

## The complaint

Miss H is unhappy that Bank of Scotland plc (trading as Halifax) hasn't written-off a loan taken out in her name which she says she didn't apply for. She's also unhappy that it's not refunded a series of faster payments and cash withdrawals she made after she says she fell victim to a scam.

## What's happened?

Miss H says she met a person who I'll refer to as 'S' for the remainder of this decision. S asked her if she was able to receive funds from some of his business clients and pay them out to his other clients.

Miss H agreed to help. She provided her account details to S and received three payments into her account totalling £34,000 during June 2019. Around the same time, Miss H made a series of faster payments and cash withdrawals, totalling slightly more than the £34,000 her account had received. Miss H says it was her understanding that the money all belonged to S.

After Miss H had made the last transactions in the middle of June 2019, she's explained that she started to lose contact with S. She also began to receive letters from loan companies, and she says this made her realise that the payments she thought had come from S were loans which had been taken out in her name. This included one with Halifax. It was at this point Miss H says she became aware she'd been the victim of a scam.

Miss H contacted Halifax and raised a fraud claim. Halifax reviewed the claim and told her that whilst it was sorry to hear about what had happened, it wouldn't be writing-off the loan or refunding any of the transactions she'd made.

Unhappy with Halifax's response, Miss H brought a complaint to our Service. She told us:

- She met S in person, and he was extremely charming and persuasive during her initial interactions with him. However, he became more intimidating as time went on.
- She was told that before she could help S, she'd need to improve her own credit score. So, she took out a series of mobile phone contracts and handed the phones over to S. She was assured the phone contracts would be cancelled as soon as possible and that it was all to improve her credit rating so that she could assist S further.
- When she asked S why money had to be passed through her account, he told her that his accountant had advised him to move money around.
- S told her that whilst the funds paid into her account may look like loans, they actually belonged to him. He also said that she needed to pretend they were actual loans when she spoke to financial institutions.
- She accepts that Halifax questioned her on some of the transactions she made. However, she was coached by S to say the payments/withdrawals were for certain purposes – like a wedding.

Halifax told us:

- Miss H ought to have known about the Halifax loan taken out in her name because her mobile banking was accessed via biometric fingerprint recognition just before the loan was applied for. Her mobile banking was also accessed when some of the subsequent bank transfers were made.
- The faster payments were considered under the Contingent Reimbursement Model ('CRM Code'), but the cash withdrawals aren't covered by the CRM Code.
- It declined to refund the faster payments because Miss H failed to take a reasonable amount of care.
- It had no reason to prevent the cash withdrawals as Miss H provided branch staff with plausible explanations as to what the cash was for.

#### What did our investigator say?

In summary, he was satisfied Miss H had a reasonable basis for believing she was making legitimate payments. So, he said Halifax should refund any payments which were covered by the CRM Code.

He was also persuaded that Halifax ought to have taken further steps to intervene when Miss H withdrew cash in its branches – namely, by invoking the Banking Protocol. This would've meant asking the police to visit the branch and speak to Miss H directly. Our investigator was persuaded that if this had happened, the scam would've been exposed.

Our investigator recommended that Miss H was put back in the position she would've been in had it not been for the scam.

Miss H accepted our investigator's findings, but Halifax didn't. It said:

- Miss H ought to have been aware that a loan had been taken out in her name. She logged into mobile banking shortly before and after the loan application was made, and a loan confirmation was sent to her personal email address and home address respectively.
- It couldn't agree that Miss H had a reasonable basis for belief on this occasion.
- It didn't feel the Banking Protocol should've been invoked. Miss H was questioned about the transactions and she provided confident answers which didn't suggest that a scam was taking place.

Our investigator still thought this complaint should be upheld. He said Miss H had confirmed that S was with her at various points when she'd logged into her online banking. This was so he could see what money had come into her account. She'd also said that she didn't receive any email about the loan, but she did receive Halifax's letter. She asked S about why this money showed as a loan, given he'd said it was his money. He told her that he knew someone who worked at Halifax and assured her that whilst it appeared to be a loan, it wasn't.

Halifax continued to disagree with our investigator and asked for an ombudsman's decision. It provided the following further comments for consideration:

- A series of messages between Miss H and S show that they were on good terms, and there's no indication of duress.
- The same messages suggest that Miss H had concerns about what S was telling her from the start, and that she was being told she could earn significant amounts of money from helping S.

- Miss H ought to have known about the loan. She would've been able to see the loan each time she logged into her online banking as it would show on the list of products she held.
- Miss H chose to be dishonest with the purposes of the transactions when she was questioned. The staff questioning Miss H were ultimately satisfied with the plausible explanations she provided, so they didn't think it was necessary to invoke the Banking Protocol.

### My provisional decision

I issued my provisional decision on 3 February 2022. I'll set out my findings below.

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I've also seen the evidence and arguments provided in Miss H's other complaint which is of a similar nature to this one.

When considering what is fair and reasonable. I'm required to take into account: relevant law and regulations; regulator's rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time.

Having done so, I'm inclined to reach a different outcome to that of our investigator. I'll explain why.

