

## **The complaint**

Mr N complains that Bank of Scotland Plc (trading as Halifax) won't refund the money he lost to an investment scam.

Mr N is represented by a third party, but for ease of reading, I'll refer to all submissions as having come from Mr N alone.

## **What happened**

In 2015, Mr N's friend attended an investment seminar ran by a man called 'Derek' representing a company I'll call 'P'. The friend put Mr N in touch with Derek after he received a large inheritance.

Mr N was told of an opportunity to invest and that the investment would pay returns of 9.85%, that it was low risk, safe and would be used to fund payday loans in the USA. Based on this information, Mr N decided to invest. On 29 January 2016, Mr N visited a Halifax branch, accompanied by Derek, and he sent a CHAPS payment of £200,000 to the investment account. Mr N received returns totalling £19,700 paid on a quarterly basis from 13 May 2016 until 15 February 2017. After the payments stopped, Mr N contacted Derek and was reassured that all was well.

Around January 2021, Mr N received a letter from the Serious Fraud Office (SFO) saying they had started an investigation into P.

Mr N complained to Halifax in April 2023 and said it failed to protect him from financial harm and amongst other things it should have recognise he was vulnerable based on his gambling history.

Halifax issued its final response on 30 June 2023 stating that it carried out research and didn't find evidence to suggest P's operation was fraudulent. It noted P went into administration in 2018 then compulsory liquidation at the end of 2019. Halifax contacted the recipient bank who confirmed no funds remained. Halifax also contacted the SFO who confirmed its initial investigation into P was closed down without any further enquiries.

One of our Investigators looked into things, she didn't think Halifax's decision not to refund Mr N was unreasonable. Mr N didn't agree. He said in summary:

- Halifax didn't question Mr N's transaction at all.
- It is accepted Halifax didn't need to provide financial advice, it could have warned him of the risks associated with the transaction, which would have caused him to reconsider.
- Evidence suggests a person associated with P was embroiled in numerous scams prior to Mr N's investment.
- The rate of guaranteed returns were misleading and should have been recognised as a high risk, unregulated investment.

- Had Halifax carried out further due diligence it would have noted P was only incorporated 6 months prior to the investment which was a risk of fraud.
- The returns were in keeping with a typical Ponzi scheme.
- There doesn't need to be a regulator warning to confirm that P operated a scam.
- One of the directors of P referred to himself as a chartered accountant when he didn't become so until 2017 and that misrepresentation was indicative of fraud.
- Derek was an unregulated introducer and attended the branch with Mr N, this ought to have been suspicious.
- The SFO's lack of producing a fraud conviction or successful investigation is irrelevant.

The complaint has therefore been passed to me for determination.

### **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 done so, I don't uphold Mr N's complaint and I'll explain why.

Before I do, I've noted Mr N's comments that he was vulnerable at the time of his investment. I've seen no evidence that would suggest Halifax was aware of Mr N's vulnerabilities, nor have I seen anything to suggest that Halifax should have reasonably concluded that Mr N was incapable of making financial decisions for himself – even high risk ones.

Not every complaint referred to us and categorised as an investment scam is in fact a scam. Some cases simply involve high-risk investments that resulted in disappointing returns or losses.

Certain high-risk investment traders may have promoted these products using sales methods that were arguably unethical and/or misleading. However, whilst customers who lost out may understandably regard such acts or omissions as fraudulent, they do not necessarily meet the high legal threshold or burden of proof for fraud; i.e. dishonestly making a false representation and/or failing to disclose information with the intention of making a gain for himself, or of causing loss to another or exposing another to the risk of loss (Fraud Act 2006).

In simpler terms, some companies may have used sales and promotional methods that could be seen to be unfair by consumers considering the losses they've incurred – but this does not always amount to *fraud*.

When considering this for Mr N's case, I've paid particular attention to the official organisations that publish warnings about companies that operate in the UK and abroad. I've searched the Investor Alerts Portal of the International Organization of Securities Commissions ("IOSCO"), the international body that brings together the world's securities regulators. And the FCA (as the UK regulator) also has its own warning list, which is in place to share alerts and insight about companies that have been identified as potentially being fraudulent or unauthorised.

Upon checking both of these, it's my understanding that P has no adverse information reported about them. Indeed, my own research hasn't resulted in any compelling information to show it was fraudulent.

Mr N highlighted the SFO's investigation, I've noted that there's been no communicated outcome or conviction of P. I've further noted that P was incorporated on Companies House and subsequently went into administration.

I have no doubt that Derek may have misled Mr W about the risks involved with this type of investment but I've not seen that P made any misrepresentations to him.

I've further seen that Mr P received quarterly returns totalling £19,700 up to a year after his initial investment. In common circumstances of investment fraud, the beneficiary disappears with all of the money as quickly as possible. So, it's unusual that Mr N received returns from an alleged fraudster so long after his initial investment.

