

He then reported the matter to Halifax, letting it know he'd been the victim of a scam. The bank looked into what had happened but said it couldn't help. It said because Mr A had received the car it couldn't treat it as a scam. Instead, it said Mr A had a civil dispute with the seller.

Mr A wasn't happy with Halifax's answer and so brought the complaint to our service. One of our investigators considered it and thought it ought to be upheld. He thought it was clear Mr A had been scammed, given he was sold a stolen car. And he was satisfied the seller had acted with intent to defraud him. He noted that the fact Mr A had initially taken possession of the car didn't mean that he hadn't been scammed.

Our investigator went on to consider whether Mr A was due a refund under the Lending Standards Board Contingent Reimbursement Model CRM Code, of which Halifax is a signatory, which requires firms to reimburse customers who have been the victims of APP scams like this in all but a limited number of circumstances.

He recommended Mr A be refunded under those considerations. He said the bank hadn't shown that Mr A had ignored an effective warning. And he was satisfied Mr A made the payments for the car with a reasonable basis for believing he was engaged in a legitimate purchase.

Halifax disagreed and maintained its position, stating that as Mr A had taken possession of the car it was a dispute between him and the seller. It referred directly to part of the CRM Code where it states:

CRM Principle DS2 (2)

(b), states that the Code does not apply to *'private civil disputes, such as where a Customer has paid a legitimate supplier for goods, services, or digital content but has not received them, they are defective in some way, or the Customer is otherwise dissatisfied*

with the supplier.

The investigator wasn't persuaded to alter his view and so the complaint has been passed to me for 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.

Having done so I'm upholding it and for broadly the same reasons as the investigator.

I'm satisfied Mr A was the victim of a scam. It seems quite clear that the seller deliberately set out to defraud Mr A. It seems very unlikely he was unaware that the car was stolen with cloned details applied to it.

That Mr A took possession of the car doesn't mean he wasn't the victim of a scam. This isn't a case where Mr A is only dissatisfied with the quality of what he's bought. It seems quite clear there is a crime sitting behind the proposed sale.

Referring back to the section of the Code quoted by Halifax, it is evident that Mr A was not engaged in paying a legitimate supplier of goods. So I'm satisfied the CRM Code applies to the payments he made.

The investigator is also correct when he says the bank has presented no argument around whether Mr A ignored an effective warning or whether he had a reasonable basis for believing he was making a legitimate payment to a legitimate seller. These are two exceptions to reimbursement that might apply under the CRM Code.

The evidence of warnings provided to Mr A is limited. I've copied below what the bank has suggested Mr A was presented with:



I'm satisfied this doesn't meet the Code's standards for firms, which it set out what an effective warning should look like. It's not specific to the scam Mr A was falling victim to. And it doesn't give reasonable advice on what Mr A might have done to avoid the scam. But even if it had met all of the standards for firms requirements that are set out in the Code, I still don't believe it could be fairly and reasonably argued that Mr A had ignored it, given the circumstances of the case.

He'd seen the car in person, carried out an HPI check, and seen the logbook. All appeared genuine and so he would have had understandable reason to move past any warning the bank had given.

This reasoning then carries through into an assessment of whether Mr A acted with a reasonable basis for belief. Mr A carried out a lot of checks to ensure he was legitimately buying a car from a legitimate seller. Seeing the car in person and being handed the keys so he could drive it away is a major factor here. And he also carried out an HPI check. The fact

that he was able to tax the vehicle, and the police commented on how sophisticated the scam was, all points to Mr A having had a reasonable basis for belief at the time of making the payments.

I'm satisfied then that the CRM Code does apply to the payments made by Mr A. I'm also satisfied that none of the exceptions to reimbursement apply. It is then the case that Halifax ought to have reimbursed Mr A's loss under the CRM Code. It is now fair and reasonable that it compensates him to that extent.

Putting things right

To put things right Halifax should:

- pay Mr A £6,000 to compensate him for his loss resulting from the scam; *and*
- pay Mr A interest on that refund calculated at 8% simple from the date the claim was declined to the date of settlement. I've awarded interest at this rate as it's clear Mr A has been deprived of the use of this money and where he had clear intention to use it to buy a car.

My final decision

I uphold this complaint against Bank of Scotland plc trading as Halifax.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 28 October 2021.

Ben Murray
Ombudsman