

The complaint

Mr B complains that Bank of Scotland plc trading as Halifax ('Halifax') won't reimburse funds he paid to a third party.

What happened

Mr B says that in 2019 he reconnected with an old friend he had known for around 30 years. I'll refer to this person as K in my decision. He started to buy items from K, which K said he was able to get through business contacts. Mr B received these items or K gave him a cash refund if the items weren't provided.

In November 2021 Mr B sent multiple transactions totalling £6,200 to K in respect of a bracelet that K was sourcing. Mr B was meant to receive the bracelet in time for Christmas, but this didn't happen.

In December 2021 K asked Mr B to loan him £8,000 to help with his business and Mr B says they reached a verbal agreement that this amount would be returned to him in January 2022. Mr B loaned K the money but it hasn't been returned. Then, in January and February 2022 Mr B paid K £6,500 to host a party at K's restaurant. The party didn't take place and K didn't return his funds.

I've set out in the table below the transactions Mr B made to K:

Date	Amount	Reference
04/11/21	£1,000	Cartier
11/11/21	£1,000	Cartier
26/11/21	£3,000	Cartier
28/11/21	£1,200	Cartier
09/12/21	£8,000	[] loan
07/01/22	£2,500	Catering
15/02/22	£4,000	Catering
Total	£20,700	

Mr B says K stopped responding to messages and calls and he realised he was the victim of a scam. He reported what happened to Halifax on 27 April 2023.

Initially Halifax started to process refunds in respect of the payments for the bracelet but later changed its mind and credited Mr B's account with £25 by way of apology. Halifax then said there was no evidence of a scam and Mr B had a civil dispute with K which isn't covered by the Lending Standards Board's Contingent Reimbursement Model Code (CRM Code).

Mr B was unhappy with Halifax's response and brought a complaint to this service.

Our investigation so far

The investigator who considered this complaint didn't recommend that it be upheld. He said there wasn't enough evidence to demonstrate that Mr B was the victim of a scam and that the compensation Halifax had paid was fair.

Mr B didn't agree with the investigator's findings and asked for a final decision, so his complaint has been passed to me to consider. He pointed to the fact that K repeatedly told him in messages that he would pay him but there's no record of the funds entering his account. In terms of evidence, Mr B said that he had provided messages he has exchanged with K which support what he said and that a lot of communication was verbal.

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 appreciate Mr B has lost money and his trust in K was misplaced, but that doesn't of itself mean that Halifax is responsible or that it now needs to refund him.

In broad terms, the starting position in law is that Halifax is expected to process payments that a customer authorises it to make, in accordance with the terms and conditions of the customer's account and the Payment Services Regulations (PSR's).

The CRM Code provides protection to scam victims. Under the CRM Code, the starting principle is that a firm should reimburse a customer who is the victim of an authorised push payment (APP) scam (except in limited circumstances). But the CRM Code only applies if the definition of an APP scam, as set out in it, is met. I have set this definition out below:

...a transfer of funds executed across Faster Payments...where:

- (i) The Customer intended to transfer funds to another person, but was instead deceived into transferring the funds to a different person; or*
- (ii) The Customer transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent.*

The CRM Code is also explicit that it doesn't apply to private civil disputes. The wording in the code is as follows:

"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."*

In other words, the CRM Code isn't a general protection for customers against non-receipt of or defective goods or services. It only applies if it can reasonably be established that there was the intent to defraud the customer from the outset and that the high bar required for criminal fraud would likely be met. So, I need to consider whether Mr B was induced to make payments with the intent to defraud him from the outset.

It's important to note that it isn't for Halifax to investigate K, neither does it need to prove that K wasn't operating fraudulently. It is for Mr B to provide evidence to support those allegations.

I haven't seen any evidence to demonstrate that Mr B was the victim of a scam as set out above. He has provided messages which indicate that K was due to return money to him and stalled but there is no reference to the payments he has said were scam payments or of the agreement reached between the parties in respect of any one of the transactions. In the circumstances, there is no evidence that K deliberately set out with the intention to defraud Mr B from the outset so I can't reasonably ask Halifax to refund him.

Mr B believes he has provided sufficient evidence to demonstrate he's the victim of a scam, but I disagree. In respect of the bracelet, he has provided a picture of a bracelet in a box and a message from K which refers to there being a lot of interest in it. The message says Mr B would need to pay £1,000 and K would pay the rest in cash (£4,250) and they could sort the rest out another time. But Mr B has referred to multiple faster payments amounting to £6,200. The other evidence Mr B has referred to includes a message from him to K saying he'd call him and a message from K referring to the "remaining balance" – which could relate to anything. Nothing Mr B has provided suggests K intended to defraud him at the time of the payments. K may not have paid money he said he would, but this isn't enough for me to conclude that the Mr B was the victim of a scam.

There is no evidence at all in respect of the loan and no evidence that Mr B paid for a party at a restaurant. In the messages Mr B has provided there are references to paying him funds and to issues K had with his bank only. In the circumstances, I can't say fairly say Mr B has evidenced that he was the victim of a scam when he made these payments.

I also haven't been provided with any evidence from any third party organisation like the police to support Mr B's claim that he is the victim of a scam. I note Mr B told the investigator he hasn't reported the matter to the police.

Mr B referred in his response to the investigator's view to his consumer rights and the fact he's paid for goods he hasn't received. My role is to consider whether Halifax, as a bank, treated Mr B fairly and reasonably.

Overall, while I'm sympathetic to Mr B and I know this decision will be very disappointing for him, the evidence doesn't support a finding that he is the victim of a scam. And that means that Halifax isn't responsible for Mr B's loss and had no obligation to try and recover his money.

My final decision

For the reasons stated, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 6 March 2024.

Jay Hadfield
Ombudsman