

## Complaint

Miss K is unhappy that Bank of Scotland plc (trading as Halifax) didn't reimburse her after she told it she'd fallen victim to a scam.

## Background

The background to this complaint is well known to the parties. I don't intend to set it out in comprehensive detail here, but I will summarise the key facts.

Miss K has serious mental health difficulties and a learning disability. As a consequence, she needs a great deal of support with managing her day-to-day life and making decisions. She has brought this complaint with the help of her support worker. Historically, Miss K relied very much on her father for practical support. Sadly, he passed away in 2021. As a result, she inherited a significant sum of money. On 6 May 2021, the solicitor who had handled her father's estate paid her £329,943.79.

According to Miss K, her brother and his wife told her that she wasn't capable of managing her finances and that the funds should be transferred to them for "safe keeping." Her brother later indicated he would use the funds to purchase a house, promising her a proprietary right in that house and stating she would need to help with the mortgage.

On 7 May 2021, she visited a branch of Halifax and transferred £325,000 to her brother. The paperwork relating to that transaction records that the payment was a "*gift to brother for property purchase*." Miss K tells me that she believed she would benefit from her share of the house when it was sold for profit. She was told this would happen around 5 years later.

She later decided she wanted to bring that date forward. She requested that the house be sold, but she says her brother told her she had no legal right to do so. The register of title showed that she didn't have any proprietary rights in respect of the property. Miss K also shared with us that this revelation led to a confrontation involving her brother and his wife. Miss K says that her brother's wife violently assaulted her. She informed the police about both of these things – the alleged theft of her money and the violent assault she was subjected to by her brother's wife. However, social pressure from members of the extended family led her to withdraw these complaints.

She complained to Halifax. She said that it should've spotted the risk of fraud when she made that payment and taken steps to protect her from it. Because it failed to do so, she thinks it should now refund the £325,000 payment. It's worth noting that she also made ongoing payments in connection with the mortgage, but these have been refunded by the bank.

Halifax didn't agree to refund that initial payment. It said it had followed the right procedures for making the payment. It recommended that Miss K pursue a complaint with the police which could lead to her getting some of her money back. Miss K wasn't happy with that response and so she referred her complaint to this service. It was looked at by an Investigator who didn't uphold it. Miss K disagreed with the Investigator's view and so the complaint has been passed to me to consider.

## Findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I issued a provisional decision on this complaint on 6 December 2024. I wrote:

*In broad terms, the starting position at law is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. However, that isn't the end of the story. Good industry practice required that Bank of Scotland be on the lookout for account activity or payments that were unusual or out of character to the extent that they might indicate a fraud risk. On spotting such a payment, I'd expect it to take steps to warn its customer about those risks.*

*I don't think it's contentious to say that a payment of £325,000 is large enough that the bank ought to have been concerned about the associated fraud risk. There is, unfortunately, very little contemporaneous evidence regarding what happened when Miss K went into branch. However, the information recorded at the time does suggest that the transaction was processed without complication. I can see that it's likely she was read a standard warning about a range of fraud risks and given a copy of a fraud information leaflet. I can also see that she was then asked seven yes/no questions. Her answers were recorded on the paperwork.*

*I don't think that was sufficient in the circumstances. Halifax was on notice of her vulnerabilities – there are entries on her customer profile recorded by employees of the bank in June 2019 and August 2020. These record that she has severe mental health difficulties, a learning disability, suffers with suicidal ideation and has a history of self-harm.*

*Furthermore, the information that has been shared with me by her carer indicates that she was at the tail end of an acute episode of poor mental health at the time of the payment. The medications she was taking at that time (antipsychotics and opiate-based pain killers) are frequently sedating which I think would've made it very difficult for her to understand the nature of the agreement she'd come to with her brother or explain what she believed the agreement was to an employee of the bank. The paperwork suggests she was only asked 'yes/no' questions.*

