

## The complaint

Miss S complains that Bank of Scotland plc trading as Halifax ('Halifax') won't refund the money she lost.

## What happened

Miss S says she was a full-time carer for her daughter and needed some additional space so looked into having a summerhouse built in her garden. She went on a website that connects tradespeople with potential customers and said her budget for the job was £3,000 to £4,000. Someone I'll refer to in this decision as N was the only one to respond. He then called Miss S and said he lived locally and could provide a quote if Miss S paid £50. Miss S paid this amount on 20 October 2022 but says that N didn't visit at that time so she got quotes from others, but they were for around £4,500 which she couldn't afford. So Miss S went back to N who said the work could be completed for £2,500.

Miss S didn't complete any checks in respect of N and there was no written agreement covering the work that would be completed. N said he would need funds to buy materials before work could start but Miss S says only some very low value materials were bought and N visited her once, but no work started.

I have set out in the table below the payments Miss S made to N:

Date	Amount
20/10/22	£50
15/12/22	£300
22/12/22	£150
04/01/23	£250
10/01/23	£300
12/01/23	£300
16/01/23	£200
23/01/23	£100
<b>Total</b>	<b>£1,650</b>

N gave various excuses about why he couldn't start the work, such as waiting for materials, shipment delays, shortage of staff and injury. N then stopped responding to Miss S. She contacted Halifax to report what had happened on 25 January 2023.

Halifax considered its liability under the Lending Standards Board's Contingent Reimbursement Model Code (CRM Code) and didn't agree to reimburse Miss S. It said it met the standards required of it, but Miss S didn't take enough steps to protect herself from the scam. Halifax contacted the receiving bank but was unable to recover any funds as N's bank said it was a civil dispute.

*Our investigation so far*

The investigator who considered this complaint didn't recommend that it be upheld. She said that Miss S hadn't provided evidence of being scammed and so it was more likely than not that she had a civil dispute with N. Civil disputes aren't covered by the CRM Code. The investigator also felt that Halifax acted reasonably in processing the payment.

Miss S didn't agree with the investigator's findings and asked for a final decision, so her case has been passed to me to consider. She said:

- She was unable to provide the messages that were exchanged with N as they were lost after she changed her phone but had found some screenshots she took at the time. Miss S said the messages evidence she was asked for money and discussions about when work would be done. She referred to many more messages in which N gave excuses for not doing the work.
- N used language that in their culture is warm and trusting.

### **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.

Where evidence is unclear or in dispute, I reach my findings on the balance of probabilities – in other words on what I consider most likely to have happened based on the evidence available and the surrounding circumstances.

I'm sorry to hear that Miss S has lost money in these circumstances. Under the CRM Code, the starting principle is that a firm should reimburse a customer who is the victim of an APP scam (except in limited circumstances). An APP scam is defined and includes where a customer transfers funds to another person for what they believed were legitimate purposes, but which were in fact fraudulent. So the CRM Code isn't a general protection for consumers. Instead, it only applies in very specific circumstances – where the customer has been the victim of a scam.

In order for me to conclude that Miss S has been the victim of a scam, I'd have to be satisfied that N deliberately tricked her into making payments for a service he had no intention of providing at the time she made the payments. I'm not persuaded I can say that is most likely what happened given the evidence that is available.

The only evidence Miss S has been able to provide are screenshots of:

- A message sent on 26 October 2022 saying, "*I need help with some work...*". The message went on to discuss building a summerhouse and asked if N could help with it.
- Part of an undated message asking if an amount that isn't visible would be enough for work and a reply from N dated 9 November 2022 saying he was abroad and would visit when he returned.
- Undated messages referring to invoices for decking and plaster board and partitioning work (for £1,100 and £1,500).
- N's payment details

But Miss S paid N £50 before what appears to be the first contact on 26 October 2022 so it's not clear exactly what happened here. There also isn't enough evidence to reach the conclusion N intended to take Miss S' money and not provide a service. N's bank deems this to be a civil dispute between Miss S and N and there is no evidence that Miss S has reported this matter to the police or any other body – like Trading Standards – and that body has investigated and concluded a scam has taken place.

In any event, even if I were to conclude Miss S was the victim of an APP scam covered by the CRM Code, I wouldn't be asking Halifax to reimburse her. Under the CRM Code, a bank

may choose not to reimburse a customer if a customer makes payments without having a reasonable basis for believing that: the payee was the person the customer was expecting to pay; the payment was for genuine goods or services; and/or the person or business with whom they transacted was legitimate. If Miss S' case was covered by the CRM Code, I'm satisfied Halifax could fairly rely on this exclusion for the following reasons:

- N told Miss S that he didn't have a business and he just completed work on the side. So asking N to complete work involved a big risk as there was no way of checking reviews of previous work or understanding if N was trustworthy. It also meant it was unlikely N was insured. Miss S accepted this risk in engaging N.
- N charged £50 for a quote but didn't attend and provide one. I think this ought reasonably to have caused concern. Miss S then got quotes from other workmen who didn't charge her. But Miss S still chose to use N and made further payments to him after this.
- Other builders provided Miss S with quotes for the work which were much higher than N's (around £4,500). I consider this should have been a warning sign that something wasn't right.
- Miss S continued to make payments even though she says no work was completed and only very limited materials were provided.
- Miss S has no documentation to show what was agreed between her and N.
- Miss S doesn't know anyone else who used N to complete any work and didn't seek out any reviews or complete any research into N.

I've considered whether Halifax should have done anything more when the payments were made but I don't think it should. The transactions Miss S made were in line with her normal account and payment history. They were relatively low in value and were spaced out so wouldn't have caused Halifax any concern at the time they were made.

I'm very sorry Miss S has lost money in these circumstances, but I can't reasonably hold Halifax responsible.

### **My final decision**

For the reasons stated above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 11 October 2023.

Jay Hadfield  
**Ombudsman**