

The complaint

Mr F is unhappy about Bank of Scotland plc trading as Halifax's (Halifax) decision not to refund the money he paid for gardening services.

What happened

The view of 8 February 2024 detailed the background to this complaint. So, I'll only provide a brief overview of some of the key events here. Mr F used a web-based services marketplace to employ an organisation for gardening and landscaping work. In response to his enquiry, a business (I will refer to as M) reached out to Mr F and an initial verbal agreement was made on costs.

Between 11 August 2022 and 31 August 2022, Mr F transferred four payments totalling £7,000. The projects were also funded by payments from Mr F's wife – those payments commenced in July 2022. They paid £19,700 between them for the work.

At the time Mr F believed he was paying for services from M. However, he says M didn't finish the work and the work that was completed was substandard.

Halifax deemed the matter a civil dispute. Mr F says this was a scam and wants Halifax to refund him. Mr F says his wife was refunded 50% of the payments she made.

Our investigator did not uphold the complaint. He thought Halifax correctly classed this as a civil dispute between Mr F and M and it isn't covered by the Contingent Reimbursement Model (CRM) Code. Mr F 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.

Where there is a dispute about what happened, and the evidence is incomplete or contradictory, I've reached my decision on the balance of probabilities – in other words, on what I consider is most likely to have happened in light of the available evidence.

I have carefully noted the representations made by Mr F, but I won't be addressing every single point that's been raised. It doesn't follow that the points haven't been considered, simply that I don't need to particularise every point in reaching an outcome I consider to be fair and reasonable in all the circumstances. I've instead concentrated on the issues I think are central to the outcome of this complaint.

Mr F told us his wife (who also made payments to M at the same time) has had some of her money refunded from the bank. The bank made a decision (before coming to this service) relating to a different account holder. Banks can choose to make refunds for their own reasons. Ultimately each case presented to me is considered based on the particular set of facts to that case and this isn't a determining factor in this case.

I'm sorry to hear about the situation Mr F has been left in. He has paid out a considerable sum of money, yet it seems the work is not complete and, from what he has said, what has been carried out is substandard.

It's clear that Mr F feels strongly that M has tricked him. From his perspective, M provided substandard half-finished work and ultimately didn't turn up to complete the job. But I don't have the power to decide any dispute between Mr F and M. My role is limited to looking at whether Halifax has treated Mr F fairly.

Halifax didn't contract with Mr F for the gardening project he wanted done, and I can't hold it responsible for any breach of contract or other failings on M's part. As a starting point in law, Mr F is responsible for payments he's instructed Halifax to make. Unfortunately, there's little protection available to him for bank transfer payments, like these.

Halifax was under a range of other duties and obligations at the time, including to be on the lookout for payments that were unusual or out of character with the aim of preventing customers from falling victim to fraud and scams.

It's also a signatory to the CRM Code. In certain circumstances, that Code can entitle a customer to be reimbursed by banks or building societies after they've fallen victim to an APP (authorised push payment) scam.

The CRM code defines a scam as where a customer intended to transfer funds to another person, but was instead deceived into transferring the funds to a different person. Or where the customer transferred funds to another person for what they believed were legitimate purposes but were in fact fraudulent.

But the CRM Code is also explicit that it doesn't apply to:

"private civil disputes, such as where a Customer has paid a legitimate supplier for goods, services ... but has not received them, they are defective in some way, or the Customer is otherwise dissatisfied with the supplier."

So I need to consider whether Mr F has been the victim of a scam – or, in other words, whether Mr F was deceived about the purpose of the payments to the extent that he and M had intended different purposes for the payments.

I've thought very carefully about this and I think it's a finely balanced matter in this case. But, 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. And unfortunately, businesses (such as M's business) can fail or be mismanaged such that contracts are breached and agreed goods and services aren't provided. But that doesn't necessarily amount to evidence of an intent to commit an APP scam.

An APP scam is where a customer was deceived into making a payment to another person for what they thought were legitimate purposes but turned out to be fraudulent. In this context, that would mean that the very purpose for which M obtained the payments would need to be different to what Mr F believed they were for due to dishonest deception.

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 M 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 M set out from the beginning with the intent to defraud Mr F.

There's no dispute that M did do some work for Mr F here and work was carried out over a number of weeks. This suggests an intention to deliver the agreed services. And I haven't seen any evidence that M didn't use the money in the way it said it would – i.e. for gardening related materials and labour. M may have provided substandard work and not completed the job but that's not enough to say this was an APP scam. Overall, M appears to have done more work than I'd expect from someone who never intended to complete the work.

Whilst I am unable to share details about a third party and the nature of their relationship with their bank, the evidence I've seen, regarding the beneficiary account, indicates that the account was legitimate, and the activity run as the beneficiary bank would expect. This was a customer who had been operating an account for several years. The bank hasn't said it had any concerns about how the accounts were being operated and no other claims (other than Mr F's wife) of this nature have been made against it. This isn't typical of an APP scam.

Even if, as Mr F suggested in more recent correspondence with the investigator, M did say they were connected to a company they weren't really connected to, I think Mr F intended to transfer funds to M (the person he had met in person and came to do the work) and did actually transfer the funds to M.

I also acknowledge the invoice from May 2023 (with what seems to be a fake address) asking for more money is concerning. Mr F did not make a further payment in response to this. Even if this represented an intent to defraud, I don't think this is enough to show - *at the time and specifically in relation to those payments made* – there was an intent to defraud at that stage.

I accept and acknowledge that Mr F may feel he has not received the service he expected, and that M may have provided misleading or incorrect information and is now uncontactable. M may have been acting unprofessionally and may not be following the legal requirements for sole traders, but I still think M's intention was to do the work that had been agreed and that the payments were being made for the purpose Mr F transferred them for.

I know this will be a huge disappointment to Mr F, but I can't exclude the possibility that M entered the agreement in good faith, intending to fulfil the work and then was unable or unwilling to fulfil the agreement for some reason. The evidence doesn't lead me to conclude it's more likely (than these alternative possibilities) that M intended to steal his money from the outset and never had any intention of fulfilling the arrangement in full or in part.

I sympathise with the position Mr F has found himself in, and I'm in no way saying he doesn't have a legitimate grievance against M. But this type of dispute isn't something that the CRM Code covers.

Overall, I don't think Halifax's decision to treat this as a civil dispute was unfair or unreasonable. That means that I can't fairly hold Halifax responsible for the loss suffered here by Mr F. It also means I find that Halifax had no ability or obligation to try and recover his money.

In addition, Halifax doesn't have any duty or obligation to intervene in payments that are legitimate or to protect its customers from the impact of a bad deal. So, I can't fairly criticise Halifax for not doing more when Mr F made the payments.

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 Mr F to accept or reject my decision before 10 May 2024.

Kathryn Milne
Ombudsman