

## **The complaint**

Mrs W complains that Bank of Scotland plc trading as Halifax ("Halifax") won't refund all the money she lost after she fell victim to a purchase scam.

## **What happened**

The circumstances which led to this complaint are well-known to both parties, so I won't repeat them in detail here. But, in summary, I understand them to be as follows.

Mrs W says her son came across a vehicle on a well-known marketplace which he showed to her. Following this, Mrs W messaged the seller, and later agreed to buy the vehicle for £500.

Mrs W went ahead and made a payment of £150 on 1 June 2023, for what she believed was a deposit which also included delivery of the vehicle to her location. She says it was agreed she'd pay the remainder of the balance on delivery. However, the same day Mrs W was asked to make a further payment of £150 which she proceeded to make to the new payee details given to her.

After making the second payment, Mrs W was informed that there has been an issue where a colleague had also taken a deposit for the same vehicle. The third party messaged Mrs W to explain this and gave her the option to make a third payment to secure the vehicle as hers – Mrs W says she was sent a website link, which she said was for a mobile phone top up card company.

It was following this that Mrs W became concerned, and she contacted Halifax to see if there was anything it could do to help and see if her money could be recovered. Halifax declined to reimburse Mrs W her full loss. Unhappy Mrs W complained to Halifax on 8 June 2023. It looked into the matter and issued its final response letter on 3 July 2023. Having considered the payments under the voluntary code called the "Contingent Reimbursement Model" (the CRM Code) which came into force in May 2019, and it is a signatory of, Halifax concluded that Mrs W didn't have a reasonable basis to believe this was a genuine sale. It felt Mrs W hadn't carried out enough checks on the vehicle or the seller prior to sending the payments. It also said it didn't consider the payments made to be unusual to previous account activity and, therefore, there were no concerns.

However, it explained that when the claim was reported, it successfully raised a scam claim for one payment but that for the other payment this wasn't raised until the following day. Because of this, Halifax refunded 50% of one of the payments (£75.00) for the error.

Unhappy that Halifax didn't refund the full amount she had lost, Mrs W brought her complaint to our service. One of our Investigator's looked into things and didn't think the complaint should be upheld. Our Investigator thought there was enough going on that Mrs W ought to have had concerns and that she should have taken further steps before making the payments. It follows that she didn't think Mrs W had met her requirements under the CRM Code. She also didn't think the payments would've stood out as out of character or so unusual that they ought to have caused Halifax concern that Mrs W was at risk of harm from

fraud. As our Investigator didn't think a scam risk would've been apparent, she didn't think Halifax needed to provide an effective warning or contact Mrs W about the payments before processing them.

Our investigator also thought about Mrs W's circumstances at the time, but she didn't think this meant Mrs W was unable to protect herself from the scam she fell victim to or that she met the bar for vulnerability under the CRM Code. Our Investigator was satisfied Halifax had done what she'd expect of it for one of the payments when attempting to recover the money, but unfortunately no funds remained. She acknowledged there was a delay by Halifax in attempting to recover the funds for the other payment. As part of her investigation, she contacted the receiving bank of these funds, and she wasn't persuaded a full recovery would've been successful even had there not been a delay by Halifax. This was because she said most of the funds had left the receiving account the same day as the payment was received. Therefore, she felt Halifax's refund of 50% of the payment was fair and reasonable in the circumstances and she didn't think it was required to reimburse Mrs W her remaining loss.

Mrs W didn't agree with our Investigator's view. In summary, she felt Halifax's delay in trying to recover her money meant the bank was at fault and so she felt Halifax should reimburse her the full amount of her loss.

As an agreement couldn't be reached, the complaint has now 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.

I'm aware that I've summarised this complaint briefly, in less detail than has been provided, and in my own words. No discourtesy is intended by this. Instead, I've focussed on what I think is the heart of the matter here. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual point or argument to be able to reach what I think is the right outcome. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts.

