

## **The complaint**

Mr L complains that Bank of Scotland plc trading as Halifax ('Halifax') won't refund the money he says was lost as the result of a scam.

## **What happened**

In May 2023, Mr L contacted a company and hired a supercar for a family event in July 2023. I'll refer to the company Mr L used as C.

Mr L made a payment to C of £6,100 from his Halifax account on 25 May 2023.

The day before the event, C contacted Mr L and said there was an issue with the vehicle. Mr L says no vehicle was provided and he hasn't been refunded by C.

In August 2023, Mr L raised a fraud claim with Halifax. Halifax declined to refund Mr L saying his payment wasn't covered by the Lending Standards Board's Contingent Reimbursement Model Code (CRM Code) as they weren't satisfied it was a scam because C was a genuine company. Halifax say the payment was in line with Mr L's usual account activity and that he was shown a warning when he made the payment which recommended he pay by card.

Mr L wasn't happy with Halifax's response, so he brought a complaint to our service.

An investigator looked into Mr L's complaint but didn't uphold it. The investigator wasn't satisfied that Mr L made the payment as the result of a scam, so Halifax couldn't be held liable for his loss.

Mr L disagreed with the investigator's opinion, raising the following points:

- C was set up fraudulently and have moved from their registered address.
- C says on it's website that it's been in service for 20 years but was only set up last year. Also, the filing of the company accounts is overdue.
- There is no evidence that C owns the cars that it advertises.
- There are numerous negative reviews online about C which suggests other customers have lost their money in the same circumstances as Mr L.

Mr L also provided links to online or social media posts that he says supports his case that this was a scam. Mr L asked that his case be passed to an ombudsman for review.

## **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 really sorry to disappoint Mr L as he's lost a significant amount of money. But having carefully reviewed the evidence, I've reached the same answer as the investigator.

### Did Mr L make the payments as the result of a scam?

Halifax are a signatory of the CRM Code, which requires firms to reimburse customers who have been the victims of Authorised Push Payment (APP) scams, in all but a limited number of circumstances. The CRM Code defines what is considered an APP scam as “*where the customer transferred funds to another person for what they believed were legitimate purposes, but which were in fact fraudulent*”.

In order to decide whether the circumstances under which Mr L made his payment meets the definition of an APP scam, I need to consider the purpose of the payment and whether Mr L thought this purpose was legitimate. I also need to consider the purpose the recipient (C) had in mind at the time of the payment and whether this was broadly in line with what Mr L understood the purpose to be. And, if I decide there was a significant difference in these purposes, whether I'm satisfied that was as a result of dishonest deception.

I'm satisfied that Mr L made the payment for the purposes of hiring a car and there wasn't anything to suggest that this wasn't a legitimate purpose.

In reaching an answer on what purpose C had in mind, the key information to this case is:

- C are a UK incorporated company and have an active website. I appreciate that the filing of their accounts may be overdue, but it appears they have been operating legitimately.
- While there are some negative reviews online, there are also a large number of positive reviews. I haven't seen any evidence that shows C took Mr L's payment without the intention of providing the hire car. The onus is on Mr L to prove that C took his payment with no intention of providing the hire car – which he hasn't done.
- A business failure, whether that's due to mismanagement or a change in their financial position, doesn't mean that Mr L's payment meets the definition of an APP scam. It's possible that C has fallen into financial difficulties, but this doesn't mean that Mr L lost his money as the result of an APP scam.
- Mr L has reported the company to the police. I haven't seen any evidence from the police or another statutory body (for example Trading Standards) which suggests that C took the funds with a different purpose in mind.

I appreciate that Mr L hasn't been refunded the £6,100 by C and wasn't provided with the hire car that he booked, but that doesn't necessarily mean that Halifax are liable for his loss.

Based on the evidence, I'm not satisfied that I can conclude C took the payment with a different purpose in mind, or through dishonest deception. So, I can't hold Halifax liable for Mr L's loss under the CRM Code.

### Is there any other reason I could hold Halifax liable for Mr L's loss?

In broad terms, the starting position in law is that Halifax are expected to process payments that a customer authorises it to make, in accordance with the terms and conditions of the customer's account and the Payment Services Regulations 2017 (PSR's).

But, taking into account the law, regulators rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider Halifax should fairly and reasonably have been monitoring accounts and any payments made or received to counter various risks, including preventing fraud and scams.

Also, I'd expect Halifax to have 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 where a potential risk of financial harm is identified, to have taken additional steps, or made additional checks, or provided additional warnings, before processing a payment.

However, even if I was satisfied that Halifax should've intervened when Mr L made the payment it wouldn't change the outcome. I say this as all the information that Mr L had at the time about C would've suggested that he was paying a legitimate company. I'm not satisfied that questioning by Halifax would've suggested that Mr L might be at risk of falling victim to a scam. So, I can't fairly say that Halifax could've prevented his loss.

As Halifax aren't satisfied that Mr L made the payment as the result of a scam, they haven't been able to recover his funds. It's worth noting that by the time Mr L raised the fraud claim with Halifax in August 2023, some months after he made the payment, it's unlikely Halifax could've recovered the funds even if they were satisfied Mr L was the victim of a scam.

It's possible that material new evidence may come to light at a later date, for example from the police or Trading Standards. If it does, Mr L can ask Halifax to reconsider his fraud claim. Having carefully considered the evidence, I'm not satisfied that I can fairly hold Halifax liable for Mr L's loss or ask them to refund him.

### **My final decision**

My final decision is that I don't uphold this complaint against Bank of Scotland plc trading as Halifax.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 10 March 2025.

Lisa Lowe  
**Ombudsman**