

The complaint

Mrs O is unhappy that Bank of Scotland plc trading as Halifax decided not to refund her, after she says she was the victim of a scam.

What happened

Mrs O found a window fitting company. In December 2021 she paid a 30% deposit of £1,582. An instalment date was arranged but she says the company pressured her to make a second payment. Mrs O says she received a demand for payment as the company had paid for the windows and were being charged for storage. Mrs O made a further payment of £1,582 in May 2022 but says the company did not install the windows. A final payment of £2,112 was due on the last day of installation, which was not paid, as the windows were not supplied or installed.

Mrs O says she took out a CCJ and enforced a third-party debt order against the company in November 2022.

Mrs O has provided some correspondence between her and the company. In these the company initially says the windows are being remade as they couldn't be located by the manufacturer. Then the company says they are trying to get the manufacturer to release the original frames. The company then goes on to say it was having problems with its supplier, which were out of the company's control and linked to the national and global supply issues with oil at the time. The company said it paid its supplier 100% up front and was chasing the products regularly. Because of the cost it incurred it couldn't provide a refund to its customers. The company also continued to say that it intended to install the windows for Mrs O. Mrs O has not provided a contract between her and the company she was dealing with, or any paperwork relating to the CCJ, and she has provided some correspondence with the company, but this is limited to May and October 2022 only.

Mrs O says the company traded under a specific name and that was accredited to fit glazing and belonged to the local business guild. This company went bust and the owner reopened under a similar name, but it was not accredited to fit glazing and does not belong to the local business guild. She reported these matters to the local council and the licensing agent. She said looking at reviews the new company has not been verified online and the reviews it has received are in relation to leaks and fixes, and not glazing. And she has found there are a couple of negative reviews, when the bank had said there were none.

Mrs O says she's recovered less than half of her money through a third-party debt order from the court. No paperwork has been provided in relation to this and no obvious credit appears on her bank statement to corroborate this either.

Mrs O raised the claim with Halifax. It said it wouldn't be refunding her as it considered the matter to be a private civil dispute. It said the company she had dealt with was legitimate, it was on companies house, had a social media page with over 700 reviews and had been running since 2011. It suggested she contact Citizen's Advice or Trading Standards in this instance.

After bringing the complaint to our service one of our investigators looked into things. She also concluded the claim Mrs O had brought was a private civil dispute between her and the window fitting company and did not recommend that Halifax refund her losses in this instance. She considered that although no work was carried out, it appeared Mrs O had been able to recover some of her funds. Overall, she hadn't been persuaded that Mrs O's remaining losses were caused as the result of her being scammed, or that Halifax ought to have been concerned about the payments when they were made.

Mrs O didn't accept the investigators findings and said the company did offer to return some funds but hasn't yet done so. She also believes the company is not legitimate as it is not licensed/accredited. The investigator asked Mrs O for any other evidence she might have but no further information or evidence was provided. The investigator summarised that not being licensed in and of itself, was not enough to say that the company was defrauding customers and the receiving bank had confirmed it had no concerns with the operation of the account. So, she wasn't persuaded Mrs O had been scammed at the time she made the payment to the window fitting company.

Mrs O asked for an ombudsman to review the complaint and so it has been passed to me to consider. Mrs O said she would provide further evidence around the company's fraudulent claim it was accredited/licensed. These have not been provided but I am able to reach a conclusion without these as it does not impact the outcome of the complaint and I'll explain why.

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'll start by saying I'm sorry that Mr O has lost out as a result of what's happened here and his interactions with the window fitting company. It's clear Mrs O hasn't received what she paid for and the company provided a variety of reasons and excuses over several months for why this was the case, all of which has caused Mrs O a loss, and I have no doubt significant upset and frustration.

But it's my role to consider, as a result of those interactions and financial losses made with the window fitting company whether Halifax is responsible for those losses, when applying the Contingent Reimbursement Model (CRM) and other relevant industry guidance in deciding the outcome of this complaint.

I'm sorry to have to disappoint Mrs O but I agree with the investigator. That's not to take away that Mrs O hasn't suffered a loss or, that some fraudulent behaviour was underlying the window fitting company's actions. But not all instances of fraud will be enough to say that a bank is responsible for a consumer's losses. I need to see convincing evidence that Mrs O has been the victim of an Authorised Push Payment (APP) scam in order for that to be the case.

It's important to note that I am not deciding a dispute between Mrs O and window fitting company – I don't have the power to look into a complaint about that company. My role is limited to deciding the dispute between Mrs O and Halifax based on the limited information I have access to, or has been provided by the parties to the complaint. I need to decide whether Halifax acted fairly, when concluding that this amounted to a civil dispute and not an APP scam. I'm satisfied that it did, and I'll explain why below.

In order to be persuaded on balance that Mrs O has been the victim of an APP scam I need to look to the definitions set out in the CRM code. At

DS1(2)

Authorised Push Payment scam, that is, a transfer of funds executed across Faster Payments, CHAPS or an internal book transfer, authorised by a Customer in accordance with regulation 67 of the PSRs, 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.*

DS2(2) 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 order for the consumer to have been the victim of APP scam the consumer must have been deceived about the very purpose for which their payment has been procured. That being the purchase and installation of windows. And whilst those windows were not subsequently supplied or installed, I haven't seen convincing evidence that it's because the company had never intended to do so from the outset.

The failure to provide the windows, in and of itself, isn't sufficient to satisfy the definition of an APP scam. As the window fitting company appears (as far as I can reasonably tell) to be a genuine trading company, for a number of years, leading up to these events and post these events, and so there may be any number of good reasons for why the contract has not been fulfilled.

There does appear to be a dishonest misrepresentation about the glazing accreditation - although Mrs O hasn't provided any paperwork or contract between her and the company, so it's not clear if the company said the windows would be certified, beyond displaying the accreditation logo on its email chain and on its website. But whilst there may be a deceit regarding the company's accreditation status, this doesn't give rise to a situation where the company and Mrs O have different purposes for the payment. And although the accreditation is advised it isn't a requirement to have the windows installed. So, the lack of accreditation here does not mean the company could not have fulfilled the overall purpose of the contract which was to provide and install the windows.

And, I've said it's not my role, or within my remit, to investigate the actions of the window fitting company to a significant degree. But as the investigator set out the receiving bank said that no other scam claims had been brought by other customers and at the time of Mrs O's complaint the account was still active. From the limited information I have I've not able to fairly conclude that the window fitting company was not a legitimate one, to the extent that Mrs O has been the victim of an APP scam for the purposes of the definition given in the CRM code. And so, I think Halifax's conclusion, that Mrs O's claim was not covered by the code, was not an unfair one, in the circumstances.

Although I appreciate Mrs O says reviews can be bought and manipulated there is also no evidence from any online research to suggest this company is not genuine. There appears to be no other scam claims against it and the two negative reviews, which can be found, refer to the quality of the product and installation, rather than the company being a scam or no

products being received by customers at all. I haven't placed significant weight on the reviews found online but I also haven't found any persuasive evidence that this company was not fulfilling its contracts, beyond the dispute it had with Mrs O, which I'd expect to find some record of, if it were defrauding its customers from the outset. This only adds to my finding that there is not enough evidence to say Mrs O has been the victim of an APP scam.

Mrs O has mentioned a court order and Trading Standards and if those investigations result in any new or material evidence relevant to Mrs O's claim then she can of course raise a new complaint with her bank at the time.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs O to accept or reject my decision before 27 January 2025.

Sophia Smith
Ombudsman