

The complaint

Mr and Mrs G are unhappy about Bank of Scotland plc trading as Halifax's (Halifax) decision not to refund the money they paid for building work.

What happened

The view of 6 February 2024 detailed the background to this complaint. So, I'll only provide a brief overview of some of the key events here.

In March 2022, Mr and Mrs G employed the services of an organisation (I will refer to as N) for building work. On 22 March 2022 Mr and Mrs G transferred £6,150 as a deposit for the work and a further £13,530 was paid on 15 June 2022 for materials (the remainder being payable upon completion). Work commenced in June 2022, but an issue arose which needed permission from the local water company before work could continue. Once this issue was resolved in July 2022, N didn't return to complete the work. Mr and Mrs G later discovered N had gone into liquidation.

Halifax considered the matter to be a civil dispute and not a scam, but Mr and Mrs G didn't agree.

Initially our investigator upheld the complaint but after further investigation she concluded that the matter was a civil dispute.

Mr and Mrs G didn't agree, so the complaint has come 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'm sorry to hear about the situation Mr and Mrs G have been left in. They have paid out a considerable sum of money, yet it seems the work is not complete with no prospect of N returning to complete the work.

It's clear that Mr and Mrs G feel strongly that N has tricked them. From their perspective, N ultimately didn't turn up to complete the job. But I don't have the power to decide any dispute between Mr and Mrs G and N. My role is limited to looking at whether Halifax has treated Mr and Mrs G fairly.

Halifax didn't contract with Mr and Mrs G for the building project they wanted done, and I can't hold it responsible for any breach of contract or other failings on N's part. As a starting point in law, Mr and Mrs G are responsible for payments they've instructed Halifax to make. Unfortunately, there's little protection available to them 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.

I've thought about whether Halifax has any obligation to refund the losses as a result of the CRM Code that it has signed up to. But the CRM Code is 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."

In order for me to conclude that the payments Mr and Mrs G made were part of an APP scam and that Halifax should refund them, I'd need to be reasonably satisfied from the available evidence that N was not legitimate and had set out to defraud them from the outset. But I don't think, based on what I know, that I can safely conclude that.

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 N'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 N obtained the payments would need to be different to what Mr and Mrs G believed they were for due to dishonest deception.

All things considered I simply can't safely conclude that N took Mr and Mrs G's money without ever having any intention of carrying out the work. The evidence available to me simply isn't enough to support such a finding.

I do understand the concerns Mr and Mrs G have raised about the trader's history but on balance it seems to me that N was more likely than not operating as a legitimate builder. There's no dispute that N did do some work for Mr and Mrs G here. And I haven't seen any evidence that N didn't use the money in the way it said it would – i.e. for building materials and labour. N may have not completed the job but that's not enough to say this was an APP scam.

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 for a business of this nature. The bank hasn't said it had any concerns about how the accounts were being operated prior to Mr and Mrs G's claim. Whilst there may be other similar claims – that isn't surprising given N has gone into liquidation. Halifax has also established that

other account holders have paid to the same account without raising claims with some suggestion (by the reference) that work had been completed. The beneficiary account has also paid some of Halifax's other business accounts with references suggesting genuine supplies were purchased.

Overall, I think it's reasonable for me to consider that this is a civil dispute between Mr and Mrs G and N. Mr and Mrs G may be unhappy with the goods or service they have received. But I'm afraid there simply isn't enough evidence to support a finding that this was an APP scam.

I appreciate how frustrating and disappointing this answer will be. Mr and Mrs G have lost a lot of money as a result of N's failure to complete the agreed work. But I can't exclude the possibility that N 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 N intended to steal their money from the outset and never had any intention of fulfilling the arrangement in full or in part.

That means that I can't fairly hold Halifax responsible for the loss suffered here by Mr and Mrs G. It also means I find that Halifax had no ability or obligation to try and recover their 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 and Mrs G made the payments.

In saying all of this, I don't underestimate the impact this whole matter has had on Mr and Mrs G – I am sorry they have lost out through no fault of their own. It does seem N has badly let them down. But that fault lies with N, not with Halifax. And it's simply the case that I can't fairly tell Halifax to pay them the money they've lost, because I don't think Halifax has treated them unfairly or was otherwise at fault here.

In such civil matters, it is for Mr and Mrs G to pursue other ways to resolve their dispute, including contacting the police, Action Fraud and Trading Standards.

Ultimately there is insufficient evidence to persuade me that the conclusion Halifax reached - at the time and based on the evidence available - was unfair or unreasonable. Based on all the information I've seen; I don't think Halifax's decision to treat this as a civil dispute was unfair or unreasonable.

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 G and Mrs G to accept or reject my decision before 1 April 2024.

Kathryn Milne
Ombudsman