

The complaint

Mr H complains that Bank of Scotland plc trading as Halifax (“Halifax”) is holding him liable for the debt on a loan which he says he neither applied for nor knew about.

What happened

The background to this complaint is well known to both parties, so I won’t repeat everything here. In brief summary, in April 2023 a loan was taken out with Halifax in Mr H’s name for £20,000. Mr H subsequently got in touch with Halifax to let it know he hadn’t applied for the loan. Halifax investigated things and ultimately couldn’t reach agreement with Mr H, so he referred his complaint about Halifax to us. Our Investigator couldn’t resolve things informally, so the case has been passed to me for a decision.

On 5 February 2024, I issued my provisional decision on this complaint. I wanted to give both parties a chance to respond before I issued my final decision. That provisional decision forms part of this final decision and is copied below.

First, let me clarify exactly what this decision is about. I understand Mr H has explained he was tricked by scammers professing to be helping him with a legitimate investment into taking out a number of loans from different lenders, with the funds passing through a number of accounts in Mr H’s name before being lost to the scammers. This decision won’t address the payments made from Mr H’s Halifax account (so matters regarding prevention and/or recovery of the payments) because that is not the complaint referred for final decision here. Halifax has explained that if Mr H would like to complain about Halifax regarding prevention and/or recovery of the payments, then he should let it know, and that would be looked into as a separate matter. This decision also won’t address the complaints Mr H has brought to us about loans taken out in his name not from Halifax, which have been dealt with separately. So, for clarity, my decision here is only about the £20,000 Halifax loan and whether it’s fair for Halifax to hold Mr H liable for this loan bearing in mind how it was taken out and granted.

I’m intending to uphold this complaint in part. I’ll explain why.

My first consideration is: did Mr H enter into this loan agreement, or was it done without his knowledge and/or consent as he alleges? Having considered this carefully, I think it’s most likely the loan was taken out without Mr H’s knowledge and consent, and he therefore did not enter into the loan agreement. I say this because:

- *Mr H has plausibly and persuasively explained that he was in touch regularly with scammers, who he thought were helping him with a legitimate investment, who were using remote access software to ensure he was ‘investing properly’. He’s explained that at some point, they tricked him into thinking his ‘investment’ had been ‘frozen’, but that they could recover the money; but to do so, they couldn’t move money to his bank account directly as it would be rejected by his bank as an error due to ‘liquidity issues’; instead they needed to build up ‘liquidity’ on his account by moving money around his various accounts, and that there’d be no risk to him (Mr H) because he would only be moving money around his own accounts.*

- *I've thought very carefully, in the circumstances, whether I think Mr H was tricked by the scammers into knowingly, with his consent, taking out the Halifax loan (albeit being tricked into thinking he'd get the money straight back from the 'investment'); or whether it's more likely that Mr H was instead tricked by the scammers such that they were able to apply for the Halifax loan in Mr H's name without his knowledge and consent and trick him into thinking the loan funds were something else other than a loan from Halifax in his name. And in this case, whilst I acknowledge it is quite finely balanced, I think it's most likely Mr H was tricked into allowing the scammers to use remote access software to apply for the loan without his knowledge and consent, and into thinking the loan funds were something other than a loan from Halifax in his name. Indeed, it seems to me that Mr H honestly, as he's stated, thought the £20,000 loan funds paid into his Halifax account on 6 April 2023 stemmed from his 'investment' with the scammers.*
- *I've listened very carefully to a recording of a telephone conversation Halifax had with Mr H on 6 April 2023. And I think when Mr H talked about a loan on this call, it's most likely that he was referring to his re-mortgage with Halifax a couple of months before. I think the call shows crossed wires more than Mr H understanding specifically the £20,000 credit into his account that day was a loan in his name. So I'm not persuaded this recording shows the loan was taken out in Mr H's name with his knowledge and consent.*

Since I'm satisfied Mr H most likely didn't apply for or agree to this loan, I don't think it would be fair for Halifax to hold him to the terms of the loan agreement he most likely never saw or agreed to. So, Halifax shouldn't hold Mr H liable for interest and charges, neither should there be a record of the loan on Mr H's credit file – so if there currently is, this should be removed.

At the same time, I don't think Halifax was reasonably to know at the time that the application hadn't come from Mr H or that there was something untoward about it. The application would have appeared to have come from Mr H and the loan funds were requested to be paid into an account in Mr H's name. So, it doesn't automatically follow that it would be fair for me to tell Halifax that it should not be able to pursue Mr H for any of the loan funds that are still outstanding, or that it should be required to refund to Mr H any repayments to the loan he has already made (if any). I take on board what Mr H has said about how the scammers tricked him. However, I don't think it's unfair to say Mr H wasn't as careful as he should've been. The Halifax loan didn't appear on his account statement as being obviously a loan from Halifax. But I have seen information regarding at least one of the other two loans which had already, by 6 April 2023, been taken out in Mr H's name as part of the scam, that persuades me that by this point Mr H reasonably ought to have taken reasonable steps at this point (but didn't) to verify the funds weren't from a loan in his name (before sending them on from there in a process whereby I understand ultimately he lost them to the scammers). I also note that Mr H sent the loan funds to a different account held with a different bank in his own name. And this decision isn't about the prevention of those payments or the recovery of them. So, I'm satisfied in this decision that I can't fairly tell Halifax that it should not be able to pursue Mr H for any of the loan funds that are still outstanding, or that it should be required to refund to Mr H any repayments to the loan he has already made (if any).

