

## **The complaint**

Mrs H complains that Bank of Scotland plc trading as Halifax won't refund her after she reported falling victim to a scam.

## **What happened**

The circumstances of this complaint are well-known to all parties. And so rather than provide a detailed background I'll summarise the key events.

In August 2022 Mrs H contracted a limited company – which I'll refer to as E – to build a garden room at her home. Plans were agreed and Mrs H paid an initial sum of £6,900 for the construction to begin.

Work started and proceeded as planned. Mrs H made a further payment of £6,900 when works had reached an agreed point. All was going well, with the structure and some internal work completed.

Satisfied with the work completed up to that point, Mrs H made a third payment of £6,900 on 31 October 2022 so the final stages could be completed. But the jobs that were to be covered by the third payment were never completed by E. No builders ever returned to site.

Mrs H has said that once the final payment was made, she never heard from E again. She kept trying to make contact but was unsuccessful. It's then her belief that E had planned to scam her by taking the final payment with no intention of completing the work.

Mrs H has said how her belief is reinforced by the fact the builder put a liquidation notice on their website, although no liquidators have ever been engaged. Mrs H has also said how E shut down all its social media and couldn't be contacted.

Mrs H started to look into the director of E further. She found there were other people in a similar situation. And she found evidence of a previous business in the director's name, which had been liquidated two years prior, leaving customers in a similar position.

Santander investigated Mrs H's claim after she told it she'd been the victim of a scam. It said it wouldn't refund her as it believed the matter was a civil dispute between her and E. That was on the basis she'd paid a legitimate supplier but hadn't received what was agreed.

One of our investigators considered Mrs H's complaint when she referred it to our service. He thought about the evidence and information given by Mrs H and Santander. He also contacted the firm where the receiving account was held. Having done so, he found Santander's response to Mrs H's complaint was fair and reasonable. Mrs H disagreed and so the complaint has been passed 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.

I'm sorry to disappoint Mrs H, but I'm not upholding her complaint, and for broadly the same reasons as our investigator.

There's no doubt that Mrs H authorised the payments out of her account. And so, as per the Payment Service Regulations 2017, she is responsible for them. But Santander is also a signatory to the Lending Standards Board's Contingent Reimbursement Model (CRM) Code.

The Code is in place to see the victims of scams reimbursed in most circumstances. But it doesn't apply to all claims raised with signatories; there are limitations to its scope.

Importantly, the Code says, *"this code does not apply to: (b) 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;"*

Both Santander and our investigator found this described Mrs H's circumstances and that the matter was a civil dispute. I agree that's the case.

It seems quite clear that E was a legitimate company at the point Mrs H contracted it to build her garden room. It completed two phases of work as agreed and, it appears, to an acceptable standard. There was nothing to indicate E was anything other than a genuine business.

I can see why Mrs H believes things changed after she made the final payment. I don't doubt what she's said about never hearing from E again, or any of the other detail she's provided such as the liquidation notice. But I'm not persuaded the high threshold for establishing a scam has been met here. There isn't persuasive evidence that E instead reneged on its contract for some other reasons, whether that be a failing business or something else.

The closing of the social media accounts, and the posting of a liquidation notice do point to E closing down. And clearly this happened shortly after Mrs H made her final payment.

But I've also considered E's accounts, for which we have statements. These show that E was engaged in building works before, at the time of, and after Mrs H made the final payment. That suggests it was still operating, at least for a time, in an attempt to fulfil contracts.

Even if E did take payment from Mrs H, knowing it was in financial difficulties, there isn't sufficient evidence to suggest it did so with an intent to deceive. It's just as likely, if not perhaps more so, that E was trying to remain a going concern. Such practices could possibly be regarded as poor practice, but I'm not persuaded here that they amount to evidence of a scam.

I'm also not persuaded the fact the director of E had a previous limited company which, according to reviews online, closed in similar circumstances provides strong evidence of a scam. The previous company appears to have traded for at least six years, and as many as eight. That doesn't paint the picture of a scammer being in operation.

I can't say for sure why E failed to honour the contract with Mrs H. But I'm not persuaded the events meet the definition of an authorised push payment (APP) scam. And so I can't say Santander ought to be responsible for reimbursing Mrs H's loss.

### **My final decision**

I don't uphold this complaint against Bank of Scotland plc trading as Halifax.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 22 February 2024.

Ben Murray  
**Ombudsman**