

The complaint

Mr B complains that Bank of Scotland plc trading as Halifax hasn't fully reimbursed him for the money he lost when he fell victim to a scam.

What happened

Mr B explains he was made aware of a high interest investment through a contractor that his wife was working with. The contractor said they held a senior position in the government and had express permission to promote this investment.

The investment was described as being linked to a government bond scheme, specifically linked to what was described as county court funds. It was purported to offer a guaranteed monthly rate of return of 6.75%, plus compounding of that interest for up to a five-year term. Mr B says he was told he could withdraw funds without penalty when giving a month's notice.

Mr B made an initial investment of £5,000 in February 2019, transferring the funds from his Halifax account. In July 2019, he made two further payments totalling £45,000. Mr B made a final payment to the same recipient of £100 in December 2019.

In total, Mr B made payments totalling £50,100. He says he funded much of this through borrowing. He'd received statements which appeared to show his investment increasing and was led to believe HMRC was paying out money on the investments.

When Mr B made the last payment of £100, he explains this had made by mistake – he hadn't meant to send it. He tried to withdraw his money, including money he'd previously invested, and when this proved not to be possible, he realised there might be a problem. He reported this to Halifax.

Halifax looked into Mr B's report of a scam. It was unable to recover Mr B's payments, and it didn't think it was liable to reimburse him.

With the exception of the first payment, Mr B made these bank transfers after the date the Lending Standards Boards' Contingent Reimbursement Model Code (the CRM Code). The CRM Code provides additional protection when customers fall victim to push payments such as this one.

However, Halifax didn't think Mr B had taken enough care before sending the payments – it didn't think he'd had a reasonable basis for believing this was a legitimate investment opportunity. It said therefore it didn't need to refund the relevant payments under the CRM Code.

Furthermore, Halifax said it had met the standards expected of it, in relation to all of the payments Mr B had made. In short, it didn't believe it should be liable to refund him.

Mr B was unhappy with this outcome and asked our service to review the matter.

Our investigator considered everything Mr B and Halifax had submitted. She thought the terms of the investment scheme had been too good to be true, and that this should reasonably have prompted Mr B to have concerns. But she also thought Halifax should have done more. She thought in particular that it ought to have given Mr B effective warnings under the CRM Code for the relevant payments and should have contacted him about the first payment to check it wasn't connected to fraud.

In short, she thought Mr B and Halifax should share liability here. The investigator recommended Halifax reimburse 50% of Mr B's losses, with 8% simple interest payable from the date of payment to the date of settlement.

Halifax has accepted the investigator's view, agreeing to reimburse Mr B 50% of the money he lost plus interest at 8% simple per year.

Mr B didn't agree with the investigator. He thought he should be entitled to a full refund. He said his wife had also put money into the scheme and had received a full refund from her bank. He explained his wife had known the scammer personally and meetings prior to making these payments had reassured him. He didn't think there was anything he could have done to check this wasn't a real government bond scheme and didn't think the rate of return was too good to be true.

In light of this disagreement I've been asked to make a final decision on the matter.

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.

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 be good industry practice at the time.

At the outset I should clearly state that there is no doubt here that this was not a legitimate investment scheme. The name of the scheme and the application form Mr B was given correspond to the Court Funds Office (CFO) which holds the assets of people who are unable to manage their own financial affairs. That is not an investment scheme. So, unfortunately, Mr B made these payments to a fake investment scheme.

As the investigator explained in her assessment: in broad terms the starting position at law is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. So, the starting position is that the customer is liable for payments they make.

Nevertheless, where the customer made the payment as a consequence of the actions of a fraudster, it may sometimes be fair and reasonable for a bank to reimburse its customer even though the customer authorised the payment.

Amongst other things, Halifax has a duty to exercise reasonable skill and care, pay due regard to the interest of its customers and to follow good industry practice to keep customer's accounts safe. It should also apply the CRM Code where relevant.

Halifax accepts it could have done more here and it has already agreed to reimburse Mr B half of the money he lost in recognition of its share of the blame.

What remains for me to consider is whether it is fair and reasonable that Mr B should share some responsibility for the losses.

In saying this, I'm very sorry to hear that Mr B has been the victim of this scam and lost the significant sums he has. But I can only look at what Halifax is required to do – I cannot consider the actions of those who have tricked and deceived Mr B. And I need to decide that based on the facts of this case – reimbursement of someone else by their bank does not make Halifax liable here.

With that in mind, and based on what I've seen, I don't consider that Halifax needs to offer more than it has already agreed to refund to Mr B. I understand that this is not the outcome Mr B wants but I can reassure him that I've carefully considered all the circumstances of his complaint before reaching what I consider to be the fair and reasonable decision in all of the circumstances.

I've set out below the reasons why I've reached this conclusion. Slightly different considerations apply to different payments, so I've separated these out.

The final payment: £100 - December 2019

Before addressing the main payments involved, I've considered the last payment Mr B sent. He explains this wasn't intended – he sent it by mistake. I've taken account of what Mr B says about this payment and note that it is clearly very different in size to the other payments he made. On balance, I accept Mr B's explanation that this was a payment he made unintentionally rather than a deliberate attempt to invest more in the scheme.

