

## **The complaint**

Miss G complains that Bank of Scotland plc trading as Halifax won't reimburse her the money she lost when she lent money to someone who didn't repay her.

## **What happened**

Miss G says she met someone on a dating site in early August 2020. The person she met (who I'll refer to as P) said they had split with their partner and were in financial difficulties.

After a few weeks, P asked if Miss G could lend him some money. It seems P said this was for a train fare to visit his son. Miss G sent him a £25 Faster Payments bank transfer from her Halifax account.

For the next year, Miss G says she was in contact with P every day by phone calls and messages through various social media platforms.

In 2021, Miss G says they met in person, and she stayed with him for a couple of days. She says his appearance matched the photos he'd sent in his messages to her and his social media posts. She can't recall the exact date she stayed with him, but it may have been in August 2021.

In July 2021, P asked to borrow more money. Between then and March 2022, Miss G sent P a further 36 payments from her Halifax account. Miss G has provided some of the relevant text messages showing he said he'd repay her, and also showing her reminding P how much he owed her in total.

However, P hasn't repaid the loan as he said he would.

Miss G received some token payments back, in January 2022 and February 2022. She made a final payment to P on 4 March 2022, and while P has remained in regular contact and has repeatedly promised to repay Miss G, since her last payment to him, he has only made one payment back. That was for the sum of £100 in June 2022, a few months after Miss G's last payment to him.

Overall, P still owes just over £11,000 (net of what little he's repaid so far). He claims to still be in financial difficulty.

In 2023, Miss G raised the matter as a scam claim with Halifax. She didn't believe P would repay her what he owed. She thought it possible this had been a romance scam.

Halifax discussed the situation with Miss G. But it said it wasn't liable to reimburse her. It had followed her instructions in sending the payments she'd asked the bank to make. The payments individually weren't for significantly larger than usual amounts for Miss G's account – for instance, she'd made two much larger payments to other individuals in the weeks prior to her first payment to P. Given this, Halifax said it hadn't been at fault in following her instructions.

While Halifax is a signatory of the Lending Standards Board's Contingent Reimbursement Model Code (CRM Code) the bank explained that code only applied where it could be established that the payments had resulted from an Authorised Push Payment scam (APP Scam). The code didn't apply where the matter was better treated as a private civil dispute. Halifax told Miss G that this appeared to be a civil dispute rather than a criminal scam. Unhappy with this outcome Miss G referred her complaint to this service for an impartial review.

Our Investigator looked into the complaint. He noted Miss G's comments about her serious health condition and the impact this has on her (I will not detail these circumstances here, but I have taken this evidence into consideration).

However, the Investigator didn't think Halifax had treated Miss G unfairly or that it needed to refund her the amount P still owed her. The Investigator thought the bank was justified in finding this was more likely a civil dispute rather than a criminal scam. This was most likely a loan that hadn't been repaid by P.

He didn't think it was typical of a romance APP scam that there had been a gap of nearly a year between payment one in August 2020 and the next time that P had asked for financial help (in July 2021). Neither was it typical of a romance APP scam that Miss G had been able to meet P in person, and that he appeared to be who he said he was. P still continued to correspond with Miss G without further requests for money and his failure to repay might be due to the financial difficulties he said he was in rather than a deliberate attempt to trick Miss G. There had been no grounds for Halifax to prevent Miss G from making the payments she had instructed the bank to make.

As Miss G didn't accept our Investigator's view, I have been asked to reach a final decision on her complaint.

### **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.

Where the evidence is unclear or more than one explanation is possible, I am required to make my findings based on the balance of probabilities – in other words, based on what I consider to be most likely given the available evidence.

I'm sorry to hear about what happened to Miss G. Everything I have seen indicates that she lent this money in good faith, and out of a kind-hearted intent to help out someone who she believed she had established a relationship with over a number of years. But she's been left out of pocket by a significant sum as a result of P's failure to repay her. She now suspects P may have always intended to take her money without any intention of repaying more than token sums.

Of course, the main cause of the resulting loss of her money is P, and P's failure to repay Miss G as he'd said he would. Halifax won't generally be liable to reimburse bank payments made in good faith - there are only some limited circumstances where the bank would be responsible for payments made in this way or be required to refund Miss G.

As the starting position, under the relevant regulations, and in accordance with general banking terms and conditions, Halifax has a primary obligation to execute an authorised payment instruction without undue delay. That means liability for an authorised payment (or payments) will usually rest with the payer.

The Lending Standards Board Contingent Reimbursement Model Code (the CRM Code) does provide some protection to victims of APP scams where the payment is made by bank transfer. But the CRM Code specifically excludes private civil disputes. It only applies to APP scams, where it can be established that the payment was made for what turned out to be fraudulent purposes.

