

The complaint

Mr W complains that Bank of Scotland plc (trading as Halifax) won't refund all of the money he lost when he was the victim of a scam.

What happened

Mr W was looking to buy a motorhome. He found one that met his needs on a well-known online marketplace which specifically dealt with vehicle sales. The motorhome was for sale at £21,500 and, on discussing things with the seller, Mr W felt this price was reasonable and agreed to buy the vehicle.

The seller told Mr W that they had already had significant interest in the vehicle from a dealer, but would agree to sell it to Mr W if he could pay a 50% deposit. Mr W paid this deposit, but the next day the seller contacted him again and said the dealer had offered a very quick sale if they could buy it instead, the seller also said that the dealer had suggested Mr W could be trying to scam them in some way. As a result, Mr W agreed to pay the remainder of the balance that day. But when Mr W then went to collect the vehicle the next day, it became clear that he had been scammed, the seller and vehicle were not at the address he'd been given, and he was unable to make any further contact with them.

Mr W contacted Halifax to report what had happened. Halifax reimbursed Mr W for 50% of his loss, as it felt that it had failed in its obligations to him by not providing an effective warning regarding the payments he was making. It was also able to recover a small amount from the recipient account – which was also a Halifax account. But Halifax felt that Mr W had not done enough checks to ensure he was dealing with a legitimate seller, and so felt he did not have a reasonable basis for believing the sale was legitimate. It therefore declined to refund the remainder of his loss. Mr W was unhappy with Halifax's response, so he referred his complaint to our service.

The investigators who considered this complaint under the Contingent Reimbursement Model Code (CRM Code) said that Halifax had acted fairly in relying on an exception to full reimbursement because Mr W didn't have a reasonable basis for believing he was paying a genuine seller. Mr W didn't agree with the investigator's findings. He said he bought the vehicle in good faith.

As no agreement could be reached, the complaint has 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.

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to be 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 Mr W authorised the payments. So, the relevant regulations (and the terms of his account) make him responsible for payments he's made himself in the first instance.

However, where a customer makes a payment as a consequence of the actions of a fraudster, it may sometimes be fair and reasonable for the bank to reimburse the customer even though they authorised the payment.

I've considered whether Halifax should have reimbursed Mr W in full under the provisions of the CRM Code and whether it ought to have done more to protect him from the possibility of financial harm from fraud.

There's no dispute here that Mr W was tricked into making the payments and is an innocent victim. But this isn't enough for him to receive a refund under the CRM Code. Under the CRM Code, a bank may choose not to reimburse a customer in full 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 in relation to the payment being made.

There are further exceptions within the CRM Code, but they do not apply in this case.

I am also mindful that when Mr W made these payments, Halifax should fairly and reasonably also have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). And in some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

Halifax has already admitted it could have done more to protect Mr W before the first payment was made – as a result it agreed to refund Mr W half of the money he lost. Since Halifax has accepted it could have done more to provide Mr W with an effective warning, there is no need for me to explore that point any further in this decision. Suffice to say that I agree with Halifax's position here, in that it is, at least partially, responsible for refunding Mr W when considering this exception of the CRM code.

But Halifax not providing an effective warning isn't, in itself, enough to say that Mr W should be refunded the full amount of his loss. When considering the principles of the CRM code, I need to consider whether Mr W acted reasonably here. I've thought about the steps Mr W says he took to reassure himself about the legitimacy of the transactions and whether it was reasonable for him to proceed with the payments.

Having done so, while I know it will come as a disappointment to Mr W, I am not persuaded that he had a reasonable basis for believing that the payee was the person he was expecting to pay, the payment was for genuine goods or services or the person he transacted with was legitimate. I say this because:

- The vehicle Mr W was buying was significantly cheaper than other similar vehicles on the market. Mr W says this is because it was being sold by a private seller – rather than a trade seller – and that the seller appeared to want a quick sale. But I have

been unable to find similar vehicles for a similar price. Even the private sales I have found appear to be for a significantly higher price.

- Mr W has said he did some checks on the vehicle – the vehicle history check provided by the online marketplace, and an MOT and road tax check – but does not appear to have done any checks to ensure the seller was the true owner of the vehicle and he did not see the vehicle in person.
- Mr W has said the seller told him they could not provide more pictures of the vehicle because it was in storage, that they could not provide proof of their identity because they were not good with computers, and that they could not use PayPal (which would have been more secure) for the same reason.
- The seller said that Mr W needed to pay the full price of the vehicle up front to secure the sale; given that Mr W appears to have been going to collect the vehicle the next day, this urgency seems unusual.

While each of these points alone may not have been enough to cause concern, I think that as a whole the situation should have given Mr W pause for thought, and that it would have been reasonable for him to insist on further checks or evidence of the legitimacy of the sale before agreeing to pay such a large amount for a vehicle he had not seen in person. So, it's the combination of these factors that leads me to consider Mr W didn't have a reasonable basis for belief. It follows that I think Halifax has correctly identified that this exception to reimbursement under the CRM Code applies.

I note what Mr W has said about Halifax's failure to detect that he was at risk of fraud or financial harm – due to the unusual nature of the payments. But even if I consider his complaint from that perspective, the outcome is still the same. As noted above, there is no dispute that Halifax failed to flag these payments as unusual, Halifax has confirmed this itself and that is why it has refunded 50% of Mr W's loss. I would only be able to recommend that Mr W be refunded 100% of his loss if I was satisfied that he bore no responsibility for his loss here, but as noted above, I am satisfied that there were aspects of this scam that should have caused Mr W concern. I am therefore also satisfied that, if I found Halifax ought to have taken steps to prevent the scam, it would be reasonable for him to bear partial responsibility for his loss in any event. So I remain of the view that the 50% refund already given by Halifax is fair and reasonable in the circumstances of this complaint.

I am also satisfied that Halifax did what it could to recover any of Mr W's funds remaining in the recipient account. Halifax has shown that it took steps to recover those funds within a reasonable time of being informed of the scam, but by that stage only a small amount remained.

Overall, whilst I'm sorry to hear about this scam and Mr W's loss, I can't reasonably ask Halifax to reimburse him in full, given that I am satisfied it has applied the CRM Code correctly, and does not have any obligation to refund him any more of his loss under the general fraud and scam regulations and guidelines.

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 Mr W to accept or reject my decision before 9 May 2024.

Sophie Mitchell
Ombudsman