

## The complaint

Mr B is unhappy that Bank of Scotland plc trading as Halifax ('HBOS') won't refund the money he's lost to a scam.

## What's happened?

Mr B saw a private advert for a car on a well-known online marketplace. He contacted the seller and she explained that she was selling her car as she had recently received a company car. She gave Mr B some general information about the car and sent him some photographs of it. She said that the car was in storage with a haulage company ('company H') in Scotland and Mr B could collect the car in person or company H could ship it to him – either way, the purchase price would stay the same because she had already paid company H for its services, including shipping the car to a buyer.

A price of £3,900 was agreed and Mr B was told that in order to purchase the car, he needed to register as a buyer on company H's website – the seller provided a link to the website – complete a form, and company H would send him an invoice. The car would be delivered to his address within around 3-5 working days of company H receiving Mr B's payment via bank transfer and he would be allowed a 10-day inspection period, after which he could reject the car and receive a full refund if he found anything wrong with it.

On 18 October 2019, Mr B visited a branch and transferred £3,900 to the account details company H had given him.

Mr B raised a fraud claim with HBOS when he didn't receive the car by the date he expected, and he couldn't make contact with company H or the seller. But HBOS declined to reimburse him. It said that it had sufficient fraud prevention measures in place, but Mr B failed to carry out sufficient checks before making the payment. £5.85 of Mr B's money has been recovered from the bank account which received it and returned to Mr B.

Mr B has said that there was no suggestion his purchase would turn out to be fraudulent. The sale appeared truthful and highly convincing. He telephoned company H and did an internet search on it, and everything seemed above board. He also had lots of communication with the seller and company H over several days before paying for the car. He's said that HBOS' branch staff didn't ask him any questions about the payment he was making and, if they had, then he would have reconsidered purchasing the car.

## What did our investigator say?

Our investigator thought that Mr B displayed some level of caution before parting with his money. He said that HBOS should've fully reimbursed Mr B's loss under the provisions of the Lending Standards Board's Contingent Reimbursement Model ('CRM Code') because it hadn't been able to establish that Mr B made the payment without a reasonable basis for believing that he was paying a legitimate company.

HBOS didn't agree, so the complaint was passed to me to decide.

## My provisional decision

I issued my provisional decision on 25 November 2021.

I said that HBOS is a signatory of the CRM Code, which requires firms to reimburse customers who have been the victims of Authorised Push Payment scams, like the one Mr B has fallen victim to, in all but a limited number of circumstances. HBOS hasn't explicitly stated which exceptions it thinks apply here – but it seems to suggest that it provided an effective warning to Mr B, which was ignored, and that Mr B lacked a reasonable basis for belief in making the payment.

Under the provisions of the CRM Code, I said there was an obligation on HBOS to provide an effective warning. It's not entirely clear whether HBOS is suggesting that it provided an effective warning. But, for completeness, I explained that I don't think it did. The only interaction between Mr B and HBOS was when Mr B made the payment in a branch. The adviser that helped Mr B has said they can't fully recall the conversation they had with him, but they always ask their customers if:

- they're happy they're paying a legitimate company
- they have any concerns
- they have researched who they're paying
- they are happy to make the payment

Assuming the conversation went the way the adviser has suggested, I wasn't persuaded that any warning was given as such. In the circumstances, I thought HBOS should've found out what the payment was for – a car – and delivered a warning that sufficiently covered the common features of vehicle scams. But there was no real attempt to find out what the payment was for or explain what the risk might be and how to avoid it as I thought there should have been, and I was satisfied that an effective warning wasn't provided. Under the CRM Code, I said I also need to take into account whether a warning is likely to have had a 'material effect' on preventing the scam. Here, I was satisfied, on balance, that it would have done so. From what Mr B's said, he doesn't appear to have appreciated the risk he was taking. I thought that a straightforward explanation of how these scams work would likely have caused Mr B, and any other reasonable person, some concern. And Mr B has said that he would have reconsidered purchasing the car if HBOS had alerted him to the fact that he may be falling victim to a scam.

I also thought about whether Mr B had a reasonable basis for belief. I considered what steps he took to reassure himself about the legitimacy of the transaction, and whether it was reasonable for him to proceed with the payment.

