

The complaint

Mrs M complains that Bank of Scotland Plc (trading as Halifax) hasn't refunded her for the money she lost when she fell victim to a scam.

What happened

Mrs M had experienced a bereavement. She felt she would be comforted by a tarot card reading and so looked online for someone to provide that service. Mrs M says she found someone who said they could help her, and she paid them £300 on 5 June 2023. But Mrs M was then told she'd need to pay a further £735 if she wanted the reading, she says she initially refused but that the person she was dealing with became aggressive and bullied her into making the payment, which she did on 12 June 2023. This person then blocked Mrs M, and she realised at that stage that she had likely been scammed.

Mrs M contacted Halifax in August 2023 to tell it what had happened, and to ask if her financial loss could be refunded. Halifax looked into whether Mrs M was entitled to a refund of all or some of the payments she made under the Contingent Reimbursement Model (CRM) Code. This voluntary code requires firms to reimburse customers who have been the victims of APP scams in all but a limited number of circumstances, and Halifax is a signatory to the CRM Code.

But Halifax said that it did not feel Mrs M had done enough to protect herself from this scam, so it declined to refund the payments to her.

Mrs M didn't accept this, so she referred her complaint to our service.

One of our Investigators looked into her complaint. They thought Halifax was entitled not to refund Mrs M's money. They didn't think Mrs M had held a reasonable basis for believing what she did when she sent the payments. They also did not think there was anything about the payments Mrs M made that should have triggered any intervention or warning from Halifax. So, they thought Halifax had fairly assessed the claim under the Code and didn't think it needed to refund any of Mrs M's financial loss.

Mrs M remained unhappy, so her case has now been referred to me to reach a final 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.

I'm sorry to hear about what happened to Mrs M, but I have to recognise that the main cause of her losses here was the scammer who deceived her. I must also take into account that Halifax has an obligation to carry out the payment instructions its customers give it. As a starting point, a customer is therefore assumed liable for a payment they have instructed to be made.

But even with that in mind, where a customer has made the payment as a consequence of the actions of a fraudster, it may sometimes be fair and reasonable for a bank to reimburse its customer even though the customer authorised the payment.

Amongst other things, Halifax has a responsibility to exercise reasonable skill and care, pay due regard to the interest of its customers and to follow good industry practice to keep customer's accounts safe. Additionally, as I've mentioned above, the CRM Code can provide increased protection for the victims of APP scams. I'm satisfied that the faster payments Mrs M made fall within the scope of the CRM Code. But despite offering additional protections, the CRM Code includes provisions allowing a firm not to reimburse APP scam losses fully in some circumstances. Those circumstances include where the customer made a payment without a reasonable basis for believing that the person they were dealing with was legitimate, was providing a genuine service, or that the payee was the person the customer was expecting to pay.

Halifax has suggested this exception applies here. So, while it reviewed Mrs M's claim against the Code, it didn't think it was required to reimburse her.

I need to determine whether Halifax has established this exception to reimbursement can be fairly applied – in other words, that Mrs M made the payments without a reasonable basis for believing they were for a legitimate purpose or to a legitimate person. In considering this point, I've carefully considered everything Mrs M has submitted as well as the evidence submitted by the bank. But I must note here that Mrs M has not provided some of the information we have asked to see, such as the messages she exchanged with the scammer, so as a result my decision has been based on the evidence we do have.

And with what I've seen I'm satisfied that there were some features of what happened here that I think should reasonably have caused Mrs M to use greater caution before sending her money to the scammer. Mrs M appears to have previously used similar card-reading services, which had not previously cost her more than around £40. And as noted by our investigator, that appears to be around the average going rate for such services. So, it's unclear why Mrs M was willing to pay a significantly larger amount for a similar service on this occasion, and Mrs M has not provided us with any context around why she agreed to this high payment.

It is also evident that Mrs M then agreed to pay a further £735 despite no services being yet provided by the scammer at that time, so in total she paid over £1,000 for a service that should have cost less than a tenth of that amount. And Mrs M has said she did have doubts about what she was being asked to pay before she made the second payment, but without any evidence of what she was being told by the scammer, it is difficult to explain why she moved past those doubts and nonetheless went ahead with the payment.

I appreciate that tarot card reading is the kind of service that is not backed up by any kind of formal register or other organisation where Mrs M would be able to check credentials to ensure she was dealing with a legitimate provider. But nonetheless, given the huge price differential in what she paid and what she was aware was a normal price for such services, I am satisfied that she should have identified that there was a high probability that all was not as it seemed before she made these payments.

In short, I find there were indicators that all might not be legitimate. I've carefully considered Mrs M's representations regarding her personal circumstances, and I don't doubt that she was going through a difficult time. But I don't consider that Mrs M's circumstances meant she was unable to protect herself from this type of scam - I do not consider she was vulnerable in terms of the Code.

With all this in mind, I think Halifax has been able to fairly establish that when Mrs M made these payments, she did so without a reasonable basis for believing she was paying for a legitimate service. This means that, as set out in the Code, Halifax does not need to fully refund her for her loss even though this was the result of a scam.

However, under the terms of the Code a bank may still be required to partially reimburse a customer in circumstances where it hasn't met the standards set for firms by the Code. That would include requirements in terms of funds recovery or in taking sufficient steps to protect the customer from falling victim to a scam.

But, in the context of how she usually used her account, the payments Mrs M made to the scam would not have appeared as particularly unusual or out of character. So, I'm not persuaded that Halifax was required to give a warning in this case or carry out any fraud checks. And given that Mrs M did not interact with Halifax about either of the payments, I do not consider that Halifax could have done anything to protect Mrs M from this scam.

I have also considered whether Halifax could have done more to recover Mrs M's funds once she told it of the scam. But I'm satisfied Halifax could not have done more. Halifax contacted the beneficiary bank, but by that time no funds remained in the recipient account.

I understand that this will be very disappointing for Mrs M, and I recognise what the loss of this money has meant for her. But I do not consider that it would be fair to hold Halifax responsible for her loss, so I won't be asking it to refund any of that loss to her.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 19 February 2025.

Sophie Mitchell
Ombudsman