I'm sorry to disappoint Mrs W but I'm not upholding her complaint about Halifax. I know she's been the victim of a cruel scam, and that she's been left out of pocket. But having reviewed everything I've been given; I don't believe Halifax has acted unfairly or unreasonably in its response to Mrs W's complaint. And I don't find Halifax is liable for Mrs W's remaining loss. I will now explain why in more detail.

As noted above, the CRM Code exists to provide additional protection to victims from the impact of Authorised Push Payments (APP) scams. I'm satisfied that the payments made by Mrs W here fall within the scope of the CRM Code.

But despite offering additional protections, the CRM Code includes provisions allowing a firm not to reimburse APP scam losses fully where the firm can establish that the customer failed to take sufficient care when making the payment (often referred to as the exceptions to reimbursement).

Under the CRM Code, a bank may choose not to reimburse a customer if it can establish that\*:

- The customer made payments without having a reasonable basis for believing that:

the payee was the person the Customer was expecting to pay; the payment was for genuine goods or services; and/or the person or business with whom they transacted was legitimate.

- The customer ignored an effective warning by failing to take appropriate steps in response to that warning.

\*There are further exceptions outlined in the CRM Code that do not apply to this case.

Halifax says it has established this applies here. I've considered whether I agree this is fair in the circumstances. In other words, I need to determine whether Mrs W made the payments without having had a reasonable basis for believing she was paying for genuine goods or services, dealing with a legitimate person or business, or paying the person she believed she was paying.

I acknowledge that Mrs W has told us she'd never used the marketplace previously and so this was new to her when she made the payments. She's explained that she didn't know that she had to carry out checks or what checks to carry out. She did tell us that she checked the DVLA for a MOT – as the advert said the vehicle came with a year's MOT and that she checked the cost of insuring the vehicle. Mrs W has stressed she thought the price of the vehicle was reasonable for the age of the vehicle.

I've thought carefully about Mrs W's thoughts about the price of the vehicle. However, having reviewed recognised trade guides, that provide average vehicle sale prices based on make, model, vehicle age and mileage, I'm persuaded the price of the vehicle was considerably less than what comparable vehicles were being sold for at the time of the scam. I am mindful, Mrs W said she didn't know what the mileage of the vehicle was and so an estimated mileage was used and, from what I've seen the market value for this vehicle in the condition described to us and using the estimated mileage was between £1,940 and £2,494. So based on what I've seen, on balance, I think the price the vehicle was advertised for was too good to be true. I think the price ought to have raised concerns, especially when taking into account that this also included delivery from London to Mrs W's location at no extra cost. And whilst Mrs W wasn't familiar with the marketplace, I am persuaded that when looking to make a purchase for an item such as a vehicle that it is fair and reasonable to expect a buyer to carry out some checks into the price of the vehicle to see whether it is comparable to others on the market at the time.

I've also not seen anything that shows Mrs W asked any questions to satisfy herself that the person she was in contact with was in fact in possession of the vehicle she was looking to purchase. Mrs W after being shown the vehicle on the marketplace sent a message to whom she believed was the seller. However, she received a reply from a different third party. In addition to this she was then asked to make the two payments to two different individuals – neither of which were the third party to reply to Mrs W or whom she thought was the seller of the vehicle. I think she ought to have been more concerned about this than she ultimately was, especially against the backdrop that Mrs W hasn't seen the vehicle in person. Seemingly, Mrs W placed a lot of trust in a person she'd never met before and took the word of a relative stranger. She was sending the money without having been able to verify that the seller actually had the vehicle. I'm persuaded Mrs W ought to have had greater concerns about the deal and that, in turn, ought to have led to a greater degree of scrutiny on her part. Buying a car unseen at a considerable discount was always a risk. I think Mrs W should have done more than she did to question the arrangement and what she was being asked to do before paying any money.

I'm mindful that, taking any of the individual factors above in isolation, they may not have been enough to have prevented Mrs W from proceeding. But when considering the specific

circumstances of this case and the factors in the round, on balance, I think that there was enough going on and sufficient red flags that Mrs W ought reasonably to have taken further steps to protect herself. I think Mrs W should have done more than she did to question the deal and to satisfy herself that it was legitimate before making the payments.

