

The complaint

Mrs S complains that Bank of Scotland Plc trading as Halifax (Halifax) won't refund the money she lost to a scam.

Mrs S has used a professional representative to bring this complaint to our service and they have made submissions on her behalf. For consistency, I'll refer to Mrs S throughout.

What happened

The background to this complaint is well known to both parties, so I won't repeat it in detail here, but in summary I understand it to be as follows.

Mrs S was looking to purchase a vehicle. She found one listed on a well-known online selling platform (that I'll call E), for a price of £13,500. Mrs S' husband spoke to the seller via phone and agreed to pay a deposit of £3,900 via bank transfer which Mrs S paid on 20 May 2022. It was agreed that the outstanding balance would be paid upon inspection of the vehicle when Mrs S and her husband went to collect it in person.

After Mrs S paid the deposit, the seller told Mrs S and her husband that he had another interested buyer who he was going to sell to, unless they could pay the outstanding balance upfront. Mrs S didn't agree to this and so the seller agreed to refund their deposit. But the refund never materialised. And Mrs S realised she'd been scammed when the scammer stopped taking their calls.

Mrs S reported the scam to Halifax on 21 May 2022. It attempted to recover Mrs S' funds from the bank she paid, but it was unsuccessful.

Halifax declined to refund Mrs S under the Contingent Reimbursement Model (CRM) Code, of which it's a signatory. The CRM Code sets out that Halifax should refund victims of authorised push payment (APP) scams (like Mrs S), in all but a limited number of circumstances. Halifax argued that Mrs S ought to have done more to check that the sale was legitimate. It noted that whilst she did some basic checks, these only determined the vehicle existed. Such checks did not verify that the seller was the legal owner of the vehicle. It also argued Mrs S ought to have inspected the vehicle in person or requested a video call.

Halifax said it presented Mrs S with a warning based on the payment reason she provided. However, this was not relevant to her because she ought to have chosen a different reason for the payment. And it had no reason to be concerned about the payment, so it didn't intervene further.

Our Investigator didn't uphold Mrs S' complaint. They thought Halifax had fairly established that under the CRM Code a valid exception to reimbursement applied and so it did not need to refund Mrs S.

Mrs S didn't accept this outcome and thinks she ought to be refunded under the CRM code because:

- She was shown photos of the vehicle

- She was shown a photo of the log book in the hand of the seller which would indicate ownership
- She did not ignore any warnings from the bank
- She has otherwise not been grossly negligent in any way
- The confirmation of payee outcome was a close match and did not cause concern
- The price matched similar vehicles she was looking at around the time of the scam

As no agreement could be reached, this case was passed to me to be decided.

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 doing so, 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.

It's not in dispute that Mrs S made the payment to the fraudster herself. So, in accordance with the Payment Services Regulations 2017 (PSR 2017) Mrs S is presumed liable for the loss in the first instance. However, as I've already set out, Halifax is a signatory of the CRM Code.

The starting position under the CRM Code is that Halifax ought to refund Mrs S, unless it can establish an exception to reimbursement applies. Such exceptions to reimbursement include (as far as is relevant to this complaint) that Mrs S;

- Made the payment without 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

In this case, I think that Halifax has fairly established that it can rely on this exception to reimbursement. I know this will be disappointing for Mrs S, so I'll explain why I've reached this outcome.

Firstly, I do acknowledge some of the more persuasive elements of the scam. I can see Mrs S was shown various photos of the vehicle and photos of documents which appeared to be related to the vehicle – albeit these images are of poor quality so the contents of the documents can't be read. What is probably most compelling, is a copy of a V5 document in the seller's name. Mrs S says she was sent a photo of the logbook, but I've seen no such evidence.

However, what must be considered, and what I think outweighs these otherwise convincing elements, is the heavily discounted price of the vehicle. Using the vehicle registration provided by the seller, and the mileage from the MOT test completed prior to the date of sale in a vehicle valuation tool, this gives an estimated value of £25,174 on the date of sale. That would mean that the price Mrs S agreed upon was approximately 46% less than the estimated value of the vehicle.

I accept that on platforms like E, sellers will sometimes list an item for a discounted price, considering the condition of the item or the reason for selling it. However, in this case, Mrs S says that the seller appeared to have a strong emotional connection to the vehicle and often cried on the phone as the vehicle was so precious to him. It therefore seems unusual that

despite such a strong emotional connection to the vehicle, that they'd be willing to offer such a heavy discount.

I've also considered whether the price might have been discounted due to the condition of the vehicle. Mrs S says she completed a DVLA check and basic HPI check to make sure the vehicle was not damaged or stolen. The MOT completed prior to the sale shows it passed with no noted repairs necessary. And in correspondence from the seller to Mrs S' husband, the seller describes the vehicle as *"excellent condition throughout [sic] very clean well maintained and drives absolutely perfectly without any issues"*. Therefore, there isn't anything which points to the vehicle being discounted due to faults or damages.

