

The complaint

Mr W complains that Bank of Scotland plc trading as Halifax (Halifax) hasn't refunded the money he lost in an investment scam.

What happened

In February 2019 Mr W made four payments totalling £200,006.95 to invest in a twenty month (March 2019 to November 2020) fixed rate bond. When interest wasn't paid at the end of the first year, Mr W discovered he was the victim of a scam and reported the matter to Halifax.

Halifax didn't agree to a refund and so Mr W brought a complaint to this service.

Our investigation so far

The investigator who considered Mr W's complaint recommended that it be upheld. She asked Halifax to refund £200,006.95 plus 8% simple interest per year from the date the transactions were made until they were refunded. Halifax initially didn't accept the investigator's findings and raised further points which the investigator addressed. After reviewing the case again Halifax set out its offer as follows:

"Consequently, and in an effort to resolve matters, I propose the following in resolution to [Mr W's] complaint:

- *Offer [Mr W] an unreserved apology.*
- *Refund the full amount of £200,006.95.*
- *A payment in lieu of interest lost, this will be accrued to the file interest on [Mr W's] account.*

The investigator contacted Mr W on 18 March 2021 and said Halifax agreed with her view. She then quoted the offer provided by Halifax (and set out above).

Halifax paid Mr W the amount lost in the scam. In respect of interest Halifax said interest would be added to the accrued interest on the account and would be paid when the next interest was due on the account. At this stage, Mr W complained that he received £477.89 when he expected around £32,000 based on a rate of 8% simple.

A different investigator considered interest alone and said that 8% interest wasn't correct, and the offer put to Mr W didn't include this rate of interest. Mr W disagreed and referred to the wording in the view letter that set out interest at 8% simple. He said this is what he agreed to. So the matter has been referred to me to decide the rate of interest that should be paid to Mr W.

I issued a provisional decision on 28 June 2022. In it I said,

As I have set out above, Halifax has now refunded the amount lost in the scam so I am only considering in this decision the interest that Mr W should receive.

Whilst the original investigator recommended interest at 8% simple in the view she sent to Halifax and shared with Mr W, I'm satisfied this wasn't the rate that Halifax agreed. It also wasn't the rate set out when the original investigator put Halifax's offer to Mr W. The investigator quoted Halifax's offer which included, "A payment in lieu of interest lost, this will be accrued to the file interest on [Mr W's] account". Mr W accepted this offer and so I'm satisfied he didn't accept an offer of 8% simple interest.

I think the investigator could have been clearer that Halifax didn't offer the 8% interest she recommended and also that Halifax could have been clearer about the interest it was offering. But there is no mention of 8% in the offer put to Mr W.

It appears Mr W's acceptance of the offer was based on a misunderstanding of it and so I need to decide the rate of interest Halifax should pay on the award made.

When this service thinks a financial business has done something wrong, we aim to put a customer back in the position they would have been in had a mistake not happened. So, I need to think about what Mr W would have done with his funds had Halifax prevented Mr W's loss.

I don't consider a rate of interest of 8% is fair and reasonable in the circumstances of this case. I say this for a number of reasons. If I were to apply a rate of interest of 8% Mr W would be in a better position than if the scam hadn't happened as it wasn't possible to obtain this rate at the time he chose to invest. Even the fake investment Mr W paid money for didn't have a rate of return this high. Mr W told the investigator he'd taken out bonds in the past with high street building societies and these financial businesses were paying much lower rates of interest at the time (and were very low risk).

But I also don't consider that paying Mr W account interest rate is fair. Having considered Mr W's bank statements I can see that Mr W received a credit of £246,621.38 into a Halifax current account. Mr W has explained that this lump sum came from a pension payout. On the same day he transferred this sum into the savings account he later made the scam payments from around a month later. So I think it unlikely that were it not for the scam Mr W's funds would have remained in his Halifax saver account.

Mr W was actively seeking to invest his pension proceeds in a low risk investment (a fixed term bond). And, given what he's said about the way he's invested in the past, I think it's more likely than not he'd have instead put the money into a legitimate fixed term bond. There were many bonds available on the market at that time and I can't fairly say he'd have chosen or been eligible to apply for the one that paid the highest rate. So I think it's fair to calculate his financial loss with reference to the monthly average rate for fixed rate bonds as published by the Bank of England.

Information about the average rate can be found on the Bank of England's website by searching for 'quoted household interest rates' and then clicking on the related link to their database and the rate for each month is that shown as at the end of the previous month.

When he fell victim to the scam Mr W was intending to invest for 20 months. The Bank of England publishes rates for one, two and three year fixed rate bonds so I consider that Halifax should pay the average compound interest rate for a two year fixed rate bond as published by the Bank of England from March 2019 to March 2021. In the absence of any other evidence, I consider it likely Mr W would have reinvested in another bond for the same period and so I'm persuaded that from March 2021 interest should be paid at the average rate that applied in March 2021 to the date of settlement.

I think this is the fairest way of, as far as possible, putting Mr W in the position he would have been had the fraud not taken place – that being that he would have likely purchased a legitimate fixed rate bond elsewhere and continued to invest his money without risking the capital.

Mr W accepted my provisional decision, but Halifax did not. In summary, Halifax said:

- Industry wide practice is to apply the savings account interest rate in these circumstances except in exceptional circumstances.
- Halifax doesn't agree that a different rate should apply in this case.

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.

Having considered Halifax's response, I have reached the same outcome as I did in my provisional decision and for the same reasons.

As I said in my provisional decision, the aim of any redress this service awards is to put a customer in the same position they'd have been in had a mistake not happened. In this case, awarding interest at the savings account interest rate doesn't put Mr W in the position he would have been in had Halifax taken the steps I think it should have. This is because I'm persuaded that Mr W's funds wouldn't have remained in his savings account. Instead, I consider Mr W would have invested in a legitimate fixed term bond. And so I consider that Halifax should pay interest based on the average compound interest rates of fixed term bonds as set out below.

My final decision

I require Bank of Scotland plc trading as Halifax to:

- Pay compound interest on £200,006.95 at the monthly average rate for two-year fixed-rate bonds as published by the Bank of England for the month of March 2019 from the date Mr W made the payments to 4 March 2021.
- Pay interest on the same basis as set out above, but using the rate for March 2021, from 5 March 2021 to the date of settlement.
- After calculating interest as set out above Bank of Scotland plc trading as Halifax should deduct the interest payment it has already made to Mr W (which I believe to be £477.89).

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 16 August 2022.

Jay Hadfield
Ombudsman