

The complaint

Mr A is unhappy Bank of Scotland plc, trading as Halifax ("Halifax"), won't reimburse him for the outstanding money he lost as a result of paying a driving instructor for lessons.

What happened

The details of this case are well-known to both parties, so I don't need to repeat them at length here.

In summary, Mr A contacted an approved driving instructor who is listed on the Driver and Vehicle Standards Agency ('DVSA'). As a result Mr A paid an amount upfront of £1,250 which was to include 28 hours of driving lessons and two hours for the driving test.

Mr A has said he didn't receive the best level of service. While he did have some driving lessons, he felt that rearranged lessons, cancellations and interruptions impacted his learning schedule, so he sought a refund of what he had paid. Mr A wanted to be reimbursed the full amount minus the 5.5 hours (over three lessons) of driving lessons plus the driving test registration fee.

The driving instructor reimbursed £594 to Mr A, citing that some lessons had been booked in and under the terms and conditions were non-refundable. Mr A considered he was owed around a further £361.

Mr A subsequently contacted his bank - Halifax to see if there was anything it could do to help and to see if any funds could be recovered.

When Mr A first contacted Halifax it put him through to the disputes team. But as the payment was made via bank transfer, and wasn't made by card, Halifax was unable to initiate any processes / schemes that offer protection to payments made via debit or credit card. Ultimately it did however consider the matter under a voluntary code called the 'Contingent Reimbursement Model' (the CRM Code) which came into force in May 2019 that it is signed up to.

The CRM Code provides increased protection for customers who are the victim of scams. But the CRM Code doesn't apply to every type of disputed payment. The CRM Code doesn't apply to disputes that are deemed to be a 'civil dispute' between two parties.

Halifax deemed the matter a civil dispute between Mr A and the driving instructor. So it considered the CRM Code didn't apply to the payment Mr A had made and said it was unable to help him further.

Unhappy, Mr A referred the matter to our service.

While the complaint was with our service, our Investigator noted that Halifax incorrectly put Mr A through to its disputes team, which wasn't the correct department and delayed providing Mr A with an outcome. Our Investigator asked Halifax for its thoughts and whether it would offer compensation to reflect the unnecessary inconvenience caused. Halifax responded advising that it recognised that the level of service Mr A received fell below the standards it expects and offered £75 for the distress and inconvenience caused.

Our Investigator then reviewed the matter. In short, they didn't uphold the complaint in full, as they also considered the matter was a civil dispute – and therefore said the CRM Code didn't apply to the payment Mr A had made. So they didn't consider Halifax was liable to refund the outstanding amount Mr A felt he was owed. But they felt the £75 now being offered by Halifax was fair compensation for the level of service Mr A received.

Mr A disagreed and has asked for an ombudsman's review as the final stage of our process.

So, as the matter hasn't been resolved, it's been passed to me to decide.

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 sorry to hear of what's happened to Mr A. I can see the driving lessons were important to him and he clearly didn't receive the service he expected from the driving instructor. But having thought carefully about Halifax's actions, I don't uphold Mr A's complaint in full. I do appreciate how disappointing this will be for him, but I don't think Halifax has acted unfairly in its answering of the complaint, but I accept that Mr A didn't receive the best customer service from Halifax and its compensation amount is appropriate in the circumstances. I'll explain why.

When considering what is fair and reasonable in this case, I've also thought about the Lending Standards Board's voluntary CRM Code, which Halifax has signed up to and was in force at the time Mr A made the payment.

I've thought about if the CRM code applies in the circumstances of the payment Mr A made. But the CRM Code is quite explicit that it doesn't apply to all push payments. It says:

"DS2(2) 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;" **

*Subsections (a) and (c) have been omitted as they are not relevant to this complaint.

Having reviewed all the information and evidence provided, I think it was reasonable for Halifax to consider this a civil matter rather than a scam. I say this because in the case of a scam, I'd usually expect for goods or services not to be provided – and for there never to have been an intent for them to be provided.

In this case, I can see the driving instructor is listed on the DVSA and did carry out some initial lessons with Mr A. I fully appreciate that Mr A may have been unhappy with the service he received. There were postponed / cancelled lessons, amended start times and other difficulties which led to Mr A wanting a refund from the driving instructor. And Mr A was subsequently unhappy with the refund policy with Mr A only receiving a partial refund, due to the instructor advising some lessons had been booked in and those were considered non-refundable. But that in itself doesn't mean Mr A was scammed and that the driving instructor had deliberately set out, with intent, to defraud him. To my mind it seems to be simply a case of Mr A being dissatisfied with the services he received from a genuine licensed driving instructor and the subsequent refund policy. That is a civil dispute between the two parties and for reasons explained isn't something Halifax are liable for.

Taking everything into consideration, I'm satisfied the CRM Code doesn't apply and I can't fairly ask Halifax to refund the outstanding money Mr A considers he is owed. I don't think Halifax treated Mr A unfairly when it said the payments weren't covered by the CRM Code as they relate to a civil dispute.

I'm also satisfied that there wasn't anything else Halifax could have done to either prevent the loss when Mr A initially made the payment or recover any funds. I say this because the payment wasn't remarkable enough or out of character to such an extent whereby I would expect Halifax to have concerns about it and intervene. And had it done, I'm mindful it was a genuine payment made to a genuine driving instructor. And as the payments weren't made by debit or credit card, the various schemes available that offer protection to those methods of payments weren't available to Halifax or Mr A either.

Finally, I note that Halifax acknowledged its level of service fell below what it expects and has offered £75 for the unnecessary inconvenience Mr A suffered as a result. Halifax should have put Mr A through to the correct department when he first contacted it, and Halifax should have also provided an outcome to Mr A far sooner than it did. These delays would have caused unnecessary inconvenience to Mr A, so I think the £75 offered is a fair amount in the circumstances.

I realise that my decision will be disappointing for Mr A. I know he feels strongly about the actions of the driving instructor. But overall, for the reasons I've explained I can't fairly or reasonably ask Halifax to refund the outstanding money Mr A considers he is owed. I consider Halifax were fair in considering the matter a civil dispute which isn't covered by the CRM Code. It is therefore something that needs to be resolved between the two parties through alternative methods.

My final decision

Bank of Scotland plc, trading as Halifax, should pay Mr A £75 for the poor level of service it provided to Mr A, if it hasn't already done so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 1 March 2024.

Matthew Horner

Ombudsman