### The loan

From the evidence I've seen, I think it's likely that someone aside from Miss H was involved with applying for the loan. However, the crucial question is whether Miss H was complicit with this activity and, on balance, I think she was. I say this because:

- Miss H has provided a copy of a letter she received from Halifax at the beginning of June 2019. The letter confirms that a loan has been set-up in her name, provides a loan account number which matches the reference on the incoming credit to her bank account and sets-out the loan repayment schedule. Miss H says she asked S about this letter and was assured that the money was his – whilst it may look like a loan, it wasn't. But I don't think this explanation is plausible in light of the other information Miss H had available to her, and I don't think it's likely Miss H was taken in by it. I think it's more likely that Miss H knew a loan had been taken out in her name.
- Miss H doesn't appear to have raised any concerns with Halifax upon receiving its letter in early June 2019 as I might have expected her to do if she'd received documentation about a loan account in her name which she wasn't aware of.
- Halifax has evidenced that Miss H's mobile banking was accessed on multiple occasions shortly before and after both the initial loan application and the loan agreement being signed the following day. This access was done via fingerprint recognition. The mobile/online banking was then accessed via the same method extensively across the next few days. Once the loan had been processed, Miss H would've been able to see the loan account each time she accessed her mobile/online banking. So, I would've expected her to have noticed details about the loan each time she logged in. However, she didn't report anything for at least a few more months.

Whilst Miss H may have been tricked into moving the loan funds on, this isn't enough to say she should no longer be responsible for repaying the loan when she was complicit with applying for the lending. So, I don't think it would be fair for me to instruct Halifax to write the loan off.

### Faster payments and cash withdrawals

Over the course of two weeks, Miss H made a series of faster payments as well as in-branch cash withdrawals. These were predominantly funded by various loans – including the one with Halifax.

Whilst I think it's most likely that Miss H was complicit in applying for lending – I do also accept that she was most likely under the influence of S. As a result, I've considered the transactions made across those two weeks and whether I think Miss H or Halifax should've done more to fulfil their obligations. Having done so, I think both parties could've done more here.

The transactions were predominantly out of character for Miss H – both in terms of the incoming credits and the numerous substantial transactions made across the two-week period. I'm satisfied that the transactions should've alerted Halifax to the possibility that Miss H was at risk of financial harm.

Halifax is a signatory of the CRM Code, which requires firms to reimburse customers who have been the victims of Authorised Push Payment scams, like the one Miss H says she's been the victim of, in all but a limited number of circumstances. So, I would've expected Halifax to have taken certain steps to verify the faster payments and provide effective warnings. From the information available to me, I'm not satisfied that Halifax did enough on this occasion. For example, I note there are a handful of calls between Miss H and Halifax to question certain transactions after her account was blocked. However, having listened to these calls, I can't see Miss H was ever made aware of the possibility of scams or what the consequences might be if she carried on making further transactions. I also haven't seen evidence of any warnings Miss H may have been provided with when in the process of making the various faster payments.

I've also thought about the interactions Miss H had in-branch – especially following her requests to withdraw substantial amounts in cash. I accept that Halifax did question Miss H as to why she was making the withdrawals. But given the very unusual spending pattern that was emerging, I don't think it was reasonable for it to have accepted some of the explanations at face value – especially when I think some of Miss H's answers were somewhat vague. I agree with our investigator that if further probing questions had been asked, it would've raised concerns and caused the relevant branch staff to have considered needing to take further action – perhaps such as invoking the Banking Protocol. If these additional steps had taken place, I think it's most likely the scam would've started to unravel.

But whilst I'm satisfied Halifax ought to have done more, I'm also satisfied Miss H has contributed to the loss she's incurred. I say this because considering all the evidence I've seen; I don't think it was reasonable for her to have believed what S was telling her throughout this scenario.

I think it's most likely Miss H knew (or ought reasonably to have known) that loans were being taken out in her name – despite S telling her otherwise. That being the case, I have concerns as to why Miss H continued to follow S' instructions in terms of making the faster payments and cash withdrawals. She received multiple letters from the different loan providers telling her that these loans existed and were in her name – yet she didn't raise concerns with any of the loan providers until a few months later. I've also listened to a recording of a call she had with a third-party loan provider which I believe is relevant in this complaint as well. In this call, Miss H goes as far as saying she was expecting a loan with the provider and was chasing this up. By the time she had this conversation with the other loan provider, she had received the loan confirmation letter from Halifax.

I appreciate Miss H has said S told her these weren't loans crediting her account, but I don't think that this is plausible in the face of all the other evidence I've seen. And even if I accepted Miss H's explanation here, I'm not persuaded it was reasonable for her to believe what S was telling her – I think she ought to have known what was really going on. So, I think that Miss H's own actions are partly responsible for the loss that's been incurred.

As I'm persuaded that both Miss H and Halifax are at fault, I'm inclined to recommend that Halifax should calculate the total amount of disputed payments Miss H has paid out/withdrawn – before deducting £12,000 from this amount as a result of one of the other loan providers choosing to write-off a loan for the same value. Halifax should then refund 50% of what's left by:

- paying £2,500 to Miss H so she can reduce the balance of any outstanding non-Halifax loans if she so wishes.
- paying the remainder into the Halifax loan to reduce the outstanding balance.

#### Responses to my provisional decision

Neither party put forward any further evidence for 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.

As neither party has provided any new evidence for me to consider, I see no reason to depart from the findings and conclusions I set out in my provisional decision.

#### **My final decision**

For the reasons I've explained, my final decision is that Bank of Scotland plc (trading as Halifax) should calculate the total amount of disputed payments Miss H has paid out/withdrawn, then deduct £12,000 from this amount (as a result of one of the other loan providers choosing to write-off a loan for the same value) and refund 50% of what's left by:

- paying £2,500 to Miss H so she can reduce the balance of any outstanding non-Halifax loans if she so wishes.
- paying the remainder into the Halifax loan to reduce the outstanding balance.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H to accept or reject my decision before 7 April 2022.

Kyley Hanson  
**Ombudsman**