DRN-3876109

The complaint

Mrs W complains that Bank of Scotland plc trading as Halifax won't refund money she lost as a result of a scam.

What happened

Mrs W was a single parent and carer for her two terminally ill parents. She was looking to purchase a car big enough to transport them, their wheelchairs and other equipment.

She found a suitable vehicle on a popular online marketplace. She contacted the seller and they sent her information, including a video of the vehicle. Mrs W paid for a third-party check of the vehicle. That check showed that it had previously been written off, but stated that the vehicle was not stolen.

Mrs W agreed with the buyer that she'd pay a deposit by way of bank transfer and the remaining £20,000 in cash on delivery.

She went to a branch of Halifax to make the deposit payment, as she wanted the security of knowing that the recipient account was genuine. Once bank staff 'verified' the account, she paid the deposit. After she paid the deposit she received confirmation that the vehicle had been transferred into her name.

The vehicle was duly delivered and Mrs W handed over the cash to the seller. I understand she didn't have any issues with the vehicle until the following year, when the police informed her that it may have been stolen. It was subsequently removed from her possession and Mrs W was left without her money and the vehicle.

She reported the matter to Halifax. It said that it would refund the bank transfer she made, because that payment was covered under the provisions of the Contingent Reimbursement Model Code ("CRM Code"), which requires its signatories, like Halifax, to refund victims of authorised push payment scams in all but a limited number of circumstances. It also paid her £50 in compensation. Cash withdrawals are not covered under the CRM Code. It declined to refund the cash withdrawal on the basis that Mrs W had carried out fairly detailed checks, so it wouldn't have been able to uncover the scam.

Mrs W referred the matter to our service, but one of our Investigators didn't uphold her complaint. They agreed with Halifax that no intervention by it would have prevented the scam.

Mrs W didn't agree, in summary she said:

- She had not decided to purchase the vehicle prior to visiting the branch. It was only because the bank had verified the recipient account and the third-party vehicle check didn't show any concerns, that she went ahead.
- She ought to have been advised that cash withdrawals would not be reimbursed should they turn out to be made as a result of fraud. The bank is used to dealing with

these situations and should have been looking out for her interests. She ought to have been advised only to make the payment by bank transfer.
- Bank staff may have deliberately not informed her that she wouldn't be covered, knowing that it would not be liable if something went wrong.
- It was unfair to hold her responsible precisely because she had done checks, when she'd also be responsible for the loss had she acted recklessly.
- The bank fell short of its duty of care to her and this has had a significant impact on her and her family, which does not seem to be of any concern to the bank.

As no agreement could be reached, the case was 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.

I'm very sorry to learn about what's happened to Mrs W – she's been the victim of a very cruel scam and it's clearly had a significant impact on her and her family.

There's no dispute here that Mrs W authorised the withdrawal of cash. And the relevant regulations say that Mrs W is responsible for payments she's authorised herself. As already mentioned, the CRM Code does not cover cash withdrawals. But, taking into account regulators' rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time these payments were made, I think Halifax should have been on the lookout for out of character and unusual transactions and other indications that its customer might be at risk of financial harm from fraud.

It's important to state that if I did find that Halifax made an error in this regard, in order to say that it should reimburse Mrs W, I'd also need to conclude that its error caused her loss.

It's evident that a £20,000 cash withdrawal was not typical account activity for Mrs W. I can't see that she'd made any similar payments in the previous six months. I'd also expect the bank to be aware that large cash withdrawals are likely to carry some risk (if nothing else, the risk of the customer carrying around a large sum of cash). So, I'd expect reasonable enquiries to be made of Mrs W to establish the circumstances surrounding the payment.

There are no notes to suggest this did happen and conflicting information about whether a checklist for high value payments was completed by branch staff. They do not recall Mrs W's visit. So, there's no evidence to show that the bank did make proper enquiries about the payment, though Mrs W says she discussed it with the bank and showed it the checks she'd carried out. In the absence of any evidence of a conversation, I think Halifax did make an error by failing to adequately question the payment.

But it's not enough for me to conclude that Halifax made a mistake, I also need to decide that Halifax's error caused Mrs W's loss. It's important to state that its error here is that of not making further enquiries about the payment in order to establish whether Mrs W was at risk of financial harm from fraud. The fact that Mrs W went on to be defrauded does not, in and of itself, demonstrate that Halifax caused Mrs W's loss.

In this case, it's very unlikely that the scam could have been revealed at the point Mrs W withdrew the cash. The actual risk here – that the car she was purchasing had been cloned and would be received, but eventually recovered by the police, was very difficult for bank staff to counter. The principal risk that I'd reasonably expect bank staff to consider is that either the car would not be received at all or, in fact, Mrs W was falling victim to another type of scam (with the purchase of the car simply being a cover story). There would be little reason to think that the latter was the case – Mrs W had brought with her evidence of the particular vehicle and the checks that she'd carried out on it. The former was a risk here – Mrs W was making a payment by bank transfer without having seen the car in person. But, she didn't intend to handover the cash until she had received delivery of the vehicle (and after ownership of the vehicle had been transferred into her own name).

So the obvious risk here related to the payment made by bank transfer, not the withdrawal of cash. I don't think it could have been within the reasonable contemplation of bank staff that Mrs W could have been subject to a scam if she took the steps that she advised them she would take (including to not handover the cash until the vehicle was in her possession). That's particularly true as she was in possession of a third-party vehicle report which stated that the vehicle was not stolen and advised her how to check the VIN (albeit in a way which didn't counter the sophistication of this scam).

Overall, I don't think that the actual scam could reasonably have been uncovered by bank staff and, in fact, the steps that Mrs W intended to take were broadly in line with the advice that I'd expect the bank to give.

I'm afraid that I wouldn't expect bank staff to advise a customer to make a payment via bank transfer. Instead, I'd expect them to advise customers to pay for goods or services by plastic card and, if that isn't possible, only to make a payment once the goods or services have been received. That's because those methods of payment minimise (though clearly don't eliminate) the risk of fraud. Paying by bank transfer does not reduce the risk of fraud (in fact, quite the opposite is true), it just means that, in some limited circumstances, some banks will be responsible for reimbursing losses. So, I can't conclude that Halifax made an error by not advising Mrs W to pay by bank transfer and it follows that it can't be guilty of intentionally failing to give this advice either. The fact that Mrs W *might* have acted differently had she been provided with information about reimbursement in the event of a scam does not mean Halifax are at fault for not providing it.

Mrs W puts weight on the suggestion that the account she was paying was 'verified'. I understand Mrs W is referring to the fact that the account she was paying existed and was held in the same name as the person she was expecting to pay. While I can understand why this would have provided some reassurance to Mrs W, I've seen nothing to suggest (and Mrs W has not claimed) that Halifax staff told her that this would entirely remove the risk that the person holding the account intended to defraud her. So, I can't see that Halifax made any assurances about the account, on which Mrs W relied.

I have every sympathy for Mrs W. It's evident that she's lost out simply because of the way that the payment was made and the circumstances of the scam, not because she acted at all carelessly. The opposite is true – this money was clearly important to her and she took entirely reasonable and sensible steps to ensure that the sale was legitimate. I'm afraid that I simply cannot take her prudence into account when deciding the bank's liability. The only issue I can consider is whether any error by the bank caused her loss. And, given the nature of the scam, I don't think any reasonable level of questioning by bank staff could have uncovered the scam. That means I can't hold it responsible for her loss.

My final decision

For the reasons I've explained, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 29 December 2023.

Rich Drury
Ombudsman