

The complaint

Ms E complains that Bank of Scotland plc (trading as Halifax), won't refund £2,750 she lost, which she believes was as the result of a scam.

What happened

All parties are aware of the circumstances surrounding this complaint, so I won't repeat them in full here.

In brief, Ms E arranged for some work to be carried out in her garden. She found the tradesperson (who I'll refer to as R) through an online trade directory website. Through this website Ms E posted details of the job/works she wanted completed. The job (advert) could be viewed by tradespeople and the tradesperson could then get in contact with Ms E.

After posting the advert Ms E was contacted by R who said he'd be able to carry out and complete the job. Ms E discussed over email what she wanted for her garden and received a quote. Ms E says she saw positive reviews on the website about R and, she also contacted a previous customer of R's to ask about the work it had completed for them. After consideration, Ms E went ahead with the works with R.

Ms E was asked to pay a deposit of £2,750 which wasn't the full costs of the works. On 13 April 2021 Ms E sent a payment of £1 to the details for R. R confirmed this was received and so Ms E sent the remainder of the deposit £2,749 on 14 April 2021.

R attended Ms E's property, but she's explained this was only for two days out of the expected seven days she was told it would take to complete the works. Whilst at the property Ms E has told us R removed some bushes, the old shed and put down the base for the works she wanted carried out. Ms E says the work done by R was of a poor standard and that after two days, R didn't come back and so, the works weren't completed. Ms E says she contacted R but received no reply or refund despite her request.

Ms E contacted Halifax to ask for its help. Halifax wrote to Ms E on 26 May 2021 and having reviewed her claim, it didn't think she'd completed enough checks to ensure R was genuine. Following this, Ms E contacted Halifax on 10 June 2021 to confirm the checks she'd completed and provided details of these. Halifax concluded on 10 September 2021 that it wouldn't be looking to provide Ms E with a refund of the money she's lost as it deemed this a civil dispute between Ms E and R. However, it did acknowledge there had been delays in responding to her and paid £50 compensation in recognition of not reviewing her concerns in a timely manner and for the upset this had caused.

As Ms E remained unhappy, she brought her complaint to the Financial Ombudsman Service. One of our Investigators looked into things and didn't recommend the complaint should be upheld. She didn't think there was enough evidence to say R had scammed Ms E or to show that R had the intention to defraud her from the outset. Our Investigator acknowledged the bank's delay in responding to Ms E but concluded the £50 already paid was fair and reasonable in the circumstances.

Ms E didn't agree. In summary, Ms E highlighted that Halifax said she'd experienced an Authorised Push Payment (APP) fraud but that she'd not carried out enough checks. It then changed its mind and has since said this isn't a scam. Ms E feels strongly she's been scammed and has drawn attention to the fact that the receiving account had no money in it when Halifax contacted the receiving bank. And that R had purchased a car shortly after receiving the money. Ms E has also said R was not a legitimate supplier as the bank initially concluded.

As Ms E didn't accept the Investigator's findings, the complaint has come to me for a 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.

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.

Having thought very carefully about the complaint, I don't uphold it. I do appreciate how disappointing this will be for Ms E, but I don't think I can fairly say Halifax should reimburse her the money she's lost. I'll explain why.

I'm sorry to hear of what's happened to Ms E and I acknowledge her strength of feeling about why she feels she's been the victim of a scam. But not all cases where individuals have lost money are in fact fraudulent and/or a scam.

At the time Ms E made the payments, Halifax was signed up to the Contingent Reimbursement Model Code (CRM Code) which sets out how it should respond where its customer is a victim of an Authorised Push Payment (APP) scam. The code doesn't cover all scenarios and it specifically excludes private civil disputes. It says:

"This code does not apply to ... private civil disputes, such as where a Customer has paid a legitimate supplier for goods, services or digital content but has not received them, they are defective in some way, or the Customer is otherwise dissatisfied with the supplier."

The key thing I need to consider when making a finding on this point is what the evidence tells us about the intentions of R – i.e. whether the evidence is strong enough to say that R took payments with no intention of performing its side of the agreement or intended to defraud her.

It's clear the agreement Ms E entered into with R did not go as planned – with Ms E explaining that the work done was of poor quality and was not completed. And while I can understand Ms E's strength of feeling about what has happened, I'm not persuaded, with what I know, that R set out with an intent to defraud Ms E from the outset. This means I don't think Halifax is responsible for reimbursing Ms E because of any obligation it has, either under or outside of the CRM Code. I'll now go on to set out why.

