

The complaint

Mr B complains that Bank of Scotland plc trading as Halifax won't refund him after he lost money to what he now considers to be a scam.

Mr B is professionally represented in bringing his complaint, but for ease of reading, I'll refer to all submissions as being made by Mr B directly.

What happened

Both parties are aware of the circumstances of the complaint, so I won't repeat them in full here. But briefly, both parties accept that between 2018 and 2019 Mr B was looking to invest some funds he'd received from an inheritance. He was contacted regarding several different potential opportunities, which he now believes to have been scams. The particular investment I am considering was regarding the production of an animated film.

Mr B initially received a generalised email with some information on the investment and a hyperlink to obtain further information. From here, Mr B liaised with another firm I'll refer to as 'R', who were a film investment company. R provided Mr B with additional information about the investment and Mr R agreed to invest £10,000, with the understanding that he would receive this money back 'as soon as practicable after the release date', plus a 25% premium.

Mr B received a contract between himself and the production company (who I'll refer to as 'G') and made a faster payment to the firm via a Chartered Account's client account.

Mr B has said he never received any funds back and the film was never made. Believing he'd been the victim of a scam, he raised a claim with his banking provider, Halifax, in December 2022.

Halifax looked into what had happened but didn't think it was liable to refund Mr B. It didn't think it had been established that Mr B had been the victim of an Authorised Push Payment (APP) scam. Rather it thought this was a private civil dispute between Mr B and G.

Mr B disagreed and so referred the complaint to our service. An investigator considered the complaint. She thought the evidence suggested Mr B *had* been the victim of a scam, and recommended liability for Mr B's losses be split between Halifax and Mr B, to acknowledge that both parties could've done more to prevent his losses. The investigator reached the outcome that this was a scam as she was unable to find 'R', or the chartered accountancy firm on Companies House and also considered there were discrepancies on Mr B's contract about who Mr B was investing in.

Halifax didn't respond to the investigator's view, so the complaint has been referred to me for a final decision.

As part of my investigation into Mr B's complaint, I've written informally to both parties, setting out why I don't consider this was in fact a scam and asked for further evidence from Mr B should he wish to continue his complaint, which he has provided.

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.

Based on everything I've seen, while I'm sorry to disappoint Mr B, I don't think the evidence available supports his complaint that this was in fact a scam, rather than a failed investment. It therefore follows that I don't think Halifax is liable to reimburse him his losses. I'll explain why.

As a starting point in law, Mr B is responsible for payments he's instructed Halifax to make. Unfortunately, there's little protection available to him for bank transfer payments, like this was. The Lending Standards Board Contingent Reimbursement Model Code (the CRM Code) does provide some protection to victims of APP scams. But it specifically excludes private civil disputes.

When investing, there is always the risk that the investor can lose some, or all of their money. So a lack of returns, in and of itself, isn't enough to establish that someone has been the victim of an APP scam, rather than having paid towards an unsuccessful investment. Therefore to conclude that Mr B *had* fallen victim to a scam, I'd need to see evidence that, for example, the investment opportunity he was presented with was fabricated, or that his funds were never actually invested.

Having considered the available evidence, I haven't seen anything to suggest this wasn't a legitimate investment opportunity that sadly didn't provide any returns. I say that for the following reasons:

- The animation film presented to Mr B to invest in does exist and is available on a reputable streaming site.
- Having researched R, I can see it was a genuine film investment company. Although it has since ceased trading, it appears to have previously helped source funding for a number of film projects.
- G was also a genuine film production company. Having researched the film Mr B invested in, I can see both R and G quoted as involved in its production. The discrepancies noted by our investigator in who is (and isn't) named on the contact Mr B was provided with is based on who he actually invested in - rather than the firm that *introduced* him to the investment.
- The account Mr B sent his funds to is a certified accountancy firm, and the accountancy firm has provided confirmation that the account Mr B paid related to the film investment in question. The accountancy firm has confirmed that its role was to remit funds collected to the production company.
- In 2022, Mr B contacted G to question whether he will receive any funds back that he invested. G responded, explaining that as the film did not deliver the returns expected, there are no returns to pass onto the investors. I think this supports the evidence I've already set out that unfortunately, Mr B has invested in something that did not perform as hoped, rather than being a scam.

All things considered, I think it's more likely than not that Mr B paid towards an unsuccessful investment, rather than towards a scam. I appreciate this will be a disappointing answer for Mr B, having lost a lot of money to this investment. But as I haven't concluded that there was intent on R or G's part to dishonestly deceive Mr B into sending his funds, I can't hold Halifax responsible for the loss suffered here by Mr B. It also means I find the bank had no ability or obligation to try and recover his money.

My final decision

My final decision is that I don't uphold Mr B's complaint about Bank of Scotland plc trading as Halifax.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 20 May 2024.

Kirsty Upton
Ombudsman