

The complaint

Miss N complains that Bank of Scotland plc trading as Halifax ('Halifax') won't refund the deposit she paid for a lease car.

What happened

Miss N says that she found a leasing company online that I'll refer to in this decision as V. Miss N says that V was the only company she could find that would provide a car in her price range. A representative of V said it could provide Miss N with a car to lease the following week and that she'd need to pay a deposit. Miss N paid a deposit of £3,000 on 11 May 2022. Paying a larger deposit meant that Miss N's monthly payments were due to be £400. Miss N was added to a group chat that included other customers of V.

There were delays in receiving the car during which time Miss N had to hire a car from a company I'll call S. Miss N made two payments to S and received a credit so paid £1,895.40 to hire the car. V paid Miss N's hire costs and between 9 February and 4 March 2022 credited her account with £2,452.

Miss N got fed up with the delays in receiving her car and asked N to return her deposit. V provided a refund on 31 March 2022, but Miss N was unable to find the car elsewhere. V told Miss N the car was coming in and asked her to pay the deposit again. When the car arrived, it wasn't the one Miss N expected to receive and V agreed to reduce the deposit by £200 to reflect this.

Miss N received the car from a third party company. She then received demands to pay tax which she didn't expect. V told her to ignore them, but Miss N called the tax department and was told the tax was due. Miss N then called the third party leasing company, which told her she was on a personal contract hire (PCP) agreement rather than simply leasing the car as she thought and her monthly payment was £673.44 instead of £400. V said it would pay the difference between the lease cost and the higher monthly PCP payment for the duration of the contract (48 months). V paid Miss N £270 on 9 May 2022 and £228 on 13 June but didn't make any further payments.

Miss N paid the third party company five instalments of £673.44 but was advised not to continue to make the payments. The car was returned in June 2023. The third party company has advised Miss N that V has taken deposits from others and not passed them on. She also believes that V paid hire car costs in the hope she would recommend V to other people. The representative of V stopped responding to Miss N and V is no longer operating.

Miss N reported what had happened to Halifax. Halifax didn't agree to reimburse Miss N's deposit. It said it couldn't see that Miss N had suffered a loss and that Miss N received the car she expected and kept it for 12 months.

Our investigation so far

The investigator who considered this complaint didn't recommend that it be upheld. She said that there was no evidence that Miss N was the victim of a scam and that she has a civil dispute with N. The investigator noted that Miss N received a vehicle and that V paid towards the monthly cost of her having the vehicle. If V hadn't kept to the terms of the agreement this was a civil matter.

Miss N was unhappy with the investigator's findings and asked for a final decision, so her complaint has been passed to me. She says she has been left without a car or a deposit. The funds that V paid her were for hire car costs and did not represent a refund of her deposit.

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.

In deciding what's fair and reasonable, I'm required to take into account relevant law and regulations; regulatory rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

In broad terms, the starting position is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. There's no dispute here that Miss N authorised the payment.

The CRM Code provides protection to scam victims. Under the CRM Code, the starting principle is that a firm should reimburse a customer who is the victim of an APP scam (except in limited circumstances). But the CRM Code only applies if the definition of an authorised push payment (APP) scam, as set out in it, is met. I have set this definition out below:

"...a transfer of funds executed across Faster Payments...where:

- (i) The Customer intended to transfer funds to another person, but was instead deceived into transferring the funds to a different person; or*
- (ii) The Customer transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent."*

The CRM Code is quite explicit that it doesn't apply to all push payments. It says:

"This Code does not apply to: (b) 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".

So the CRM Code isn't a general protection for consumers. Instead, it only applies in very specific circumstances – where the customer has been the victim of a scam. For me to conclude that Miss N has been the victim of a scam, I'd have to be satisfied that V deliberately tricked her into making a payment for a service it had no intention of providing at the time she made her payment.

Miss N believes that Halifax should return the deposit she paid to V, but the deposit wasn't a refundable deposit. It was a payment towards the overall value of the contract, which is how lease agreement deposits work. The deposit amount affects the monthly contract price so that the higher the deposit the lower the monthly instalment. So, in a genuine credit hire agreement the deposit isn't returned to the customer. I appreciate though that if things had gone as Miss N expected she'd have had the use of a car for four years.

In this case Miss N initially paid a deposit that V later refunded when a car didn't become available. This isn't what I'd expect of someone who intended to defraud her. And when Miss N's next vehicle was delayed V paid her car hire costs so that she had a vehicle available to her. Again, this isn't what I'd expect of a fraudster, particularly given that the sums involved weren't insignificant.

Miss N has said that she thought she was leasing a vehicle but later found that she had a PCP agreement. I've asked Miss N to provide evidence of the agreement she signed but it hasn't been provided. It's clear she signed the document on a secure portal that she no

longer has access to. Without seeing the signed agreement it's difficult to understand exactly what was agreed between Miss N and V.

I'm also mindful of the fact that Miss N was provided with a car that she had the benefit of for over a year. For the first couple of months V paid the difference between the PCP agreement monthly cost and the lease cost. It's difficult to know why V stopped paying this amount but businesses can fail or be mismanaged such that agreements are breached and agreed services aren't provided. These scenarios amount to civil disputes which banks aren't responsible for.

Solicitors acting for the third party company that provided Miss N with a car have provided evidence that a number of customers of V reported that V took deposits which it passed on to its client on different terms to those agreed with the customer, or not at all. And the police have said that Miss N is the victim of a scam. I don't consider these pieces of evidence to be persuasive in deciding whether the definition of an APP scam in the CRM Code (as set out above) has been met though. The solicitors are setting out what others have reported to them, and the police evidence appears to rely heavily on reviews on a well-known website. There is no evidence of a police investigation or of any charges being brought against the directors of V. It also seems from what Miss N has said and the reviews I have read that other people weren't given a car or hire car costs, so I feel Miss N's situation is different in any event.

I can also see that V is a registered company that was incorporated in January 2020. So at the time Miss N made the payment V had traded for a few years. In response to negative reviews, a director of V said that he could no longer afford to trade. This is as likely an explanation for the way V treated Miss N than any other. It is for Miss N to demonstrate that she is the victim of fraud, but the evidence doesn't support this finding.

Overall, while I'm really sorry to hear of Miss N's loss and the impact it has had on her, I can't reasonably ask Halifax to reimburse her.

My final decision

For the reasons stated, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss N to accept or reject my decision before 17 April 2024.

Jay Hadfield
Ombudsman