As outlined above, Ms E posted an advert for the garden works she wanted carried out and R got in touch with her following this. Ms E recalls that R had been a member of the website for around three years and told us that there were a number of reviews for R. I haven't seen or been provided with the specific reviews for R from the online trade directory website which

Ms E has referred to and I do note R is no longer on the website – but Ms E has told us that a number of the reviews were ‘glowing’. Ms E has also told us she contacted a previous customer of R’s by phone and email and that she received photographs of the work R had carried out and completed for them. Satisfied with this, Ms E proceeded with the garden works. For completeness, I am aware Ms E did receive further correspondence from the previous customer, after R started the works on her garden, expressing unhappiness with the quality of the works that had been completed.

Having thought about this, while I recognise the email correspondence Ms E has given us from the previous customer indicates they are now unhappy with the quality of the works R completed for them, I don’t think this automatically means R was a scammer or that this was a scam. This is because, Ms E herself has referred to many glowing review responses at the time she carried out her checks into R. And the information provided by the previous customer confirms R did complete the work it was instructed to do but the subsequent concerns are around the quality of the work done. It follows that I’m not persuaded the information above suggests R set out to defraud Ms E.

I’m aware R attended Ms E’s property and did undertake some of the agreed works after the payments were made - although she’s explained this was not to a good standard and that the work had to be redone. Ms E has provided some email correspondence between herself and R which is from the initial contact about the work and, also contact after R had been to the property. Within emails from April 2021, I can see Ms E referred to not having heard from R and asked if everything was ok. She also commented that R’s profile on the website was now closed. R responded and said that someone was off and that the account had closed due to a matter with another client and the website not helping to resolve the issue. Within this contact R informs Ms E that it’ll be back later that week. It was following some further emails from Ms E, that it appears R stopped responding. I’d like to assure Ms E that I can appreciate her frustrations and unhappiness that she stopped receiving replies to her messages. But I have to keep in mind that there are many reasons why two parties might stop communicating with each other, such as a breakdown in the relationship or a business getting into difficulties financially or with staffing/materials and so this aspect doesn’t automatically lead me to make the finding that there is enough evidence of a scam in this particular case.

Our Investigator also got in touch with the bank Ms E sent her payments to. While I am unable to share details about a third party and the nature of their relationship with their bank, the receiving bank has said that there were no other concerns raised prior to Ms E making the payments.

Ms E says no funds remained in the receiving account. She believes R withdrew the funds and purchased a car with her money. In support of this, Ms E has provided a copy of a post from R’s social media account. I’ve thought carefully about this, but this point doesn’t change my conclusions. Whilst R may have purchased a car, this in and of itself isn’t evidence of a scam. Nor do I think no funds remaining in the receiving account, in isolation, is enough to persuade me that R had the intention to deceive Ms E or that it had no intention of performing its side of the agreement.

After taking everything into careful consideration, the testimony and evidence provided by both parties, on balance and when considering the individual circumstances of this case, I can’t safely say this meets the high legal threshold and burden of proof for fraud. It follows that I can’t fairly or reasonably say that, based on what I know and the evidence available, R set out with the intent to defraud Ms E.

This being the case, I’m satisfied the CRM Code doesn’t apply. And I can’t fairly or reasonably ask Halifax to refund the money Ms E has lost, as I don’t think it has treated

Ms E unfairly when it said the payments she made weren't covered by the CRM Code. Overall, I'm persuaded this appears to be a case of a tradesperson, potentially failing to honour an agreement, by not providing or completing the work that their customer expected or to the standard expected.

I do understand Ms E is unhappy that Halifax initially said she'd experienced fraud but changed its mind and said this was a civil dispute. The Financial Ombudsman Service is an informal dispute resolution service for complaints about financial businesses. It is not our role to fine or punish businesses. That is the remit of the regulator, the Financial Conduct Authority. I can appreciate the change in Halifax's position may have caused Ms E some confusion and frustration, but it is not unreasonable for a business to change its position when it better understands the circumstances of the case. It follows that I don't think this change in position means Ms E should be reimbursed the money she's lost.

Customer service

I can see Ms E is also unhappy with the service she received from Halifax. It accepts there were delays in responding to Ms E and has paid £50 compensation in recognition of this and the upset caused. While I can understand why Ms E would've liked to receive the outcome of her claim sooner than she did, I'm satisfied the £50 paid by Halifax is fair and reasonable in the circumstances of this complaint. I also don't consider any poor service to have affected the outcome Halifax ultimately reached. So, I make no further award on this point.

I do recognise my decision will come as a disappointment to Ms E and I'd like to assure her I've taken everything she's told us into account, but overall for the reasons I've explained above, I can't fairly and reasonably ask Halifax to refund her the money she has lost.

My final decision

For the reasons set out above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms E to accept or reject my decision before 20 July 2022.

Staci Rowland
Ombudsman