All things considered, in the circumstances of this particular case, I don't think Mrs W had a reasonable basis for believing she was paying who she expected to pay, nor that she was paying a legitimate seller for genuine goods. So, under the terms of the CRM Code, Halifax is entitled to rely on an exception to reimbursement.

I've also thought carefully about what Mrs W has told us about her circumstances. The CRM Code talks about customers being reimbursed in full, despite exceptions (such that I have outlined above) applying, if the individual was vulnerable to the extent that they were unable to protect themselves from the scam. So, I have also considered what the CRM Code says about vulnerability and when it might lead to a full refund, even if Mrs W didn't have a reasonable basis for belief.

When considering the relevant part of the CRM Code, it says:

*A Customer is vulnerable to APP scams if it would not be reasonable to expect that Customer to have protected themselves, at the time of becoming victim of an APP scam, against that particular APP scam, to the extent of the impact they suffered. This should be assessed on a case-by-case basis.*

So I've considered whether there are vulnerabilities present to such an extent that Mrs W was unable to take steps to identify the scam she fell victim to or to recognise steps she might take to test the legitimacy of what she was being told by the fraudster. To do so I must consider the details of the scam, Mrs W's actions throughout, and the wider circumstances.

I'd like to assure Mrs W that I don't doubt what she's said about her medical conditions and the bereavement of a close family member. But I've not seen anything to suggest that because of the circumstances she's shared Mrs W was unable to protect herself from this particular scam. Mrs W was shown a vehicle on the online marketplace by her son, and she proceeded to make the decision to contact the seller, and ultimately decided she wanted to purchase the vehicle.

Given this, I'm not persuaded that it would be unreasonable to expect Mrs W to have protected herself against the particular scam she fell victim to. And so I don't find Halifax needs to refund Mrs W's entire loss under the vulnerability clause of the code.

I've then gone on to think about whether Halifax met its own standards under the CRM Code. The code says that the bank is required to provide an effective warning only where it identifies an APP scam risk, which it should do by considering the normal transactional data of the account and customer behaviour. Looking at the payments Mrs W made here, I don't think they would have appeared so unusual or out of character when compared with her previous account activity that the payments would have appeared particularly suspicious to the bank. Halifax wouldn't have been required to provide an effective warning unless other risk factors were present, which I don't find they were in this case.

Finally, I've thought carefully about Mrs W's comments in relation to the bank not acting quickly enough when attempting to recover the money and her belief that had it acted more quickly, more of her money would've been recovered. As set out in the bank's final response letter of 3 July 2023 and by our Investigator, Halifax accepts that it didn't act within the timeframes allowed under the CRM Code for one of the payments Mrs W made. In light of this, Halifax accepted partial liability for this payment and reimbursed Mrs W 50% of one of

the payments she made (£75.00). Whilst I accept an error was made by the bank when attempting to recover Mrs W's fund, this would not automatically mean Halifax was liable to reimburse Mrs W all the money she'd lost. The information I've seen indicates that even had there not been a delay in attempting to recover the money for one of Mrs W's payments it wouldn't have made a difference, as the majority of the funds had left the receiving account the same day the payment was made. Therefore, I'm persuaded Halifax's refund of 50% of this payment was fair and reasonable in the circumstances on this case.

I'd like to assure Mrs W that she has my considerable sympathies. She's found herself in an unenviable situation where she has lost money to a fraudster. And I understand the whole experience has been deeply upsetting for her and I don't underestimate her strength of feeling. But overall, for reasons explained I'm persuaded that the 50% of one payment Halifax has already paid, is fair and reasonable considering the circumstances of this case. So I don't think Halifax has to refund any more of the money Mrs W lost.

### **My final decision**

My final decision is that I don't 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 28 December 2023.

Staci Rowland  
**Ombudsman**