

The complaint

Mr B is unhappy Bank of Scotland plc, trading as Halifax, will not the refund £20,270 he lost as the result of a scam.

Mr B brought his complaint through a representative. For ease of reading I will refer solely to Mr B in this decision.

What happened

As both parties are familiar with the details of the scam I will not set them out in detail here. In summary, Mr B made four cash payments to a building firm he had appointed to build a rear extension as set out below.

payment	Date	value
1	01-Dec-21	£10,000
2	31-Jan-22	£4,770
3	10-Feb-22	£2,500
4	10-Aug-22	£3,000

The contract he signed showed the job was due to cost a total of £48,870. The job started as planned but Mr B then refused to make any further payments as the builders were frequently not on site. In response the building firm refused to continue with the job.

Mr B says he is the victim of a rogue trader scam and Halifax did not take the steps it should have to protect him. It is therefore liable for his losses.

Halifax says this is not a scam, it is a civil dispute. It has found no intent to scam. The builder that came to the property had the opportunity to take cash and not supply any materials or carry out any work. Instead, the builder attended the property and carried out work. This wouldn't happen if they had set out with the intention to scam. Additionally, it cannot find any related cases in the name of the individual or business provided. When Mr B made the first withdrawal it completed out a High Value Checklist (HVC), which does include providing scam education.

Our investigator did not uphold Mr B's complaint. He found it was a civil dispute, not a scam.

Mr B disagreed and asked for an ombudsman's review. He said whilst the investigator mentioned the HVC there is no mention of this being a warning against scams. There is no mention of any questions being raised about what the payment was for, who he was paying and if any research had been carried out on the builder. Also had the risks of a cash payment been highlighted, and had there been more questioning around these payments, this scam could have been prevented.

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 doing so I have taken into account relevant law and regulations; the regulator's rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time.

There's no dispute here that Mr B authorised the payments. Under the relevant legislation, that means he's liable for those payments in the first instance. However, Halifax was under a range of other duties and obligations at the time. Broadly summarised, it was expected 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 Lending Standards Board's Contingent Reimbursement Model (CRM) code. In certain circumstances, that code can entitle a customer to be reimbursed by the bank after they've fallen victim to a scam.

However, before I consider whether any of those obligations come into play, I must first consider whether Mr B is a victim of fraud. 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."* I would add, there is also a simplifying factor with regards to the application of the CRM code in this case. The payments were made in cash and the CRM code does not cover cash payments. But I still need to establish the cause of Mr B's losses to be able to decide what the bank's obligations were.

To be satisfied that Mr B fell victim to fraud, I'd need to be persuaded that the firm he hired had a settled intention to scam him. Obviously, I cannot know what was in the minds of the builders at the time the firm agreed to carry out this build. As a result, I must infer what their intentions were based on the available evidence. There's clearly a dispute between Mr B and the building firm that has resulted in Mr B refusing to make any further payment and the firm refusing to attend the site until he does. But that doesn't mean that he's a victim of fraud.

Unfortunately, I'm not convinced that the evidence shows that Mr B was the victim of a scam, rather I find this is a private civil dispute. I've come to that conclusion for several reasons.

The building firm purchased materials that it used in the build. It dedicated labour (more than one person) to the project over an extended period of time. The extension was part built though not, I accept, completed. I think it is unlikely a rogue trader would have done this much. At the start of the project Mr B had also been able to view other jobs the firm had completed.

It's not clear from Mr B's explanation exactly when the work stopped but from the date range of the payments it seems he was satisfied with the progress for a number of months. He made four payments over a period of over eight months. Again this prolonged engagement with the firm is not typical of a rogue trader scam.

I also note the bank did not find any other claims against the named building firm, or the named individual involved. Typically there will be multiple victims in a rogue trader scam.

So, in the round, I cannot fairly conclude this was a scam.

Mr B also complained the HVC did not warn against scams, or probe as to what research he had done about the building firm, or suggest using an alternative payment method. But Halifax has confirmed that the HVC does also include some scam education. And I can see

there are scam-related questions on the document. And crucially, as I have not concluded this was a scam I cannot find the bank ought to have intervened further.

I'm not going to go into detail on this because, given that I'm supportive of the bank's decision to conclude this is a civil dispute, there isn't any basis upon which any intervention ought reasonably to have caused concern with the payment(s). So, I can't fairly criticise Halifax for not having done more in these circumstances. It is not under a duty to warn account holders about 'bad bargains' or in this case, the selection of a specific builder.

I don't say any of this to downplay or diminish what Mr B has been through which must have been exceptionally difficult. I sympathise with him for that and I know he will be disappointed by my decision. However, having considered all the available evidence and arguments, I'm not persuaded Halifax can fairly be held liable for his losses in these circumstances.

My final decision

I am not upholding Mr B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 14 February 2025.

Rebecca Connelley
Ombudsman