

Complaint

Mrs A was unhappy that Bank of Scotland plc (trading as Halifax) didn't refund her after she told it she'd fallen victim to a scam.

Background

In early 2023, Mrs A wanted to make a travel booking for her and her family to go on a religious pilgrimage. She contacted a company that she found online which specialised in arranging such trips. In total, she booked a trip (including flights, accommodation and visas) through this company.

She used her Halifax account to make several payments to a total value of £18,545. The company gave her the details of hotel reservations for all the family members. However, it claimed that it couldn't secure visas for all eleven travellers. Mrs A didn't want to go ahead and so it agreed to refund her. As I understand it, no refund was ever paid. Mrs A sent the company a formal letter requesting repayment and saying that she would take legal action through the courts to recover her money. The company didn't reply to that letter, and it has since ceased trading.

Mrs A told Halifax that she'd fallen victim to a scam. It looked into things, but it didn't agree to reimburse her. It considered her complaint under the Lending Standards Board's Contingent Reimbursement Model (CRM) Code – a voluntary code under which banks may reimburse customers who have fallen victim to scams. However, it didn't think Mrs A was the victim of fraud – instead, it thought she had a civil dispute with the company. It said that:

"We believe the payments you made don't fall under the remit of the CRM code. To be covered under CRM there would need to be a clear intention to defraud from the outset ...

[...]

The payments you've made have gone to a legitimate company registered on Companies House, they did provide you with airline tickets and visas for five of the travelling party and accommodation for all 11 members of the party."

Mrs A wasn't happy with the response she received from Halifax and so she referred her complaint to this service. It was looked at by an Investigator who didn't uphold it. Broadly speaking, the Investigator came to the same conclusions as Halifax regarding whether Mrs A was the victim of an APP scam, or simply had a civil dispute with the business she'd been dealing with.

Mrs A disagreed with the Investigator's opinion and so the complaint has been passed to me to consider and come to a final decision.

Findings

I've considered all the available evidence and arguments to decide what's fair and

reasonable in the circumstances of this complaint.

In broad terms, the starting position at law is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations 2017 and the terms and conditions of the customer's account. However, that isn't the end of the story. Halifax is a signatory to the Lending Standards Board's Contingent Reimbursement Model Code ("the CRM code"). This code requires firms to reimburse customers who have been the victim of authorised push payment ("APP") scams in all but a limited number of circumstances.

However, it doesn't apply to all transactions. For a payment to be covered, it needs to meet the Code's definition of an APP scam which is as follows:

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 Code also specifically doesn't cover what it terms *"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 question this case turns on then is whether the purpose for which this company received this payment was fraudulent. To reach a determination on that point, I need to consider what the intentions of the company and its director were – in other words, did they plan to deceive Mrs A and take her money from the start with no intention of fulfilling their side of the agreement? I can't know for sure what was in the director's mind at the time, so I have to look at the available evidence and infer what their intentions most likely were. Unless that evidence shows that it's more likely than not that the director of the company intended to defraud Mrs A, I can't make a finding that she is a victim of fraud, and this payment would fall outside the scope of the CRM Code.

This is quite a finely balanced case but overall, I'm not persuaded that the evidence is strong enough to say that Mrs A was the victim of fraud. I say that because:

- The company does have a footprint on the Companies House register. That on its own doesn't prove anything, particularly since it had only been on the register a short time. Nonetheless, the person who created the company, registered it and opened up a bank account in its name doesn't appear to have taken any steps to conceal their identity. If the purpose of creating the company was to perpetrate fraud, I might have expected them to do so.
- In addition to that, the receiving bank shared statements with us that showed how the company's bank account was operated. While I accept it's not conclusive, it does show activity consistent with it running as a travel business. This suggests that it's possible the company was chaotically mismanaged, but not necessarily a vehicle for defrauding people.
- Despite the fact that this has been reported to Trading Standards and the police, no further action has been taken in connection with that report.

Overall, I'm not persuaded that there's strong enough evidence to say that Mrs A is the victim of fraud here. It is, of course, possible that the situation may change. The police or

Trading Standards may opt to carry out a substantive investigation and that might uncover new evidence. That could affect the outcome. However, I have to decide the case on the facts and information before me. I'm currently not able to conclude there is convincing evidence that Mrs A has been the victim of an APP scam.

If new material information does come to light, at a later date, then a new complaint can be made to Halifax. But I'm satisfied, based on the available evidence that I have seen and been presented with by all parties, that this is a civil dispute. I don't say any of this to downplay or diminish what Mrs A has been through here. However, my role is limited to looking at the actions and inactions of the bank and, while I'm sorry to have to disappoint her, I'm satisfied Halifax's decision under the CRM Code was correct.

Final decision

For the reasons I've set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A to accept or reject my decision before 25 July 2024.

James Kimmitt
Ombudsman