Mr N has suggested this to be a Ponzi scheme but I have no credible evidence that this was the case at the time of Mr N's payment, or at the time of writing this decision.

I've seen some adverse customer reviews about P and I cannot ignore that, while this could be seen as circumstantial evidence that helps build an overall picture of P – this is not in itself sufficient evidence of fraud.

I must therefore take into account that there's strong evidence here –particularly because there is no credible adverse evidence that was published at the material time– that P hadn't been identified as a fraudulent company when these payments were made.

I'm not persuaded with any degree of certainty that P was operating a scam. So, taking everything into consideration, I'm not persuaded that P was in fact a fraudulent company.

As explained previously, Halifax's duty is to guard against the risk of fraud and scams; it is not to give investment advice or protect consumers from bad bargains. But even if I'm wrong and P were operating fraudulently, I've thought about what I'd reasonably have expected Halifax to do in the circumstances at the time Mr P authorised the disputed payment.

Taking into account the law, regulatory rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider Halifax should fairly and reasonably:

- Have been monitoring accounts—and any payments made or received—to counter various risks, including anti-money-laundering, countering the financing of terrorism, and preventing fraud and scams;
- Have had systems in place to look out for unusual transactions or other signs that might indicate its customers were at risk of fraud (amongst other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer; and
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

In my judgement, the disputed payment of £200,000 was very large and ought to have prompted further checks by Halifax before it allowed it to be sent.

If Halifax had fulfilled its duties by asking suitably probing questions in private, without any third parties present, I think Mr N would have explained what he was doing and that the purpose of the payment was to invest.

In such circumstances, whilst Halifax had no duty to protect him from a bad bargain or give investment advice, it could have reasonably asked Mr N some further questions to ascertain

whether he was likely to be at risk of financial harm from fraud. I've thought carefully about the sorts of questions Halifax should've asked, bearing in mind the features of investment scams at that time.

At the time Mr N fell victim to the scam, investment scams carried some common features. For example, these included rates of return which were too good to be true, receiving the opportunity to invest via an unsolicited cold call, with fraudsters often applying pressure to their victims to invest quickly.

Against this backdrop I'd have expected Halifax to ask Mr N some questions to see if there were any signs that this was an investment scam (as described above). I think Halifax would have reasonably asked what it was Mr N was investing in and I think he'd have explained he was investing in a five-year investment plan involving payday loans in the USA. I think Halifax would have reasonably been aware that companies offering these types of products weren't required to be regulated by the FCA. But I think it would have also acknowledged these investments could be high risk, so I think Halifax could have asked how Mr N had come across the investment. I think Mr N would have likely explained that the investment was recommended by someone he considered to be a financial professional (Derek) who he'd met through a friend the previous year. I don't think Halifax would have reasonably been expected to probe the legitimacy of Derek based on Mr N's dealings with him.

Upon receiving this information from Mr N, I'm not persuaded Halifax would've been concerned that Mr N was about to fall victim to an investment scam as there were no obvious indicators of what I consider to be well published investment scam typologies at the time. I accept the rate of return was higher than what a high street bank would've offered, but these products do often have higher rates of return and I don't think it was 'too good to be true'. I accept the rate of return potentially indicated a high-risk investment, which might not have been suitable for Mr N, but as I've explained, it would not have been Halifax's role to provide him with financial advice. By Mr N's own admission, he had a history with gambling and if Halifax were reasonably aware of this, I think it would have reasonably been aware that Mr N was comfortable with taking risks with his finances.

Even if Mr N did have concerns about investment scams following a conversation with Halifax, which for the avoidance of doubt I don't think he would have, I think it's more likely than not he would have directed them to Derek rather than an independent third party and that's because he trusted him. I've noted that when the interest payments ceased, Mr N contacted Derek who reassured him not to worry and that the payment had been delayed. I've further noted that there were several years in between Mr N's investment and raising his concerns with the bank.

I empathise with the fact Mr N invested significant sums into a product that hasn't gone to plan. But this does appear to be a legitimate investment opportunity that has gone wrong, rather than an investment scam.

But given I've found that it's more likely than not an intervention from Halifax wouldn't have made a difference and exposed the alleged scam, it is unnecessary for me to go on to consider whether Mr N should share any responsibility for the loss he incurred.

Overall, whilst I agree that Halifax didn't do what it ought to have done by intervening in Mr N's payment towards his investment with P, I don't find that it was the primary cause of his loss. In other words, I don't think Halifax could have prevented Mr N from making the payments towards his P investment, nor do I think there was any indication that Mr N had fallen victim to a fraud or scam at the material time, such that I would make an award against Halifax. I know this will be an extremely difficult decision for Mr N to receive.

**My final decision**

My final decision is, despite my natural sympathies for Mr N's loss, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 15 January 2024.

Dolores Njemanze  
**Ombudsman**