

The complaint

Ms D complains that Bank of Scotland plc trading as Halifax won't reimburse her after she sent funds to an individual she believes to be a fraudster.

What happened

The background to this complaint is well known to both parties so I won't repeat it in detail here. But briefly, both parties accept that in around June 2023, Ms D was planning a family trip abroad and was looking for a cost-effective option for driving once there. Ms D has said she looked into the cost of renting vehicles while abroad, as well as shipping her own car. She found a website that she considered looked professional that offered to ship vehicles abroad and contacted it for a quote. Ms D was quoted £645 to ship her own vehicle one way. She's explained this was cheaper than renting an appropriate car while there, and also cheaper than other shipping companies she'd contacted (other quotes being around £1,200 for the same one-way transportation) and therefore agreed to this quote.

Ms D sent the funds via faster payment to the account details provided - which were for an individual's account. However, once the payment had been made, the company she'd paid suggested that based on the size of her car, she needed to pay a higher charge. Ms D refused to do so and requested a refund. While the company agreed to refund her, no refund was ever actually received and so Ms D contacted her banking provider Halifax, believing she'd fallen victim to a scam.

Halifax looked into what had happened but didn't think it was liable to refund Ms D. It didn't think it had been established that Ms D had been the victim of an Authorised Push Payment (APP) scam. Rather, it thought this was a private civil dispute between Ms D and the individual.

Ms D disagreed and so referred the complaint to our service. An investigator considered the complaint. Overall, he didn't agree that Ms D's complaint was a civil matter, rather than a scam. However, he also thought that, in the circumstances, Ms D ought to have completed further checks to verify that she was dealing with a genuine seller. The investigator therefore didn't consider that Halifax needed to do anything to put things right for Ms D.

Ms D didn't agree with the investigator, so the case has been referred to me for a final decision.

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.

Having done so, while I'm sorry to disappoint Ms D, I'm not upholding her complaint. I'll explain why.

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

When thinking about what is fair and reasonable in this case, I've considered whether Halifax should have reimbursed Ms D under the provisions of the Contingent Reimbursement Model (CRM) Code and whether it ought to have done more to protect Ms D from the possibility of financial harm from fraud.

I've first considered Halifax's point that this is a civil matter between Ms D and the company, rather than a scam. Halifax has raised that the company Ms D was liaising with was (and still is) an active business on Companies House, and that the individual that Ms D made the payment to was a prior director of the company (albeit resigned before Ms D made the payment transfer). It's also raised that the company did agree to refund Ms D – although this never happened. However, I don't agree that the evidence suggests there was ever an intention for the individual Ms D paid to provide a service and therefore disagree that this is a civil matter.

Having reviewed the company online, almost all reviews I've found seem to depict a similar story to that Ms D has provided – that payments were taken and then reasons were given to not provide a service. These reviews span over a few years, so I don't think it's likely that this was simply a business that fell upon hard times. Whilst I accept there is an active business and this can positively suggest that a business is legitimate, this is not always the case. I can also see in this case, the company has been generally dormant, with two separate notices for strike-off. In any event, Ms D didn't make her payment to this firm, but to an individual who isn't confirmed as working for the firm any longer. It's unclear what involvement, if any, this individual still has with the firm.

Ms D has provided an 'export accompanying document', providing details of the agreed vehicle shipment. However, a different shipping provider is noted on the form. I think it's possible that another company's forms are being used and doctored. The price Ms D was quoted was also notably cheaper than any other shipping firm she contacted – or than renting a car. This is a known tactic used by fraudsters to entice more individuals into the scam.

As I don't consider the evidence provided sufficiently supports the suggestion that this is a civil matter, I've gone on to consider whether Halifax is liable to refund Ms D under the CRM Code.

The CRM Code

Halifax is a signatory of the Lending Standards Board Contingent Reimbursement Model (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 a customer failed to meet 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

**Further exceptions outlined in the CRM Code do not apply to this case.*

I think Halifax has been able to establish that it may choose not to fully reimburse Ms D under the terms of the CRM Code. I'm persuaded one of the listed exceptions to reimbursement under the provisions of the CRM Code applies.

Taking into account all of the circumstances of this case, including the characteristics of the customer and the complexity of the scam, I don't think there is enough to support a position here that Ms D had a reasonable basis for believing she was paying for a genuine service. I'll explain why.

Ms D has explained she chose to proceed with this particular individual as she'd received several other quotes, and this was the cheapest. However, I think the difference in price between this company and others who provided quotes ought to have raised concerns for Ms D. Whilst I accept all business offers differ, the amount she was quoted was almost half what others had quoted to provide the same service. I think this ought to have made Ms D question the legitimacy of the offer and whether it was simply too good to be true. Had Ms D researched the company further, I think she would've identified the negative reviews already posted surrounding this firm and most likely not proceeded.

Ms D also paid an individual's account, rather than a business account. Although Ms D has suggested this is the norm in the country she was visiting, as this was a UK account she was paying I think Ms D could have questioned why she wasn't paying the company directly.

With the above in mind, in the particular circumstances of this case, I consider that Ms D ought to have conducted further checks, prior to making a payment to the fraudster. In not carrying out sufficient checks I don't find she had a reasonable basis for believing she was paying for a genuine service and so fell below the level of care expected of her under the CRM Code.

Should Halifax have done more to try to prevent the scam and protect Ms D?

I've thought about whether Halifax did enough to protect Ms D from financial harm. The CRM Code says that where firms identify APP scam risks in a payment journey, they should provide Effective Warnings to their customers. The Code also says that the assessment of whether a firm has met a standard or not should involve consideration of whether compliance with that standard would have had a material effect on preventing the scam.

I am also mindful that when Ms D made this payment, 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). Having considered the payment Ms D made, I don't think it was so remarkable, in comparison to her usual account activity, that it should've appeared as suspicious to Halifax. I therefore don't think Halifax failed to meet its standards under the Code by not providing Ms D with an effective warning, prior to processing the payment.

Once made aware of the scam, as Halifax determined it to be a civil dispute, it didn't make attempts to recover Ms D's funds from the receiving bank. However, due to the time that had passed between Ms D making the payment and reporting it as a scam I don't think it's likely Halifax would've been able to recover Ms D's funds even if it had reached out immediately to the receiving bank provider.

Overall, while I'm sorry to disappoint Ms D, I don't think Halifax should be held liable for Ms D's losses under the CRM Code. And so I don't intend to make an award to Ms D.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms D to accept or reject my decision before 14 May 2024.

Kirsty Upton
Ombudsman