

## The complaint

Mr and Mrs S complain that Bank of Scotland plc, trading as Halifax ("Halifax"), won't refund them the money they lost to what they believe was a scam. Mr and Mrs S feel that Halifax ought to have done more to protect them, especially when they were also making large cash withdrawals from its branches.

## What happened

The background to this complaint is well known to both parties, so I won't repeat it in detail here. But in summary, I understand it to be as follows.

In early 2021, Mr and Mrs S were looking to have some building work carried out on their property. Mr and Mrs S agreed for the works to be completed by a builder, who I'll refer to as 'K'. They were aware of 'K' as he rented a house from their son.

Mr and Mrs S agreed a price of £52,000 with 'K' for the work, but they have said this escalated to them paying over £100,000. The works began and carried on for a number of months, but Mr and Mrs S are unhappy with the quality of the work. The council's building control team has said there are a number of outstanding items that need to be satisfied before they are able to issue a building regulation completion certificate.

Mr and Mrs S have said the works have not been completed and 'K' has become insolvent. Alongside this Mr and Mrs S are unhappy with how Halifax handled the cash withdrawals. Mr and Mrs S believe that if Halifax had asked them about the cash withdrawals, they would have explained the builder was demanding and threatening them for weekly payments. They believe that Halifax should have applied the Banking Protocol.

Mr S has said that further cash payments were made to 'K', made up of 'old' bank notes that had been withdrawn from circulation, that Mr S had exchanged for 'new' notes at the Halifax branch. Halifax has said it hasn't been able to match all of the transactions that Mr and Mrs S have said ultimately went to the builder, but from looking at statements and the submissions of both parties, it appears the relevant transactions are;

28 January 2021	Faster payment to builder	£10,000
29 January 2021	Faster payment to builder	£500
5 February 2021	Cash withdrawal from branch	£15,000
12 February 2021	Cash withdrawal from branch	£12,000
19 February 2021	Cash withdrawal from branch	£10,000
22 February 2021	Cash withdrawal from branch	£10,000
24 February 2021	Cash withdrawal from branch	£10,000
5 March 2021	Cash withdrawal from branch	£10,000
18 March 2021	Faster payment to builder	£10,000
26 March 2021	Cash withdrawal from branch	£4,000
18 June 2021	Faster payment to builder	£1,500

Mr and Mrs S raised the matter with Halifax. It investigated the complaint but didn't think it should be upheld. In summary, it felt this was a civil dispute between Mr and Mrs S and K,

as it thought the work had been done by a genuine company. It added from what it had seen, it didn't think there was a requirement for the Banking Protocol to be invoked in this case. Overall, it didn't agree to refund the payments Mr and Mrs S had made.

Unhappy with Halifax's response, Mr and Mrs S brought their complaint to this service. One of our Investigator's looked into things, but didn't think the complaint should be upheld. In summary this was because they thought this was a civil matter between Mr and Mrs S and the builder. It was therefore our Investigators view that Halifax wasn't responsible for refunding the money they lost.

Mr and Mrs S didn't agree with our Investigator's opinion. In summary, they said that if Halifax had questioned them about making the cash withdrawals, they would have told them that K was demanding and threatening. They feel that the branch staff in Halifax have let them down. Alongside this, Mr and Mrs S submitted documents to this service indicating that K had some outstanding tax liabilities. Overall, they feel they have been conned and that K is not bonafide.

The complaint was then reviewed by one of this service's Senior Investigators. They looked into things again and agreed with the position the Investigator had taken.

Mr and Mrs S didn't agree with our Senior Investigator's view. As agreement couldn't be reached the complaint has now been 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.

I'm aware that I've summarised this complaint briefly, in less detail than has been provided, and in my own words. No discourtesy is intended by this. Instead, I've focussed on what I think is the heart of the matter here. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual point or argument to be able to reach what I think is the right outcome. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts.

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 have been good industry practice at the time.

Having thought very carefully about Halifax's actions, I don't uphold Mr and Mrs S's complaint. I do appreciate how disappointing this will be for them and I don't underestimate their strength of feeling, but I don't think I can fairly say Halifax should reimburse them. I'll explain why.

I'm sorry to hear of what's happened to Mr and Mrs S, and I can understand entirely why they feel so strongly that their money should be returned to them. And I can see that this has been a very difficult time for them. But not all cases where individuals have lost significant sums are in fact fraudulent and/or a scam.

When considering what is fair and reasonable in this case, I've also thought about the Lending Standards Board's voluntary Contingent Reimbursement Model Code (CRM Code), which Halifax has signed up to and was in force at the time Mr and Mrs S made these transactions.

Under the CRM Code, the starting principle is that a firm should reimburse a customer who is the victim of an APP scam. But the CRM 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"*

Subsections (a) and (c) have been omitted as they are not relevant to this complaint.

The bank, our Investigator and our Senior Investigator felt the payments Mr and Mrs S made formed part of a civil dispute and, as such, are not covered by the CRM Code. Mr and Mrs S disagree.

In order to conclude that the payments Mr and Mrs S made were part of a scam, I'd need to be reasonably satisfied, from the available evidence, that the builder they were using set out to defraud them. But I don't think, based on what I know, that I can safely conclude that.

This isn't a straightforward question to address. To be satisfied that Mr and Mrs S fell victim to fraud, I'd need to be persuaded that the builder they hired had a settled intention to scam them. Obviously, I cannot know what was in the mind of K at the time they agreed to carry out these works. As a result, I must infer what their intentions were based on what the available evidence tells me.