I've also considered the seller's motivation for parting with the vehicle. But the seller said they were selling the vehicle simply because they no longer needed it. That doesn't suggest an urgency to sell which might have otherwise explained the discounted price. Whilst I appreciate Mrs S says she saw similar vehicles sold for a similar price, I've seen no evidence of this or plausible explanation for the heavy discount offered. I don't doubt the price is likely what enticed Mrs S into buying the vehicle, considering how cheap it was in comparison to the typical selling price. But a very low price can be one indicator that there is potentially something untoward about the seller or the proposed deal.

In addition to the price, I think there were other signs that something wasn't quite right. Mrs S thought she was dealing with a seller and this seller's name is also the name shown on the V5 document photographed. However, when Mrs S made the payment to the details provided, the CoP result was not an exact match. The surname Mrs S entered was correct, but the first name was entirely different. The audit trail shows that approximately two minutes after the first CoP mismatch, Mrs S proceeded using the different name. And as Mrs S says this didn't cause any concern, it doesn't appear that she queried this. I think the above factors ought to have prompted a more cautious approach from Mrs S.

As I understand it, the seller was located two hours' drive from Mrs S' home. So, I don't think it would have been unreasonable to expect her to have made the journey to view the vehicle first, before making a payment. Given Mrs S was planning on inspecting and collecting the vehicle in person after she'd paid the deposit, it seems reasonable that this step could have been taken prior to parting with any money. Failing that, another reasonable step might have been to request a video call with the seller to prove that the item was in their possession. I understand Mrs S says she was reassured from an online search of the seller's address which showed satellite images of the same vehicle on the driveway. I've completed the same online search and reviewed the images, but these do not appear to show the same vehicle on the driveway that Mrs S has described.

In light of the above, I've found that Halifax has fairly established that Mrs S lacked a reasonable basis for believing that the person with whom she transacted was legitimate or that they were genuinely selling her a vehicle. Therefore, Mrs S can be held at least partly liable for her loss under the CRM Code.

Standards for firms

Halifax also has standards under the CRM Code it's expected to meet. Failure to do so in relation to a particular payment, or series of payments, could mean it's responsible for partially reimbursing its customer.

Effective Warning

The CRM Code requires a firm to provide an Effective Warning where it identifies an APP scam risk in a payment journey. Given the value of the payment Mrs S was making, I think

Halifax ought to have provided Mrs S with an Effective Warning in line with the requirements of the Code. And it did take steps to establish the type of scam Mrs S was at risk of.

However, Mrs S selected 'Move my money' as opposed to 'Buying something online' which would have been more relevant to her circumstances. Mrs S says she doesn't remember selecting this or why she selected this. The only reason offered as to why she selected 'Move my money' as opposed to 'Buying something online' was that the payment was made late at night, so she might have been tired.

As Halifax didn't speak to Mrs S when she was making the payment, it couldn't have known she was falling victim to a purchase scam. Nor would I expect Halifax to have made direct contact with Mrs S, given how this payment appeared amongst her previous account activity. I therefore don't think it would be fair to hold Halifax liable on the basis that the warning Mrs S wasn't specific to the scam she was falling victim to.

Recovery of funds

I've also considered whether Halifax took appropriate and timely steps to notify the receiving firm of Mrs S' claim, in line with the expectations under the CRM Code. Such expectations say that a sending bank should notify a receiving firm of an APP scam immediately. 'Immediately' isn't defined, but I think up to one hour would be considered reasonable.

Mrs S reported the scam to Halifax at 08:33. Halifax has evidenced it contacted the bank Mrs S sent her funds to at 09:03. I'm therefore satisfied it took reasonable steps to notify the receiving bank promptly. Unfortunately, the receiving bank didn't return the 46p that remained of Mrs S' funds, despite a further chaser from Halifax. All in all, I'm satisfied Halifax acted appropriately in its attempts to recover Mrs S' funds.

Overall

In reaching my decision, it's not my intention to blame Mrs S. My role here is to consider whether Halifax has reached a fair and reasonable outcome, in light of the relevant rules and regulations – namely the CRM Code. And under the CRM Code, it is necessary to consider the actions of both Mrs S and Halifax when reaching an outcome.

Taking these things into account, I'm satisfied Halifax has fairly established a relevant exception to reimbursement applies, and there is no other applicable reason under the CRM Code for Halifax to refund Mrs S.

My final decision

For the above reasons, my final decision is that I do not uphold this complaint about Bank of Scotland Plc trading as Halifax.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 4 March 2025.

Meghan Gilligan
Ombudsman