*I think it's likely that an employee of the bank would've spotted that Miss K was experiencing cognitive difficulties if she'd been asked a handful of open questions about the nature of the payment and the agreement that she believed she'd reached with her brother. Furthermore, if Miss K had revealed that her understanding was that she was to be a co-owner of the property, it would be a concern that she'd described the payment as a "gift." It's understood, for example, that where a third-party has contributed to the purchase of a home for someone else they're often expected to provide a statement that their contribution is a gift and that they understand it gives them no beneficial interest in the property.*

*I accept that I only have one side of the story here, but I'm persuaded that the evidence suggests there was something problematic regarding this transaction and there were shortcomings in the way the bank handled things. Miss K thinks that Halifax should, therefore, refund the £325,000 transaction. While I do have concerns about the way things were handled for the reasons I've explained, a refund wouldn't be proportionate, particularly given that her brother would continue to benefit from the*

*alleged deception and that Miss K is (theoretically at least) able to pursue other recovery options either by bringing a civil claim against her brother or pursuing her criminal complaint with the police.*

*However, I think the way things were handled justifies a sizeable award for distress and inconvenience. I've taken into account the guidance published on our website on quantifying awards for distress and inconvenience. I think these circumstances fall within the £1500 - £5000 band particularly given that the impact of the bank's error has been distress that has been sustained over a long period of time.*

*However, I'm mindful that the full extent of the consequences Miss K experienced wasn't foreseeable. For that reason, I'm inclined to award below the top of that band and ask Halifax to pay £3,750 in distress and inconvenience.*

Halifax agreed to settle the complaint in line with my recommendations. However, Miss K didn't agree. Her representative responded on her behalf. He explained that the amount of compensation recommended was far too low and that Miss K felt like she'd been pushed into a corner to accept it because she doesn't have the means to take legal action. He also explained that he'd discussed the case with members of her family who agreed.

I've considered that response carefully, but I'm not persuaded to come to a different conclusion. It doesn't surprise me that Miss K thinks that the compensation I've recommended is too low and I sympathise with her reasons. I agree that the bank made a significant error here. It shouldn't have processed the payment without considering the risk that Miss K was being taken advantage of. There were several ways it could have responded to that risk. However, it's important to note that I can't know for certain that, if it had responded differently, it would've prevented the fraud indefinitely, particularly since there was no formal arrangement in place regarding the management of Miss K's finances.

I'm also mindful of the fact that there is a third party who may give a different version of these events. Although I'm not necessarily persuaded that the bank could've prevented the scam, I'm satisfied that its failure to act on that date caused Miss K significant distress and inconvenience. But to award the compensation she's looking for (i.e. a full refund of the transaction) wouldn't, to my mind, be proportionate. The person primarily responsible for the loss Miss K has suffered is her brother, not the bank. The just way to resolve matters here would be for Miss K to have her money returned and for it to be taken from her brother. If I direct the bank to compensate her in full, she would have the money returned to her but her brother's position would be unaffected.

A complaint against the bank isn't the only route available to Miss K to get her money back. I know she says she doesn't have the resources to take private legal action against her brother. However, she does still have the option of making a criminal complaint which wouldn't involve legal costs. If that were successful, the courts could compel Miss K's brother to sell the property and compensate her. As I understand it, Miss K was initially inclined to make a criminal complaint but was talked out of it by members of her extended family who said that the matter could be resolved informally. According to her representative, those family members now think that the amount of compensation recommended is too low.

I realise that Miss K has good reasons for not wanting to take this course of action, but I don't think that means that Halifax should fairly and reasonably be expected to compensate her in full, particularly when it doesn't have any way of recovering the money, but Miss K does.

**Final decision**

For the reasons I've explained, I uphold this complaint in part.

If Miss K accepts my final decision, Bank of Scotland plc needs to pay her £3,750.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss K to accept or reject my decision before 25 March 2025.

James Kimmitt  
**Ombudsman**