

The complaint

Mrs H has complained that Bank of Scotland plc (trading as Halifax) won't refund the money she lost after falling victim to a scam.

What happened

Both sides are most familiar with the case, so I'll summarise what happened in brief.

In 2018, Mrs H made two £10,000 bank transfers to a business run by an acquaintance of hers – a regular customer at her own business. For several months, she received payments in return of over £2,000 per month. These repayments ceased, and Mrs H reported the matter to Halifax as a scam.

Mrs H explained that the acquaintance had persuaded her to invest in his property business, having shown her examples of properties he'd worked on. She said he promised unrealistic returns, gave her no documentation, and later disappeared.

It later emerged that Mrs H had paid the money as a loan, under a loan agreement which both she and the acquaintance had signed. The acquaintance's business ran into financial difficulties and was wound up due to insolvency.

Halifax tried to recover the money, but no funds remained. Halifax didn't think they were liable for Mrs H's loss. They thought this was a civil dispute between Mrs H and her acquaintance.

Our investigator looked into things independently and agreed this was most likely what we'd consider a civil dispute rather than a scam. And they clarified that even if they agreed it was a scam, they didn't think Halifax had grounds to intervene at the time.

Mrs H's representatives asked for an ombudsman to look at things afresh, so the complaint's been passed to me to decide.

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.

There's no dispute that Mrs H authorised the payments involved. So under the Payment Services Regulations she is liable for the loss in the first instance. And broadly speaking, Halifax were obliged to follow her instructions – the starting position in law is that banks are expected to process payments that a customer authorises them to make. Though this matter does not end there.

I've thought carefully about whether this was an incident I'd consider to be a scam – an intentional attempt to defraud Mrs H – or a civil dispute between her and her acquaintance. Of course, I cannot know for certain what was in the mind of the acquaintance or what his true intentions were. I can only look at what the available evidence tells me.

I acknowledge that the acquaintance cut contact, that his bank received one other claim that his business didn't pay due returns, and that he faced investigation for other matters such as not getting the right licence for a property.

However, the acquaintance's company was a genuine registered property business, which had been trading for about a decade and a half. The person Mrs H paid was someone she'd known in person for a while. They paid her significant amounts in return for some time – more than 10% of her initial investment each month for four months, plus a further interest payment, meaning she got nearly 45% of her initial outlay back in six months – which would be rather unusual if this was an intentional attempt to defraud her. Fraudsters do sometimes give initial returns to encourage their victim to pay them further money, but these were substantial repayments and I can't see that there was any attempt to leverage these repayments to get more money from Mrs H. It looks like the acquaintance was genuinely repaying her while his business still could. I've not found any scam warnings about this business from official sources, and its bank account was closed due to non-repayment of debts rather than for fraud. It looks like the business ran out of money and was forced to dissolve, which would explain why it stopped making its loan repayments. And I certainly don't think this was an investment scam, given that Mrs H does not appear to have invested – she gave the money as a loan, which was set out clearly in the documentation she signed.

Mrs H's representatives pointed out that the business was not FCA-regulated. But I can't see that it was carrying out any activities that needed to be regulated by the FCA. They said that the acquaintance had offered unrealistic returns – but again, this was not an investment, it was a loan. They pointed out that the company changed its stated purpose a few times, but that doesn't seem particularly surprising given how long it was running for, nor do the changes seem indicative of fraud. They also pointed out that the business had been overdue with some documents, but that's not particularly remarkable or indicative of a scam either (as opposed to, say, poor administration) nor especially surprising for a failing business.

Overall, I don't think the evidence substantially supports that the acquaintance intentionally defrauded Mrs H. It looks like Mrs H lent money to an acquaintance's business, and that business became unable to repay its debts. I appreciate this must have been a very difficult situation for Mrs H to face. But I'm afraid I would consider this to be a civil dispute between her and her acquaintance, rather than a scam.

With that said, even if I accept that this was a scam, I do not find that Halifax are responsible for the loss in these circumstances. I'll explain why.

Halifax should've been on the lookout for payments which could be the result of fraud or scams, to help prevent them. But I also accept that a balance must be struck between identifying and responding to potentially fraudulent payments, and ensuring there's minimal disruption to legitimate payments.

Here, I don't think the payments involved were so unusual or out of character that Halifax needed to intervene. While they were certainly large payments, they were funded from Mrs H's savings, and it's not unusual for customers to occasionally make very large payments using their savings – indeed, that's a rather usual way to use savings. The payments did not drain Mrs H's current account – the remaining balance was the same as before this incident – nor her savings account, which still had a very significant balance afterwards. Mrs H had made a number of sizeable bank transfers in the months before this incident, so while these payments were larger than others, I'd not consider them to be so out of character for her that I'd expect Halifax to intervene. Further, these were only two payments made on different days, rather than a series of rapid ones, they went to a UK account of a long-standing registered business, and they were authorised by the genuine customer. Overall, I'm afraid I do not see that Halifax had sufficient reasons to intervene in this particular case.

Lastly, I've looked at what Halifax did to try to recover Mrs H's funds after she told them this was a scam. I can see that they appropriately contacted the receiving bank to try to get her money back. But by the time the repayments had stopped and Mrs H reported the matter, no funds remained. So by that point, it wasn't possible for Halifax to get her money back.

I do sympathise with the fact that Mrs H is out of pocket for a very significant amount. And I realise that this decision will come as a disappointment to her, though it is not my intention to disappoint her. But for the reasons I explained above, I cannot fairly hold Halifax liable for her losses in this case.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 21 August 2023.

Adam Charles
Ombudsman