Mr B has said that he saw photos of the car outside of a residential address, and the seller appeared willing to allow him to collect the car if he wanted to, so he wasn't suspicious. I also saw that Mr B had lots of communication with the seller and company H as he says. But considering the car's age, mileage and condition, I thought the price seemed low. Mr B was put off viewing the car before purchasing it and I couldn't see that he was given much information about it – he was told the make, model, mileage and condition but he doesn't appear to have been given such detailed information as the car's fuel type or transmission, or that he was even given the car's vehicle registration number. Given all of this, I said I would've expected Mr B, or anyone else to be put on guard. But Mr B didn't carry out any checks or make any attempts to protect himself. For example, he didn't:

- take any steps to verify the seller was genuine
- carry out any checks on the vehicle to ensure that it wasn't stolen, was free from finance and belonged to the seller
- attempt to pay for the car via more secure means than a bank transfer, particularly as he was apparently paying a company and companies almost always accept different methods of payment

I said I'd also seen evidence which indicates that Mr B had some reservations but proceeded with the payment regardless. It appears that he tried to telephone company H before making the payment, but they didn't answer his call, so he sent the seller a message which said:

*"Please give contact number and name if possible for (company H) I googled them and they appear to be a management consultancy company"*

In responding, the seller offered to have company H call Mr B, but I couldn't see any evidence that this call took place. I said that Mr B went ahead and made the payment despite this, and what I considered to be an obvious red flag of an internet search on company H returning results for a company which trades in a different business to the one Mr B thought he was transacting with.

For all of these reasons, I wasn't persuaded that Mr B had a reasonable basis for belief in this case.

Finally, I considered whether HBOS took reasonable steps to recover Mr B's funds, and I thought it did. It contacted the receiving bank shortly after Mr B reported the scam. Evidence shows that £5.85 was recovered from the beneficiary account, and this has been returned to Mr B. I was persuaded that HBOS couldn't have taken any further action that would've led to the recovery of a higher proportion of Mr B's funds.

Overall, I was persuaded that HBOS failed to provide an effective warning to Mr B and that failure is likely to have had a 'material effect' on preventing the scam. But Mr B also lacked a reasonable basis for belief in making the payment. Under the provisions of the CRM Code, I said that this means Mr B should be reimbursed 50% of his loss.

I said that the payment was made from Mr B's current account, and I thought it was likely that Mr B would have used his money to buy a different car if he had not been defrauded or spent it on other things. So, I considered it fairest to award 8% simple interest from the date his claim was declined under the Code to the date of settlement.

I invited Mr B and HBOS to send me any additional evidence they wanted me to consider before I made my final decision.

## Responses to my provisional decision

HBOS confirmed that it agreed with my provisional decision and had nothing further to add.

Mr B replied to say that he still firmly believed his full loss should be refunded, and he provided some further points for me to consider. In summary, he said:

- HBOS never gave a reason why it didn't accept his fraud claim.
- He's surprised that HBOS' adviser can't recall the conversation they had with him when he made the payment given that he only raised his fraud claim a week later. The adviser didn't ask him the questions they've said they always ask their customers.
- He didn't have any reservations about the payment until the car wasn't delivered as expected.
- He's always believed that transacting in a branch was a secure method of payment. He's made 5 or 6 large payments in this way and had no untoward feelings.

## **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.

Mr B has said that he didn't have any reservations about his purchase when he made the payment, and he thought that paying for the car by a bank transfer instructed in a branch was a secure means of payment. These points are relevant to his basis for belief in making the payment.

I accept that Mr B may not have realised that there are more secure methods of payment than bank transfer, especially if he has transacted successfully in this way in the past. But I think that his internet search on company H returning results for a company which trades in a different business to the one Mr B thought he was transacting with was an obvious red flag. Even if I were to accept that Mr B didn't have any reservations when he made the payment, I think that he ought reasonably to have done so for this reason, and all the other reasons I set out in my provisional decision. So, I'm still not persuaded that Mr B had a reasonable basis for belief in this case.

I'm sorry to hear that Mr B doesn't agree with my provisional findings. But in responding, I don't think he's given me any other new information that would change my mind – I thought about HBOS' response to his fraud claim and the conversation he had with the HBOS' adviser when reaching my provisional decision. And as HBOS hasn't given me any new information either, I see no reason to depart from the conclusions set out in my provisional decision.

## **My final decision**

For the reasons I've explained, my final decision is that I uphold this complaint in part and instruct Bank of Scotland plc trading as Halifax to:

- reimburse 50% of Mr B's loss - £1,950 – within 28 days of receiving notification of his acceptance of my final decision; plus
- pay 8% simple interest on that sum from the date that Mr B should have been reimbursed under the CRM Code to the date of settlement. \*

\*If HBOS considers it's required by HM Revenue & Customs to take off income tax from the interest, it should tell Mr B how much it's taken off. It should also give him a certificate showing this, if he asks for one, so that he can reclaim the tax from HMRC if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 4 January 2022.

Kyley Hanson  
**Ombudsman**