

## The complaint

Mr H complains that Bank of Scotland plc trading as Halifax ("Halifax") won't refund the money he says he lost to a scam.

This decision only relates to the payments made from Mr H's account. A number of payments were also made from Mr H's wife's account ("Mrs H"), but they are the subject of a separate complaint and do not form part of this decision.

As this was a joint project, in the main, I will refer to Mr and Mrs H throughout this decision.

## What happened

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here:

Mr and Mrs H decided to renovate, extend and add a music studio to their home. Mrs H received a recommendation for a tradesman - "R" - from her friend. R had completed some small, odd jobs for Mr and Mrs H before and they'd been happy with the quality of the work he'd completed.

Mrs H reached out to R after her father sadly passed away and asked if he could offer some advice on housing probate. At this point, she also mentioned the work her and Mr H were planning to do to their home. R told Mr and Mrs H that he would be able to complete the required work and provided them with a quote of £115,000 (which later increased to £118,000 after some extras were added).

Mr and Mrs H also got quotes from other tradesmen but decided to go with R because they already had an existing relationship with him. R arranged a payment plan with Mr and Mrs H and between April 2022 and November 2022, 14 payments were sent to R to pay for work and materials. The majority of the payments left Mr H's account. The payments that left Mrs H's account are, as I've said, the subject of a separate complaint.

The payments that left Mr H's account are detailed below:

Date	Amount
13/06/22	£7,100
14/07/22	£3,850
19/07/22	£14,000
12/08/22	£14,000
26/08/22	£4,650
03/09/22	£15,000
07/09/22	£681
09/09/22	£385
28/20/22	£1,400

02/11/22	£500
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R told Mr and Mrs H that the majority of the payments were needed for building supplies and for paying his workmen. And, after the total deposit was paid, the work began.

Mr and Mrs H quickly became unhappy with the activity undertaken by R. They pointed out that the roof, which had been stripped, was leaking and that waste, including asbestos, was being left around the property. Mrs H says R's attendance at her property was also sporadic from the outset. He often worked very short days or failed to attend the property at all.

Mrs H became so unhappy with the quality of the work being completed that she stopped work on the roof of the property whilst she asked a surveyor to inspect what had been completed so far to see if it was up to standard. The surveyor commented that some remedial work would need to be carried out but was otherwise satisfied and payments to R for windows and other supplies continued.

Building foundations were ultimately laid and some walls and a partial roof were erected. Whilst acknowledging this and the fact that materials had been purchased, Mr and Mrs H say the amount of labour/materials didn't equate to the amount they had paid.

Other parts of the project were being carried out by contractors presumably engaged by R with an extension and a kitchen roof being completed. R told Mrs H that window fitters would be attending the property to fit windows. However, by September/October 2022, Mr and Mrs H had significant concerns about the quality of the work that had been carried out and the number of hours R was spending on site. They also had concerns that they had paid for materials that had not been ordered when they'd been told they had been. Overall, the quality of the work was significantly below standard – windows were protruding, the roof was leaking and, in some places, was being held together with tape.

By November 2022, Mr and Mrs H decided to terminate their contract with R and cease any further work. At this point, R became aggressive and told Mr and Mrs H that if they tried to pursue him through the civil courts, he would declare bankruptcy and they would be left with nothing.

At a loss, Mr and Mrs H referred the matter to Trading Standards, The Police and their bank, Halifax. Mr H said he had been a victim of fraud.

Halifax declined to offer Mr H a refund of the amount paid from his account as it didn't agree that he had been a victim of fraud. It said this was a civil dispute between Mr and Mrs H and R and not something it should become involved in now. To support this, Halifax said R and his workmen had attended the property and completed some of the work – just not to the correct standard. Halifax said that this indicated that this was a dispute as to the quality of the work completed rather than a fraud or scam.

Unhappy with Halifax's response, Mr H brought his complaint to this service and one of our investigators looked into things.

Our investigator didn't think the complaint should be upheld. In summary, they thought that what had happened to Mr and Mrs H amounted to a civil dispute between them and R and therefore they weren't due a refund under the Contingent Reimbursement Model ("CRM") Code. The investigator said there wasn't any evidence that R had, from the start, intended to defraud Mr H.

Mr H disagreed. He said the investigator had focused on the quality of the work completed and had not taken into account that R had lied to them in order to obtain money from them. Mr and Mrs H said R had lied about being able to complete such a large project and had consistently taken payments from them for materials which he said he had ordered but which he hadn't.

As the case could not be resolved informally, it was passed to me for 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.

Having done so, I agree with the outcome reached by the investigator and I won't be upholding this complaint.

I do appreciate how disappointing this will be for Mr H. I want to stress from the outset that I am very sorry to hear about what's happened to him and his home and I understand the impact this has had on his family. I have reviewed the extensive evidence he has provided and it's clear that he and his family have been treated very poorly by R and now face significant ongoing costs in order to put things right. However, at the same time, I also have to stress that I am not looking into a complaint about the actions of R, I am looking into a complaint about the actions of Halifax. And I'm not satisfied I can fairly hold Halifax liable for his loss. This is because not all cases where individuals have lost sums of money are in fact fraudulent and/or a scam.

So, whilst I can quite understand why Mr H feels strongly that he has been scammed, there is a high legal threshold or burden of proof for fraud and there are a number of potential reasons (other than a scam) for the breakdown in a relationship between two parties and for a dispute to exist.

