

The complaint

Ms M is unhappy about Bank of Scotland plc trading as Halifax's (Halifax) decision not to refund the £5,750 she paid for building work.

What happened

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here. On 21 February 2023, Ms M paid builders £5,750 upfront from her Halifax account. Work commenced and between 12 March 2023 and 4 April 2023, Ms M made 10 payments (between £475 and £500) totalling £4,475 from her other bank account (subject of a separate complaint). At the time she believed she was paying for services from a building company – I will refer to as D. However, Ms M says they didn't finish the work and left her flat in a mess.

Halifax deemed the matter a civil dispute. Ms M says this was a scam and wants the bank to refund her.

Our investigator did not uphold the complaint. She thought Halifax correctly classed this as a civil dispute between Ms M and D and it isn't covered by the Contingent Reimbursement Model (CRM) Code. Ms M did not agree, so the case has been passed 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, I'm required to take into account relevant law and regulations; regulatory rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

I understand Ms M has strong views about what has happened. I want to assure her that I've considered everything she's provided to support the complaint very carefully.

It's important to note that I am not deciding a dispute between Ms M and D – I don't have the power to look into a complaint about D. My role is limited to deciding the dispute between Ms M and Halifax. So, I need to decide whether Halifax acted fairly, when concluding that this amounted to a civil dispute and not a scam.

It isn't in dispute that Ms M authorised the payment that left her account. The starting position – in line with the Payment Services Regulations 2017 – is that she's liable for the transaction. But she says that she has been the victim of an Authorised Push Payment (APP) scam and that D's intent from the start was to deceive her.

Halifax is a signatory to the voluntary CRM Code. This is a scheme through which victims of APP fraud can sometimes receive reimbursement from the banks involved. But the CRM 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 CRM Code defines what is considered an APP scam and this includes where the customer transferred funds to another person for what they believed were legitimate purposes, but which were in fact fraudulent.

So, I can only apply the CRM Code to Ms M's payment or consider Halifax's liability to her under the CRM Code, if I'm satisfied that the payment was made as part of an APP scam. As opposed to a situation where D didn't fulfil the contract with Ms M due to, for example, the business failing, ill health or dissatisfaction with the quality of the work - which would be considered a civil dispute not covered by the CRM Code.

I've carefully considered all the reasons that Ms M believes she was the victim of an APP scam, however, I'm not satisfied that I can safely reach that conclusion. I'll explain why.

I accept that D didn't complete the work they were contracted to do and that there may have been issues with the work they did complete. However, that isn't enough to say that D set out with the intention to defraud Ms M from the outset.

Whilst I can quite understand why Ms M feels that D has scammed her, there is a high legal threshold or burden of proof for fraud. And there are a number of potential reasons (other than a scam) for the breakdown in a relationship between two parties for a dispute to exist.

D started the work, which suggests an intention to deliver the agreed services. A dispute about the quality of the services ensued, and D walked off without completing the work. I think the messages with D do reinforce this is a civil dispute rather than a scam. I appreciate there may not be scope for a civil conversation with D now. I also appreciate the work may not have been of a satisfactory standard but that is not the same as the intention to defraud. As the CRM Code highlights where customers have paid a legitimate supplier for services but they are defective in some way or the customer is otherwise dissatisfied with the supplies - this still amounts to a private civil dispute.

I must make a decision on what I think is most likely to have happened. And, based on the evidence I've seen, I think it's more likely here D was attempting to operate as a legitimate business at the time and that other factors ultimately meant the work wasn't completed. I don't think D set out from the beginning with the intent to defraud Ms M or that Ms M has been the victim of a scam here.

Halifax says the individual payment wasn't particularly out of character given the transaction history on the account. Ms M says the bank did in fact intervene and asked her about the payment. I'm not going to go into detail on this because, given that I'm supportive of Halifax's decision to conclude this is a civil dispute, there isn't any basis upon which any intervention ought reasonably to have caused concern with the payment. That is to say; any intervention would likely have revealed the payment was going to a legitimate builder and if (for example as Ms M has suggested it should have done) Halifax asked her for an invoice – she would have been able to provide one. Any further questions would likely have shown she found them through a recognised site for finding trusted builders. So, I can't fairly criticise Halifax for not having done more in these circumstances.

I know this will be a huge disappointment to Ms M but I don't think this situation meets the definition of an APP scam. I consider this to be a civil dispute. I sympathise with the position Ms M has found herself in, and I'm in no way saying she did anything wrong or that she doesn't have a legitimate grievance against D. But this type of dispute isn't something that the CRM Code covers. So, I don't think it was unfair for Halifax to take the view that it was unable to refund Ms M under the CRM Code.

So, for the reasons I've explained above, I don't think it would be fair to hold Halifax responsible for the money Ms M has lost.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or reject my decision before 29 February 2024.

Kathryn Milne
Ombudsman