

The complaint

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

What happened

Mr W is represented in this case but for ease I'll refer to Mr W throughout this decision.

Mr W says that he had been looking for a van for work for a few weeks when he saw an advert on an online marketplace. Mr W was interested in the van and spoke to the seller about it. The van was advertised for £7,250 but the seller agreed to accept £7,000, with half being paid upfront and the outstanding amount when Mr W picked up the van. Mr W says that he was unable to view the van before paying the deposit because it was located 350 miles away from where he lived.

Mr W says that he checked the van's MOT history and that it was taxed, and the seller talked through the documents he had in a phone call. He paid a £3,500 deposit on 13 September 2023 and travelled to inspect and pick up the van on 16 September. The seller was due to meet him at the station but when he didn't arrive Mr W got a taxi to the address he had been provided with. The seller wasn't at the address and stopped responding to Mr W's calls and messages. Mr W called Bank of Scotland to report that he was the victim of a scam.

Bank of Scotland didn't agree to reimburse Mr W's loss. It considered Mr W's claim under the Lending Standards Board's Contingent Reimbursement Code (CRM Code) and said it could rely on an exception to reimbursement. This was because Mr W hadn't viewed the van in person, the price was too good to be true and there was no evidence that the seller owned the van. Bank of Scotland also said that when he made the payment Mr W chose an incorrect payment purpose and that had he said he was buying goods online he'd have been advised to pay by card. Finally, Bank of Scotland said it had done what it could to recover Mr W's funds.

Our investigation so far

The investigator who considered this complaint didn't recommend that it be upheld. She said that Bank of Scotland fairly relied on an exception to reimbursement under the CRM Code for multiple reasons including the fact there was no evidence the seller owned the van, the price was too good to be true, Mr W didn't view the van in person and although it was advertised by a business Mr W paid an individual. The investigator went on to say that given the payment was a one off relatively low value payment that was in line with Mr W's usual account activity Bank of Scotland didn't need to provide an effective warning. Finally, the investigator said that Bank of Scotland had done what it could to recover Mr W's funds.

Mr W didn't agree with the investigator's findings, so his complaint has been passed to me to review. In summary, he said:

- Mr W couldn't view the van in advance given that it was located so far away, and sales of this nature are now common.
- The price was in line with market value. Mr W's representative provided adverts for a van of the same make for between £5,499 and £10,500.
- Mr W made a high value payment to a new payee which wasn't in line with his usual

account history.

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 W is liable for transactions he's carried out himself. But Bank of Scotland is a signatory to the CRM Code and also has a longstanding obligation to be on the lookout for unusual and out of character transactions which might indicate its customer is at risk of financial harm from fraud.

There's no dispute here that Mr W 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.

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 Bank of Scotland has raised about the legitimacy of the transactions Mr W made are enough to support its position that it can choose to rely on an exception to reimbursement. I don't think Mr W had a reasonable basis for believing the seller was legitimate and will explain why.

- Mr W found an advert for the van on an online marketplace. He hasn't suggested that he looked at any reviews in respect of the seller or at how long the seller's account had been active.
- The price of the van was too good to be true. Mr W was buying the van for £7,000. 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 Mr W paid around 50-60% of the market value. I think this is a significant point that ought reasonably to have led Mr W to take additional steps before making payment.

I note that Mr W's representative has provided adverts for similar vans with advertised prices between £5,499 and £10,500. But some of the adverts don't include mileage and others list the price without including VAT. The adverts are also current so don't show market value at the time of the scam.

- I appreciate that it has become more common to buy vehicles online and that it would have been difficult for Mr W to view a van that was located around 350 miles away. But given these points, and the fact that Mr W was buying through an online marketplace that doesn't provide any protection in respect of the purchase of vehicles, I think Mr W ought reasonably to have done more to check the vehicle existed and was owned by the seller. All that Mr W was provided with were two photos of the outside of the van. Mr W could, for example, have requested a video call with the seller so that he could see the van and further documentation.

- Mr W didn't see any evidence which demonstrated the seller owned the van.
- The advert Mr W saw was through a business account, but Mr W was asked to pay an individual and told it was the name of the seller. I've looked at the business at Companies House and can't see that the seller or the payee are linked in any way to it. Given that Mr W hadn't seen the van or any proof of ownership he could have done more to satisfy himself the seller was genuine before making such a substantial payment.
- Mr W paid 50% of the cost of the vehicle upfront. I can't see that he suggested a lower deposit.
- The marketplace Mr W used suggests that users pay for vehicles via different methods like card payments or a secure online payment method.

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

I've gone on to consider whether Bank of Scotland met its obligations under the CRM Code. When it recognises a scam risk Bank of Scotland should provide its customer with what the code calls an effective warning.

It's debateable whether Bank of Scotland ought reasonably to have recognised a scam risk in this case. The scam transaction was made from Mr W's savings account. Whilst the value was greater than previous transactions, making a one off higher value transaction from a savings account isn't unusual. In any event, Mr W was asked to provide a reason for the transaction and chose the move my money option. Bank of Scotland provided a warning based on this payment reason. But there was a more suited reason of paying for goods online. If Mr W had chosen this payment reason, he'd have been given a warning that advised him to pay by card and which went on to say that if he couldn't pay by card, it was likely a scam. Bank of Scotland could only provide a warning based on the payment reason provided.

I also don't consider the scam transaction was so unusual and out of character that Bank of Scotland ought to have done more than provide a warning tailored to the payment reason given. It was relatively low in value and was broadly in line with Mr W's usual account activity.

I'm satisfied that Bank of Scotland did what it could to recover Mr W's funds once the scam was reported. As is often the case though, the scammer removed the funds quickly leaving no funds to recover.

Whilst I'm sorry to disappoint Mr W, I can't reasonably ask Bank of Scotland 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 W to accept or reject my decision before 20 June 2024.

Jay Hadfield
Ombudsman