

The complaint

Miss N complains that Bank of Scotland plc trading as Halifax hasn't refunded her after she reported she'd been the victim of a scam.

What happened

In January 2022 Miss N wanted some building work carried out at her home. She used a website especially designed to help locate reliable tradespersons. She was put in touch with a builder whom I'll refer to as Mr E, the director of a limited company.

Miss N discussed the job with Mr E and received a quote for works to be carried out, including: the building of walls, a garage, and the laying of a driveway. A price was agreed alongside a payment plan. Miss N was to pay a 33% deposit of £3,300 upfront, followed by another 33% payment once the foundations for structures had been laid. The final payment was due on completion of all works.

The work started as agreed in early February 2022, following Miss N's initial payment. As work progressed Miss N made the second payment of £3,300.

Miss N says once the second payment was made little to no more work was carried out. Some walls had been built and some other materials delivered, but her property was left in a very bad state. Miss N kept trying to communicate with Mr E, but he refused to return to complete the work, or to return any of her money.

Miss N has since had other builders provide quotes to complete the work. They've said the work that had been carried out by Mr E was of a poor quality and would have to be redone.

As Mr E refused to complete the work or return the money, and given the standard of the work that had been completed, Miss N contacted Halifax to say she'd been scammed. She sought a return of her money through the bank.

Halifax considered Miss N's claim but said it couldn't help. It felt Miss N had a civil dispute with Mr E and his company, rather than it being a case of her having been scammed.

Miss N disagreed and so brought the complaint to our service. One of our investigators looked at what had happened and found Halifax had acted fairly and reasonably. She acknowledged Miss N hadn't gotten what she'd paid for, but agreed with Halifax's assessment that Miss N's situation was a civil matter and there was nothing for the bank to do differently.

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 Miss N further but I'm not upholding her complaint, and for broadly the same reasons as our investigator. I find she has a civil dispute with the builder, rather than this being a case of her being the victim of a scam.

I can tell Miss N is in a difficult and challenging situation. And I can see how these events will have left her shaken and emotionally affected, not to mention the financial impact. But I can't say there's anything more Halifax ought to have done.

Has Miss N been the victim of a scam?

Halifax is a signatory to the Lending Standards Board's Contingent Reimbursement Model (CRM) Code. Broadly speaking, the Code looks to see victims of scams reimbursed in most circumstances. But for the provisions of the Code to apply, the payments that are part of the dispute must be within scope. Importantly, the Code states:

DS2(2) 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.

I don't doubt that Miss N has been poorly treated by Mr E. It's clear that he didn't finish the work, and it seems very unlikely he did all he was paid to. I can also accept that the work that was completed was of poor quality. But that's not the same as Miss N having been scammed, though I'm sure to her it very much feels that way. Mr E's actions must feel calculated and deliberate. But the available evidence suggests it's more likely than not Mr E was a legitimate builder with a legitimate business at the time Miss N paid him. The dispute between the two parties has arisen after a contract was agreed and work carried out. I'm not persuaded Mr E set out to defraud Miss N.

It is the case that Mr E was sole director of the limited building company that was contracted to undertake work for Miss N. That business was registered on Companies House, albeit it is now dissolved. The company also had online reviews, suggesting work had been carried out for other customers and that those customers were happy with the quality of the work. This speaks to the legitimate nature of the business.

I've thought about the fact the Mr E's business is now dissolved and that he has started new ones. Miss N has said this helps demonstrate his deceptive nature and his intent to scam her. Whilst I can see where she's coming from here, I'm not persuaded this presents strong enough evidence that Mr E was not a legitimate tradesman at the time Miss N paid him.

Miss N was contacted by Mr E after using a website set up to connect clients with verified tradesmen. The website states it carries out checks to make sure those registered with it are legitimate. I can't be sure of exactly what checks were carried out by the website or the thoroughness of them. But applying to be registered with such a service does not match the actions of a deliberate fraudster that would go on to target just one person.

We've spoken to the bank that held the current account for Mr E's business. It's confirmed there have been no other customer's raising scam claims. Had Mr E set out to deliberately scam Miss N I'd consider it likely he would have done the same to other people, probably around the same time. But there's no evidence of that.

I can also see that work was carried out at Miss N's home. I appreciate what's been said about the quality of that work, and I know it's incomplete. But if Mr E had been out to steal from Miss N from the outset I don't consider as much work would have been carried out as has been. It seems from the descriptions and photos provided by Miss N that work continued for some time after she made the second payment. That payment was due after foundations were laid, and the work completed includes the building of walls upon those foundations. I don't think someone that had decided to scam a client would continue to carry out works

after they'd received the money into their account.

I've also considered the text messages between Miss N and Mr E. We don't seem to have a complete record of all conversations. And I'm conscious some would have been in person or over the phone. So I can't say exactly what happened. But there is evidence to support a breakdown in the relationship between Mr E and Miss N. I can't fairly rule this out as a reason for work not being completed.

In evidence of this there is a message from Mr E to Miss N on 22 February 2022 which says, '*Due to unrealistic demands alienating my staff and unnecessary stress I have spoke [sic] to my advisor and I will not be returning to to [sic] your job. All contact from know [sic] should be through written communication. I.e email or representation.*'

There are also some messages which suggest a falling out between Mr E and some of the people that worked with him. Mr E asks Miss N if he can have a colleague on site call him, to which Miss N replies '*Don't think he wants to speak to you*'. This is on 19 February 2022, when work was well underway, but close to the point at which no further progress was made.

It seems there were a number of factors at play here that led to Mr E not completing the work he was contracted to. His decision to breach the contract and not repay Miss N might well be judged to be unfair. But it doesn't support that Miss N has been the victim of a scam that Halifax ought now to reimburse her loss.

Is there anything else Halifax ought fairly and reasonably to have done?

I don't find that Halifax ought to have questioned Miss N about the payments she was making. And, even if it had, I'm not persuaded it would have made any difference. She'd found the builder on a legitimate website used for (at least trying to) secure trusted tradespersons. He appeared well reviewed online. She'd met Mr E, he seemed knowledgeable and provided a reasonable quotation for the work. There was also a reasonable schedule for payments. And those payments were going to a legitimate business account that matched the name given by Mr E.

So even if Halifax did question the payments, it seems there was little to cause alarm and it seems more likely than not Miss N would have proceeded to make them anyway.

I should also say here that, because I'm not persuaded a scam has taken place, industry best practice on customer protection and the provisions within the CRM Code around scam warnings don't apply.

Following on from that point, because a scam hasn't taken place, Halifax were unable to seek a return of Miss N's funds from the receiving bank. So I don't find it acted unfairly in not pursuing recovery there.

conclusions

I've considered all the aspects of Miss N's complaint alongside all the evidence supplied by her, the bank, and other third parties. Having done so I've found Halifax has acted fairly and reasonably in not refunding Miss N.

My final decision

I don't uphold Miss N's complaint against Bank of Scotland plc trading as Halifax.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss N to accept or reject my decision before 7 December 2023.

Ben Murray
Ombudsman