

## Complaint

Mr P is unhappy that Bank of Scotland plc trading as Halifax hasn't reimbursed him after he fell victim to what he says was a scam.

## Background

In 2021, Mr P inherited some money. His friend, Mr L, invited him to jointly invest in a property overseas. This was someone who, as I understand it, had been known to Mr P for over thirty years. Mr P had visited the property in person and on the basis of what he saw, he was happy to make the following transfers to Mr L:

- £25,000 on 27 July 2021
- £20,000 on 30 July 2021
- £3,955 on 3 August 2021.

Mr P says that he didn't sign a contract regarding the purchase and doesn't have any evidence as to what he agreed. Since making the transfers, Mr L has delayed matters and been obstructing. Eventually, Mr P concluded that Mr L had simply taken his money and had no intention of following through on their agreement.

He notified Halifax. It looked into matters but didn't agree to reimburse him. It considered his case under the terms of the Contingent Reimbursement Model (CRM) Code and concluded that this was really a private civil dispute between Mr P and Mr L and so wasn't covered by the Code.

Mr P was unhappy with that response and so he referred his complaint to this service. It was looked at by an Investigator who didn't uphold it. She agreed with Halifax that this was a private civil dispute and so not covered by the CRM Code. Mr P has also claimed that one of the three payments was made without his authority.

Since Mr P disagreed with the Investigator's view, the complaint has been passed to me to consider and come to a final decision.

## Findings

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

The starting point here under the relevant regulations is that Mr P is liable to any payment that he authorised. However, that's not the end of the story. Halifax is a signatory to the Contingent Reimbursement Model (CRM) Code. That Code sets out the circumstances under which Halifax should reimburse customers who have fallen victim to scams. However, it doesn't cover all scenarios and it specifically excludes what it describes as "*private civil disputes*."

In this instance, Halifax has treated this as a private civil dispute, and I don't think it's unreasonable for it to have done so. When determining whether or not fraud has taken place, I have to consider the intentions of the alleged fraudster. I can't know for certain what was in the mind of Mr P's friend at the time he agreed to accept the bank transfers in connection with this property purchase. As a result, I have to decide the case based on the balance of probabilities – that is, is it more likely than not that Mr P's friend set out with the intention of defrauding him?

Unfortunately, I'm not persuaded that there is strong enough evidence to support that he did. Mr P has told us that the transfers were connected with the purchase of a rental property overseas. I don't know why that transaction didn't conclude and Mr P didn't become the joint-owner of the property in question. But the fact that he didn't doesn't automatically mean that he is the victim of fraud – an arrangement such as this one could collapse for a wide range of innocent reasons.

It's not clear on what terms Mr P agreed to transfer the money to his friend. There was no formal paperwork and he didn't sign a contract. As a result, there's very little evidence to show that this person went back on their word or didn't act as had been agreed. I know that Mr P will be disappointed with my findings on this point, but I agree with Halifax that this complaint isn't covered by the CRM Code. If he wants to attempt to recover his money, he ought to seek independent legal advice about whether he can bring a claim against Mr L directly.

### *Authorisation*

Mr P told our Investigator that one of the three payments wasn't authorised by him but was carried out by Mr L without consent. Under the Payment Services Regulations 2017, Halifax generally can't hold Mr P liable for a transaction he didn't authorise. There are exceptions to this in the regulations but they don't apply in this case.

I've therefore considered whether the evidence suggests Mr P authorised this payment. Due to the time that lapsed since Mr P made this specific allegation (i.e. that one of the payments wasn't authorised) there is limited technical evidence available to help figure out whether the evidence supports his claim or not.

All of the payments were made by online banking. Mr P says that he thinks he was observed entering his online banking details by Mr L. But it seems far fetched that Mr L could've simply remembered his security credentials in order to make the payment himself.

I'm also mindful of the fact that he told our Investigator both that (a) he didn't authorise the *third* payment and that (b) he didn't authorise the payment of £25,000. However, the £25,000 payment appears to have been the *first* payment. Finally, it's noteworthy that when he reported what had happened to Halifax in October 2021, he told the call handler at the bank that *"I'm so honest and straightforward, I gave my money over ... I've done three transactions, one of them I took out of my savings account."*

Mr P's testimony on this point is contradictory and so it's difficult to attach a great deal of weight to it. Overall, I'm not persuaded there's sufficient evidence to show that any of these transactions weren't authorised by him.

### **Final decision**

For the reasons I've explained above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or

reject my decision before 5 October 2023.

James Kimmitt  
**Ombudsman**