When considering what is fair and reasonable in this case, I've thought about the CRM Code, which Halifax has signed up to, and which was in force at the time Mr H made these payments.

Under the CRM Code, the starting principle is that a firm should reimburse a customer who is the victim of an APP scam. So, I've first thought about whether the CRM code applies in the circumstances Mr H has set out and whether Halifax ought to reimburse him under the provisions of the Code. The Code is quite explicit that it doesn't apply to all push payments. It says:

*"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."*

Halifax is of the opinion that Mr H's circumstances fall into this definition of a private civil dispute and I agree that this is most likely the case. I'm not persuaded that I can reasonably say, based on what I know and what the evidence shows, that R set out with an intent to defraud Mr H from the outset. It seems more likely to me that this is a dispute about a builder failing to complete the work agreed to the agreed standard. And this amounts to a civil dispute rather than a scam. I will now explain in more detail below.

Mr and Mrs H have provided numerous photographs and videos which show the building work in progress – including foundations being laid, the roof having been re-tiled, and windows having been fitted. I understand, having seen these pictures and videos, why Mr and Mrs H feel the quality of that work was inadequate and unsafe. And whilst this would clearly be unacceptable to Mr and Mrs H, this doesn't mean that their circumstances now meet the high legal threshold for this to be a scam where I would need to be satisfied that it was R's intention to deceive from the start. This means, I'd need to be persuaded that Mr H paid R funds for the purposes of him completing work on his property but that R, from the outset, had never intended to carry out the work and intended to defraud Mr H of his funds instead. I haven't seen persuasive evidence that this is what happened here.

So, whilst I also acknowledge Mr and Mrs H's arguments that the work was done poorly or incorrectly and that this is confirmed by various third parties, that isn't, in and of itself, evidence of this being a scam. This is evidence of Mr and Mrs H being unhappy with the quality of the building services being provided. In fact, the fact that significant work was completed, albeit poorly, suggests R didn't set out to defraud Mr H at all. Had R simply intended to defraud Mr H of large sums of money, there would've been no obvious benefit to him turning up on site over a number of months and completing any such work or employing third parties. There would also have been no benefit to him in spending money on any labour and materials or continuing to meet with Mr and Mrs H to discuss the work - it seems more likely that he would've "taken the money and run".

Instead, in this case, R seems to have been quite determined to continue to carry out the work. It was only when he was asked to leave by Mr and Mrs H that the work stopped. And so, the fact that substantial materials were purchased, and significant work was carried out, albeit poorly, suggests to me that this wasn't a scam and there was no intention to defraud from the outset.

Furthermore, the payments made here, took place between April 2022 and November 2022 (14 payments were made over a 6 month period). Whilst there may have been delays and occasions when R wasn't on site, there was presumably enough work being done during this time to reassure Mr H that the work would eventually be completed. Furthermore, it is suggested that R was operating successfully as a tradesman prior to Mr and Mrs H engaging him to complete this work for them. This doesn't support that he was operating a scam, this suggests to me that he might've initially thought he could complete the work but ultimately the job was too large and he was out of his depth. It is impossible to know for certain what happened but the evidence I've seen suggests that something seems to have gone wrong here, there was a breakdown in relationship between Mr and Mrs H and R and that this is a private civil dispute between them now. I've seen no persuasive evidence that satisfies me that it was R's intention to dishonestly deceive Mr H from the outset or that he did not intend to complete the work.

Finally, whilst I am unable to share details about a third party and the nature of their relationship with their bank, the evidence I've seen regarding the beneficiary account, indicates that R's account was legitimate and the receiving bank hasn't said it has any concerns about how the account was being operated either.

Overall, I must make my decision based on what I think is most likely to have happened. And, based on the evidence I've seen, I think it's more likely R was attempting to operate as a legitimate business at the time and that other factors ultimately meant the building work wasn't completed to the standard expected. I haven't seen anything that persuades me that R set out from the beginning with the intent to defraud Mr H, or that Mr H has been the victim of a scam. I want to acknowledge Mr and Mrs H's arguments that R lied to them about being able to complete the job and the ordering of some materials. I acknowledge that this may

well be the case and R might've misrepresented his ability to complete such extensive works but misrepresentation does not mean that Mr H is the victim of a scam under the CRM Code.

I've also thought about whether Halifax should've done anything else to protect Mr H. I haven't been provided with any evidence that shows me Halifax provided Mr H with a scam warning when the payments were made here but I'm not going to go into detail on this because, given that I'm supportive of Halifax's decision to conclude this is a civil dispute, there isn't any basis upon which any further intervention ought reasonably to have caused concern with the payments. So, I can't fairly criticise Halifax for not having done more in these circumstances.

I know this will be a huge disappointment to Mr H. This is not a decision I've made lightly. I appreciate how Mr H feels about this case, and that his family property was left unfinished. I sympathise with the position he and his wife have found themselves in, and I'm in no way saying they did anything wrong or that they don't have a legitimate grievance against R. But, for the reasons I've explained above, I don't think their circumstances amount to a scam and because of this, I don't think it would be fair to hold Halifax responsible for the money Mr H lost now.

### **My final decision**

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 22 April 2025.

Emly Hanley Hayes  
**Ombudsman**