In order to find that Halifax was somehow liable to reimburse Miss G under the CRM Code, I'd need to find that the evidence was strong enough to show this was more likely than not a deliberate, criminal scam rather than it being a private civil dispute between Miss G and P. Simply put, that means deciding whether the available evidence shows it is most likely that P set out to defraud Miss G with criminal intent. I'd need to find that there was convincing evidence to show this was more likely than the alternative possibility that P borrowed the money with the intention (even the weakest of intentions) that he'd attempt to repay Miss G.

In thinking about all of this, I consider the length of time that the relationship was ongoing is relevant. Miss G has consistently confirmed that she was in almost daily contact with P. It appears this relationship had been in place for nearly a year before Miss G had sent anything more than the initial payment (of £25). That would suggest unusual patience on the part of a criminal scammer - it seems less inconsistent with a genuine relationship.

I also find it relevant that Miss G met P in person, that she stayed with him, and that he appears to have been who he says he was. Revealing their true identity could place a criminal scammer at risk of a possible prosecution, and this is therefore less common in fraud and scam cases.

The limited messages Miss G has provided appear to consistently refer to the money as being a loan. Similarly, the messages indicate consistent reference to P intending to repay Miss G. Of course, I don't find the three small payments P has sent Miss G back are convincing evidence that P intends now to repay the loan. But the fact P has made any payments back to her, and a payment some months after Miss G's final payment to him, mean I cannot discount the possibility that P did see the amounts Miss G paid as being a loan he would need to repay at some point.

Lending any money always entails the risk that the debtor may not repay that money - or may even be financially unable to ever do so. But a debtor's later failure to repay certainly doesn't establish that they acted criminally in borrowing it. There could be many reasons that someone hasn't repaid as they said they would – for instance it could simply be sign of genuine financial problems.

In saying that, I cannot discount the possibility that P took advantage of Miss G's trust and saw her as vulnerable to financial exploitation. It is possible this led him to borrow more from her than he could afford to repay in a reasonable timescale.

It is also possible he never intended repayment. But crucially, I cannot reasonably conclude that this is the most likely version of events – more likely than the other possibilities outlined above. The evidence before me is just as consistent with this having been a loan P has simply been unable to repay.

I obviously cannot know for sure what P actually intended and whether this was different to what he said at the time to Miss G. All I can do is look at the evidence that's available to me now and consider whether this shows it is most likely that P took Miss G's money with criminal intentions.

And having considered everything here, I simply can't safely make a finding that P took

Miss G's money with criminal intentions, or without ever having any intention of repaying her. The evidence available to me simply isn't enough to show that explanation is most likely. It isn't inconsistent with this having been the loan Miss G believed it was at the time.

That means I don't think Halifax was at fault in reaching the outcome it did - when it told Miss G it didn't think it had been established the payments had resulted from an APP scam.

I've also taken into account Miss G's concerns that Halifax didn't do enough at the time she made these payments. In considering this, I've taken into account the pattern of these payments and the other aspects that I could reasonably expect Halifax to have been aware of at the time.

Firstly, these payments spanned a considerable period of time. At the time of the first payment of £25, in August 2020, I don't consider there would have been any reason for Halifax to have been concerned that it could be related to fraud or an APP scam. The value was low in comparison to the majority of payments on Miss G's account. By comparison, in the previous two months she'd made three payments of values from £1,500 to £10,000.

Miss G's account history also shows she regularly makes transfer payments from her account. Based on my review it wasn't unusual for her to make more than one payment to the same payee (presumably legitimate payments) within the space of a few days. And while her payments to P increased in size and frequency later in 2021 and 2022, this was never to the extent that she sent more than £1,000 on a single day. Again, I don't consider this was remarkable in the context of her normal usage of the account.

Halifax also explains that Miss G had received confirmation of payee messages indicating that the account she was paying matched P's name. From the bank's point of view that would have reduced the apparent risk of the payments, all else being equal.

Overall, thinking about what the bank could have known at the time, including the size, frequency and the other features of the payments, I'm not persuaded Halifax ought to have had any specific fraud or scam concerns about Miss G's instructions. These simply wouldn't have stood out as being remarkable in the context of Miss G's prior account usage, nor would they otherwise have obviously pointed to a significant risk of Miss G instructions to the bank being linked to a scam or a fraud.

That means I don't consider Halifax can fairly be expected to have provided specific scam warnings, or to have delayed processing Miss G's instructions. Because I find Halifax did not need to reimburse Miss G's claim under the CRM Code, and because I do not find it was at fault in carrying out her payment instructions, I do not find the bank is liable to recompense her for the money she remains owed by P.

In summary, I don't find Halifax needs to refund Miss G for the payments she made.

In saying this, I want to stress how sorry I am to hear about how her good nature appears to have been taken advantage of, and the impact these events have had on her. But I do not find this was Halifax's fault in any material way, that it could have reasonably prevented what happened, or that it is otherwise liable to refund Miss G.

### **My final decision**

For the reasons given above, I do not uphold Miss G's complaint about Bank of Scotland plc trading as Halifax.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss G to accept

or reject my decision before 23 February 2024.

Stephen Dickie  
**Ombudsman**