It's clear the agreement Mr and Mrs S entered into with the builder did not go as planned and they have not received what they were expecting. I can understand entirely why they feel so strongly about what has happened. There may even have been some sharp practice in terms of how the builder carried out the work. But I can't safely say with any certainty, with what I know, that the builder set out with an intent to defraud them.

I say this because the purpose of Mr and Mrs S making the payments to K was to have building work done, K's purpose in receiving the payments was to do that work. Here K did carry out that work, at least to an extent, this is confirmed with Mr and Mrs S's own representations. I don't doubt the works weren't carried out to the standards Mr and Mrs S expected. They have submitted evidence, from Building Control, that shows a number of outstanding items need to be satisfied before a building regulation completion certificate would be issued. But I'm not persuaded this necessarily proves fraud, rather it lends itself to suggest that some substantive works have been done, but that some remedial work is needed. I don't doubt Mr and Mrs S's arguments that K has completed the work to an extremely poor quality, nor that there was work left undone. But it's at least as likely that the root cause of this was incompetence or maladministration.

Mr and Mrs S have also provided evidence that indicated K may have had some outstanding tax liabilities and have said that K was being wound down. But, on balance, and with what we know in this case, I think this more points to a company that was being chaotically mismanaged and failing to meet its obligations, rather than being a clear indication of a fraudulent intent.

I've also considered that, in the circumstances of this case, K was known to Mr and Mrs S (he rented a property from a family member). So Mr and Mrs S weren't cold called by K, which can often be a pre cursor to these types of scam, although not always of course. Alongside this, for 'rogue trader' type scams, I'd usually expect an illegitimate company to be

involved, and for goods or services not to be provided – and for there never to have been an intent for them to be provided. But in this case, as mentioned above, K has carried out works, and over a number of months. It is also important to note that K appeared to be a legitimate company, that was formed in 2018 and was registered with Companies House.

I can certainly see that Mr and Mrs S have been let down very badly by a builder that they trusted. Their financial losses are very significant and it's understandable that they would feel aggrieved. But while I know this will be disappointing to them, I'm not persuaded that the evidence supports the argument that K set out to defraud them. As a result, Halifax isn't required to consider their complaint under the terms of the CRM Code.

### *The Banking Protocol*

It's important to note that not all of the money Mr and Mrs S paid K could potentially have been covered under the CRM Code anyway, since the Code doesn't apply to cash withdrawals. But Mr and Mrs S have argued that Halifax branch staff didn't do enough when they were withdrawing large sums of cash in its branch, they think the Banking Protocol should have been more fully applied.

It's not in dispute that Mr and Mrs S authorised the cash withdrawals involved. So under the Payment Services Regulations they are liable for the loss in the first instance. And broadly speaking, Halifax had an obligation to follow their instructions – the starting position in law is that banks are expected to process payments that a customer authorises them to make. In broad terms, the Banking Protocol requires branch staff to:

- Look out for any unusual or out of character withdrawals and to implement the Banking Protocol procedure when such transactions are identified.
- Discreetly question the customer about the withdrawal or transaction and their reasons for making it, keeping in mind that the customer may have been told they are helping to catch a corrupt bank employee and may have been given a cover story to tell if asked about the transaction.
- Consider the responses against what they expect as normal activity on the individual's account. If they are concerned or suspicious that the customer may be the victim of fraud, they should notify a senior member of staff, who should take the customer to a quiet area and ask further questions to establish more details.
- If the senior colleague believes the customer is the victim of fraud, either as a result of the answers provided or through their general behaviour, they should call the Police immediately who will attend the branch to speak to the customer.

There are conflicting testimonies between Mr and Mrs S and Halifax around what happened in branch. On the one hand, Mr and Mrs S say they can only recall being asked once what the purpose of the withdrawals were, on the other hand Halifax believe they would have asked a sequence of questions, due to the high value of the withdrawals.

In the circumstances of this case, I agree that the withdrawals were out of character and large in value. But in any event and perhaps most importantly, even if Halifax had asked further questions, I'm not persuaded it would realistically have uncovered any reasonable cause to invoke the Banking Protocol.

Mr and Mrs S were making the withdrawals to pay a builder that was actively working on their property. That's a legitimate thing to pay for and it's not particularly unusual for tradespeople to ask for cash payments. Mr and Mrs S were not cold called, nor coerced into

having building work carried out unnecessarily. They decided for themselves that they wanted the work carried out, looked for a tradesperson, and of their own accord chose someone who a family member knew.

So at the time the withdrawals were made, I think it's fair and reasonable to say that the withdrawal requests would have appeared legitimate to Halifax and I can't fairly or reasonably say that the branch staff should have been concerned or suspicious. Halifax didn't have a good reason to stop Mr and Mrs S from accessing their own money, let alone to invoke the Banking Protocol and call the police. Indeed, it would have been unreasonable for Halifax to take such severe actions in a situation where they had no reasonable cause for concern at the time.

I'm enormously sympathetic to the position Mr and Mrs S find themselves in and I am sorry to have to deliver this news to them. They have clearly been very badly let down by the builder and it's had a tremendously significant impact on them. But, for the reasons I have explained, I cannot fairly say that Halifax should fairly and reasonably be held responsible for refunding them the money they paid.

### **My final decision**

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S and Mr S to accept or reject my decision before 22 March 2024.

Stephen Wise  
**Ombudsman**