It follows that as this was not a payment Mr B made through the deception of a fraudster, but rather a payment made by mistake, it was not an APP scam payment.

A bank can't revoke a transfer once it has been correctly fulfilled in line with its customer's instructions, as this was. When a customer makes an incorrect payment, their bank is required to make reasonable efforts to recover the funds. I'm satisfied that Halifax took the correct steps when it was notified by Mr B. I don't find it at fault in relation to this transaction, and I don't require it to do more than it has already done in relation to this payment.

Payments made between February and July 2019

As noted above, Halifax has already accepted a share of the responsibility in relation to these payments.

I've therefore thought about whether Mr B's actions, or inactions, mean he should share liability for the loss he incurred.

Taking everything into account, I think there were clear signs that this wasn't a legitimate investment. The monthly rate of 6.75% (which would then be compounded) was simply too good to be true. The yield on five-year government bonds at the time was under 1% per year. The supposed investment was said to pay interest over six times that annual rate *every month*. In other words, even if it wasn't compounded, the rate would be about 80 times the usual yearly rate for a government issued bond.

A similar comparison holds for other legitimate fixed term, fixed rate investments including bank accounts, savings bonds and other bonds – the rate Mr B was being offered was out of line with what could reasonably be expected. There was no real explanation given to Mr B

about how such a remarkably high rate of return could be possible on a government backed investment scheme.

I think this should have been a clear red flag that something wasn't right with what he was being told. At the very least it should have prompted Mr B to independently investigate how exactly the scheme was proposing to pay such a high level of return. While Mr B explains he did find out some information about the scheme and knew the person who said they were running the scheme, I am not satisfied this was enough to explain how it could ever be possible to get annual returns of 80 times the normal rate.

What's more, had Mr B taken reasonable further steps to look into what was being offered, such as searching online, I think this would have shown the scheme wasn't legitimate. Details of the rate paid by the real CFO Special Account are readily found through an internet search. That would have shown the court funds special rate was also under 1% per year in 2019. The application form Mr B was given is a standard CFO form also readily available to download online. I think taking such steps would have uncovered the fraud.

Considering the above, I think it is fair and reasonable that the blame for the resulting losses should rest with Mr B as much as with Halifax. Unfortunately, I think the attraction of the significant returns and the involvement of people he knew well led Mr B to invest when otherwise he might have had second thoughts.

So, having carefully considered everything, I don't require Halifax to reimburse Mr B by more than the 50% figure it has offered. I think it is fair and reasonable for both sides to share equal responsibility for the losses here.

Does the CRM Code mean Halifax should fully refund Mr B?

Firstly, I should explain also that the CRM Code would not apply to the smaller payments Mr B made in February or December. The payment in February predates the introduction of the CRM Code and the code does not apply retrospectively. And in relation to the December payment, Mr B explains this was a payment he made by mistake rather than a payment he was tricked into making, so it wasn't an APP scam payment and the CRM Code won't be applicable.

But Halifax accepts that the two larger payments (both made in July) can be considered under the remit of the CRM Code. I have considered whether the CRM Code would require Halifax to do more than it has already offered to do.

For Halifax to be liable to refund Mr B more than the 50% figure it has offered, I'd need to be satisfied that Mr B had a reasonable basis for believing the payments were going to a legitimate investment - because otherwise Halifax is entitled to apply an exception to full reimbursement under the CRM Code.

But for very similar reasons to those I've set out above, I don't think this was the case. I think the exceptionally high returns being offered should have prompted Mr B to do more research before sending a large payment, and that had he taken the steps I think he should have taken this would have led him to realise the scheme was not legitimate.

In short, I don't think Mr B had a reasonable basis for believing this was a legitimate investment scheme, which means I find Halifax is entitled to rely on the relevant exception to full reimbursement under the CRM Code. Therefore, Halifax doesn't need to pay Mr B more than the 50% it has already offered him.

Halifax's offer of settlement

In saying the above, I want to stress that I am very sorry to hear about what happened to Mr B and I am sorry he has lost out. He was the victim of a crime and of what appears to have been a cruel scam carefully designed to defraud him of his money. I appreciate the remaining 50% of his losses are a very significant sum. But in all of the circumstances, I can't fairly say Halifax should be held fully liable for what happened – I think Mr B fairly shares the blame equally here.

Halifax has offered to reimburse Mr B half of the loss he incurred from the first three main payments he made. That equates to £25,000. Halifax has also agreed with the investigator's recommendation that 8% simple interest should be added from the date of each payment to the date of settlement. Given the sources of the money Mr B sent, I think 8% simple interest is a fair proxy for the likely cost and other inconvenience of him being deprived of the funds for the time he has been.

It is my finding that the offer Halifax has made is a fair settlement in all of the circumstances. I do not require it to do anything further.

My final decision

For the reasons set out above, it is my final decision that Bank of Scotland plc trading as Halifax has made a fair offer to settle Mr B's complaint.

If Mr B accepts my final decision, the bank should settle Mr B's complaint in line with its offer within 28 days of receiving confirmation of his acceptance.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 19 July 2022.

Stephen Dickie
Ombudsman