Mr H has questioned how he was accepted for the loan in the first place, or why there wasn't greater due diligence on the part of Halifax. However, I've already explained that I don't think Halifax was reasonably to know at the time of the application there was something untoward about things. Furthermore, our usual approach on unaffordable lending is that interest and charges should be removed but the consumer should still pay back the principal amount of

the loan they had the benefit from. I've already said above this is essentially what I think should happen in this case. So, even if the loan had been irresponsibly lent (and I'm not saying I think it was), the redress I'm intending to direct in this case would already cover what we'd normally award for this. I haven't seen anything in this case that persuades me appropriate redress would be different to this. So, I'm satisfied this wouldn't change things.

For the reasons explained, I am intending to uphold this complaint in part and to direct Bank of Scotland plc trading as Halifax to:

- *remove all interest and charges on the loan;*
- *take any repayments already made to the loan by Mr H to date (if any) as having reduced the loan balance;*
- *remove reference to the loan from Mr H's credit file; and*
- *not pursue Mr H for more than the outstanding amount of the principal loan of £20,000.*

Halifax responded to say that whilst it didn't agree with all aspects of my provisional decision, it was willing to accept it to resolve the case.

Mr H responded to my provisional decision to say, in summary, that:

- He was totally unaware the loan was being taken out in his name.
- Halifax's loan approval processes are flawed and should be corrected. The information the fraudster supplied to Halifax was clearly fabricated. His declared salary on the loan application was lower than the salary actually paid into his Halifax account each month. This loan was the last of three loans taken out around the same time, which should have rung alarm bells with Halifax. And he'd only re-mortgaged with Halifax a couple of months before, when Halifax undertook lots of checks with him and his wife and concluded that the repayments for the re-mortgage were the maximum he could stretch to. So, he thinks that Halifax ought not to have granted the loan if it had carried out reasonable checks, that he's the innocent party here, and that it should be down to Halifax to prove unequivocally that he's at fault (if, indeed, it thinks that).
- Our service has a duty of care to address the process banks use to approve loans, not just for him, but for every other person who is, or has been, caught up in scams like this.

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.

Mr H's response to my provisional decision hasn't persuaded me to reach a different decision.

I explained in my provisional decision that, whilst finely balanced, I accept this loan was most likely taken out in Mr H's name without his knowledge and consent, and he therefore didn't enter into this loan agreement. I explained my reasons, and why I thought it wouldn't therefore be fair for Halifax to hold Mr H to the terms of the loan agreement – so Halifax shouldn't hold Mr H liable for interest and charges, and Halifax should remove any records of the loan from Mr H's credit file (if there are any).

I also explained in my provisional decision, though, why it doesn't automatically follow that it would be fair for me to tell Halifax that it should not be able to pursue Mr H for any of the loan funds that are still outstanding, or that it should be required to refund to Mr H any repayments to the loan he has already made (if any). I've thought carefully about what Mr H has said in his response to my provisional decision about this, but this hasn't changed my mind. The UK financial industry regulator – the Financial Conduct Authority – sets the rules which UK lenders should follow. In this decision I can only address whether I think Halifax, in this case, ought reasonably be able to pursue Mr H, for any of the loan funds still outstanding. Even if I accepted what Mr H has said about some of the application details looking sufficiently 'off' (and I'm not saying that I do), I still don't think in this case I could reasonably say Halifax, in granting the loan, ought reasonably be held responsible for Mr H's loss of the loan funds in circumstances as I've found them. Mr H had the use of the loan funds. I explained in my provisional decision why I don't think it's unfair to say Mr H wasn't as careful with the loan funds as he should've been. And ultimately it was the scammers who were the root cause of Mr H being tricked, not Halifax.

I also explained our usual approach on unaffordable lending is that interest and charges should be removed but the consumer should still pay back the principal amount of the loan they had the benefit from. I've already said this is essentially what I think should happen in this case. So, even if the loan had been irresponsibly lent (and I'm not saying I think it was), the redress I'm directing in this case would already cover what we'd normally award for this. I haven't seen anything in this case that persuades me appropriate redress would be different to this. So, I'm satisfied this wouldn't change things.

I appreciate Mr H will be disappointed and I'm sorry he's lost money. But for the reasons explained, I've therefore reached the same conclusions as in my provisional decision, and for materially the same reasons.

My final decision

For the reasons explained, I uphold this complaint in part and I direct Bank of Scotland plc trading as Halifax to:

- remove all interest and charges on the loan;
- take any repayments already made to the loan by Mr H to date (if any) as having reduced the loan balance;
- remove reference to the loan from Mr H's credit file; and
- not pursue Mr H for more than the outstanding amount of the principal loan of £20,000.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 18 March 2024.

Neil Bridge
Ombudsman