

## **The complaint**

Mrs C complains that Bank of Scotland plc trading as Halifax ('Halifax') won't refund the money she says was lost as the result of a scam.

## **What happened**

The background to this complaint isn't in dispute, so I won't go into detail.

In summary, Mrs C engaged a builder who I'll refer to as P, to add a conservatory to her home.

Mrs C's husband paid the deposit, and work was supposed to start in December 2022. The start date was delayed and work commenced around Easter of 2023.

In May 2023, Mrs C was asked to make a further payment of £6,565, which she made from her Halifax account.

Mrs C says while the foundation was laid and some brickwork was completed, the job hasn't been finished. A surveyor visited the property and said the work completed isn't of an acceptable standard. Mrs C says the work that was completed will need to be removed and redone.

Mrs C raised a scam claim with Halifax and asked that they refund her. Halifax declined to refund Mrs C saying she has a civil dispute with P.

Mrs C wasn't happy with Halifax's response, so she brought a complaint to our service.

An investigator looked into Mrs C's complaint but didn't uphold it. The investigator agreed with Halifax that Mrs C isn't entitled to a refund under the Contingent Reimbursement Model Code (CRM Code), saying she has a civil dispute with P.

Mrs C disagreed with the investigator's opinion and asked for an ombudsman to review her complaint.

## **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 in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to be 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.

In broad terms, the starting position at law is that a bank such as Halifax are expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations (in this case the 2017 regulations) and the terms and conditions of the customer's account.

I accept that Mrs C has suffered a financial loss, but I'm not making a finding as to whether P owes her money. Rather, I'm deciding whether Halifax can fairly be held liable for that loss.

I'm really sorry to disappoint Mrs C, but having carefully considered the evidence, I've reached the same answer as the investigator. I'll explain why.

#### Is Mrs C entitled to a refund under the CRM Code?

Halifax have signed up to the CRM Code, which requires firms to reimburse customers who have been the victims of Authorised Push Payment (APP) scams, in all but a limited number of circumstances.

But, the CRM Code does not apply to private civil disputes, for example 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 CRM Code defines what is considered an APP scam as, *"where the customer transferred funds to another person for what they believed were legitimate purposes, but which were in fact fraudulent"*.

In order to decide whether the circumstances under which Mrs C made her payment meets the definition of an APP scam, I need to consider the purpose of the payment and whether Mrs C thought this purpose was legitimate. The purpose P had in mind at the time of the payment and whether this was broadly in line with what Mrs C understood the purpose to be. And, if I decide there was a significant difference in these purposes, whether I'm satisfied that was as a result of dishonest deception.

Mrs C was making a payment to P for building work. I haven't seen anything that suggests Mrs C didn't think this was a legitimate purpose.

So, I've gone on to consider what purpose P had in mind and whether it was in line with what Mrs C thought.

In reaching an answer on what purpose P had in mind, the key information is:

- P turned up at Mrs C's property and completed some of the work, which included foundations and some of the brickwork. I appreciate that Mrs C isn't happy with the quality of the work completed, but quality issues aren't covered by the CRM Code.
- I haven't seen any evidence that shows P took Mrs C's payment with no intention of doing the work.
- While Mrs C may've made a payment for windows, and the manufacturer hasn't been paid, that doesn't mean that the funds she paid to P weren't used for the overall building work they'd agreed.
- We've received information from the receiving bank that I can't share due to data protection issues. But this doesn't evidence that Mrs C's funds weren't used for their intended purpose.

- It's possible that P has experienced a change in their personal circumstances which has meant they were unable to complete the work. In the chats with P, he tells Mrs C that he's having financial difficulties. Failure of P's business, whether that was due to financial difficulties or mismanagement, wouldn't mean that Mrs C was the victim of an APP scam as defined by the CRM Code.
- Mrs C received a recommendation from someone P was doing work for, this suggests that P was operating as a builder at the time.
- We don't have any evidence from the police or Trading Standards which points to P's intentions at the point Mrs C made her payment.

Taking all of these points into consideration as a whole, I'm not satisfied that I can fairly say P took Mrs C's funds with a different purpose in mind. Although the work wasn't finished and Mrs C isn't happy with the quality of the work that has been completed, this fits with Mrs C having a civil dispute with P, rather than it being an APP scam.

Based on the evidence, I'm not satisfied that the circumstances under which Mrs C made the payment meets the definition of an APP scam under the CRM Code. So, I can't fairly hold Halifax liable under the CRM Code.

It's possible that material new evidence may come to light at a later date, for example from Trading Standards or the police. If that happens, Mrs C can ask Halifax to reconsider her claim.

Is there any other reason I can fairly ask Halifax to reimburse Mrs C?

There is an expectation for Halifax to be on the lookout for, and to protect its customers from, potentially falling victim to fraud or scams. This includes monitoring accounts and identifying suspicious activity that appears out of character. Where potential fraud is identified, I would expect Halifax to intervene and attempt to prevent losses for the customer.

However, even if I was satisfied that Halifax should've intervened when Mrs C made her payment, I'm not satisfied this would've prevented Mrs C's loss. I say this as the information Mrs C had in May 2023, suggested that P was operating legitimately, especially as work had started on the conservatory. So, if Halifax had asked Mrs C questions about the payment, I'm not persuaded that Mrs C would've provided any concerning information to Halifax that meant they shouldn't have followed her payment instructions.

For the reasons given above, I'm not satisfied that I can fairly hold Halifax liable for Mrs C's loss or ask them to refund her.

### **My final decision**

My final decision is that I don't uphold this complaint against Bank of Scotland plc trading as Halifax.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 9 June 2025.

Lisa Lowe  
**Ombudsman**