

## **The complaint**

Mr R complains that Bank of Scotland plc trading as Halifax ('Halifax') won't refund the money he lost in a scam.

## **What happened**

Mr R is represented but for ease I'll refer to Mr R throughout this decision.

Mr R says that he saw a van advertised for sale on an online marketplace. He was interested in the van, as he urgently needed one for his work, and contacted the seller. The van was advertised for sale for £5,300 and the seller asked for a refundable deposit of £2,500 with the balance to be paid on collection. The seller provided Mr R with a screenshot of a V5 document which said the vehicle was acquired in February 2018.

Mr R asked if he could pay by a secure method, but the seller said he didn't have an account to do so. Mr R paid £2,500 by bank transfer on 17 February 2022 and was due to drive a long distance to pick the van up the following day. The seller then threatened to sell the van to someone else if Mr R didn't pay the balance. The seller also told Mr R that he'd been unable to access the funds initially sent so asked Mr R to transfer the balance to his girlfriend's account. Mr R asked for some photos of the van as he said the advert had been removed and made the second payment.

Mr R went to pick up the van but when he got to the address the seller had given him the owners knew nothing about it. The seller blocked contact with Mr R and he realised he'd been scammed and contacted Halifax that evening.

Halifax investigated Mr R's claim but didn't agree to refund him. It said that it met its obligations under the CRM Code, but that Mr R didn't do enough to check the seller was legitimate. Halifax also attempted to recover Mr R's funds but was only able to recover 4p.

### *Our investigation so far*

The investigator who considered this complaint didn't recommend that it be upheld. She said that the payments Mr R made were consistent with previous account activity, so Halifax didn't need to provide warnings when the payments were made. The investigator also agreed that Mr R didn't have a reasonable basis to believe the seller was legitimate.

Mr R didn't accept the investigator's findings and asked for a final decision, so his complaint has been passed to me to consider.

## **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.

The starting point for my considerations is that, under the Payment Services Regulations 2017 and the terms of his account, Mr R is liable for transactions he's carried out himself. But Halifax are signatories to the CRM Code and also have a longstanding obligation to be on the lookout for unusual and out of character transactions which might indicate their customer is at risk of financial harm from fraud.

There's no dispute here that Mr R was tricked into making the payment. But this isn't enough for him to receive a refund under the CRM Code. The CRM Code requires firms to reimburse customers who have been the victims of Authorised Push Payment (APP) scams like this, in all but a limited number of circumstances and it is for Halifax to establish that Mr R failed to meet his requisite level of care under one of the listed exceptions set out in the CRM Code.

Under the CRM Code, a bank may choose not to reimburse a customer if it can establish that:

- The customer ignored what the CRM Code refers to as an "Effective Warning" by failing to take appropriate action in response to such an effective warning.
- 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.

There are other exceptions that do not apply to this case.

Taking into account all the circumstances of this case, I think the concerns Halifax has raised about the legitimacy of the transactions Mr R made, are enough to support its position that it can choose to rely on an exception to reimbursement. I don't think Mr R had a reasonable basis for believing the seller was legitimate and will explain why.

- The price of the van was too good to be true. Mr R was buying the van for a total cost of £5,300. Having reviewed recognised industry trade guides that provide average vehicle sale prices based on make, model, vehicle age and mileage, this price is considerably less than the amount comparable vans were being sold for at the time of the scam. The information I have seen suggests the typical market value for the van Mr R was buying was around double what he paid. I think this is a significant point that ought reasonably to have led Mr R to take additional steps before making payment.

I appreciate that the seller told Mr R that he needed the funds so that he could buy a replacement vehicle, but this doesn't explain the massive price discount. The seller would need to obtain the market value of the van to replace it with a comparable van or to put towards an upgrade.

- The seller initially said Mr R would need to pay a refundable deposit of £2,500 (which was said to be 50% of the purchase price) and the balance on collection. So I think Mr R ought to have had concerns about being asked to pay the balance before he had the opportunity to view the van. This is particularly so given that Mr R was driving to collect the van the day after the initial payment. And I'm uncertain why the price rose by £300 so that Mr R's second payment was for £2,800.
- Mr R has said he completed checks as he used a website that allowed him to see details like the make and model and also previous MOT information. I've viewed this website and can see that it provides limited information unless you pay a fee. I've not been provided with any evidence that Mr R received a report so assume he could only see the basic information available. The information shows that the vehicle exists but there's nothing to link the seller to the vehicle. Whilst the seller provided Mr R with a V5 document which was in the name the seller gave to Mr R, this document clearly says on it that it isn't proof of ownership.
- Mr R was asked to make the second payment to the seller's girlfriend which I consider to be unusual, and I don't consider the explanation was plausible.
- Mr R was in urgent need of a van for work. He says that because of this he didn't check how long the seller had been on the marketplace or look at any reviews. But I don't believe it would have taken long to check this information to protect Mr R.

Scammers who sell fake goods online often have newly created accounts.

Overall, whilst I'm sorry to hear about this cruel scam, I think Halifax acted reasonably in relying on an exception to reimbursement under the CRM Code.

I've gone on to consider whether Halifax met its obligations under the CRM Code. When it recognises a scam risk Halifax should provide its customer with what the code calls 'Effective Warnings'. In this case though, Mr R had made transfers of around £2,000 shortly before the scam so I'm satisfied the payments were in line with normal account activity and Halifax didn't need to provide effective warnings. For the same reasons, I also don't think Halifax needed to intervene when the payments were made.

Halifax should contact the bank that received Mr R's funds as soon as possible after the scam was reported to try to recover any funds that remain. The scam was reported in the evening of 18 February 2022, but Halifax didn't contact the receiving bank straight away. Confidential information obtained from the receiving bank shows that the delay in contacting the receiving bank had no impact on the amount that was recovered though. The funds sent to the seller on 17 February were removed shortly afterwards. The funds sent the following day were also removed soon after they were credited and before the scam was reported to Halifax (except for the 4p that was returned).

Whilst I'm sorry to disappoint Mr R, I can't reasonably ask Halifax to provide a refund.

### **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 R to accept or reject my decision before 6 September 2023.

Jay Hadfield  
**Ombudsman**