

The complaint

Mr M complains that Bank of Scotland plc trading as Halifax ('Halifax') won't refund the money he says was lost as the result of a scam.

What happened

In 2019, a long time friend told Mr M about a director of an investment company. I'll refer to the director as J, and the investment company as F.

J was running a charity account on a social media site to prove he could achieve high investment returns.

Mr M says he followed J's social media account for approximately nine months, and says the account achieved a 100% return during that time.

J contacted Mr M in 2020 to talk about investing with F. But Mr M had concerns that the rate of return being offered was too good to be true and didn't invest.

A few days later J got in touch again, and Mr M decided to invest £9,000. Mr M says that within a couple of months of making his investment, it had grown to £30,000 based on the increase in the stock price and he was able to withdraw the funds.

Not long after, Mr M met with J and was talked through the different investment options that F offered. Mr M says he checked Companies House and saw that F was a UK incorporated company and that J was its director. However, Mr M was still wary about the risk involved and didn't invest.

Mr M says that eventually J persuaded him to invest with F. Mr M agreed to invest £30,000 in a 3 year retail investment and which he was told would give a return of 80% per year.

Mr M made two payments from his Halifax account. The first payment was for £25,000 on 10 December 2020, the second payment was made the following day for £5,000.

In 2023, all contact with J stopped and Mr M has been unable to withdraw his funds from F. Mr M believes that he was the victim of an investment scam.

Mr M raised a fraud claim with Halifax in January 2024, asking that they refund him. Halifax declined to refund Mr M, saying his payments weren't covered by the Contingent Reimbursement Model Code (CRM Code), as he has a civil dispute with F. Halifax say F appear to be a genuine company and they're not satisfied that Mr M was the victim of a scam.

Mr M wasn't happy with Halifax's response, so he brought a complaint to our service.

An investigator looked into Mr M's complaint but didn't recommend that Halifax refund him. The investigator wasn't satisfied that Mr M's funds hadn't been used for the purpose of investing by F, so agreed that Mr M wasn't entitled a refund under the CRM Code. The

investigator felt Halifax should've intervened when Mr M made his first payment as it was particularly unusual and out of character. But the investigator wasn't satisfied that intervention by Halifax would've prevented Mr M's loss.

Mr M disagreed with the investigator's opinion and asked for an ombudsman to review his case. Mr M raised the following points:

- Just because F is still trading as a company, doesn't mean that it's legitimate.
- F or J shouldn't be allowed to keep Mr M's money.
- The police are investigating F and J, and Interpol are involved.

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.

Where there is a dispute about what happened, and the evidence is incomplete or contradictory, I've reached my decision on the balance of probabilities – in other words, on what I consider is most likely to have happened in light of the available evidence.

I'm really sorry to hear about the difficult circumstances that Mr M has gone through, and to hear about the impact the loss of these funds has had on him.

I'd like to reassure Mr M that I believe he has suffered a loss and that F hasn't returned the £30,000 that he invested. However, I have to decide whether or not I can fairly hold Halifax liable for that loss.

Is Mr M entitled to a refund under the CRM Code?

Halifax are a signatory of the CRM Code, which requires firms to reimburse customers who have been the victims of Authorised Push Payment (APP) scams, in all but a limited number of circumstances. But, the CRM Code defines what is considered an APP scam as "where the customer transferred funds to another person for what they believed were legitimate purposes, but which were in fact fraudulent".

In order to decide whether the circumstances under which Mr M made the payments, meets the definition of an APP scam, I need to consider:

- The purpose of the payments and whether Mr M thought this purpose was legitimate.
- The purpose F had in mind at time of the payments and whether this was broadly in line with what Mr M understood the purpose to be.
- And, if I decide there was a significant difference in these purposes, whether I'm satisfied that was as a result of dishonest deception.

Mr M was making the payments to F for an investment, and I haven't seen anything that suggests he didn't think this was legitimate.

So, I've gone on to consider what purpose F had in mind and whether it was in line with what Mr M thought.

In reaching an answer on what purpose F had in mind, I've considered the wider circumstances surrounding F and its director J. The key information to this case is:

- Mr M initially invested £9,000 with F, which provided him with a return of £30,000 – which was paid out to Mr M. I wouldn't expect a return of this size to be paid if F was taking funds through dishonest deception, as there was no guarantee that Mr M would make any further investment in F after receiving these funds.
- F is an incorporated UK company which has been operating since May 2019. It last filed accounts in May 2023, which showed a significant amount in capital and reserves. There is an active notice to strike off, but a company strike off can occur for a number of different reasons. Also, a failed firm or investment, in and of itself, isn't sufficient to establish that F, or those operating it, had a different purpose for the funds when they were obtained from Mr M.
- It's possible that F invested Mr M's funds in trades as agreed, but that the trades suffered losses – which meant F couldn't repay Mr M's funds. But this would be considered a failed investment, rather than an APP scam as the funds were used for their intended purpose.
- We've received third party information from the receiving bank. I can't share the details of that information due to data protection laws. However, that information doesn't allow me to safely conclude that F took Mr M's funds through dishonest deception or that Mr M's funds weren't used for the intended purpose of investment.
- The latest update from the police indicates that they are still in the process of investigating the complaints against F and J. We don't have any evidence that supports F taking the funds through dishonest deception, for example a conviction.

Considering all of these points as a whole, I'm not satisfied I can fairly say that F took Mr M's funds with a different purpose in mind, or that the funds were obtained through dishonest deception.

On that basis, I'm not satisfied that the circumstances under which Mr M made his payments meet the definition of an APP scam, which is required for me to be able to hold Halifax liable under the CRM Code. So, I can't ask Halifax to refund Mr M under the CRM Code.

Is there any other reason I can fairly ask Halifax to refund Mr M?

In broad terms, the starting position in law is that Halifax are expected to process payments that a customer authorises it to make, in accordance with the terms and conditions of the customer's account and the Payment Services Regulations 2017 (PSR's).

But, taking into account the law, regulators 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 preventing fraud and scams.

Also, I'd expect Halifax to have systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). And where a potential risk of financial harm is identified, to have taken additional steps, or made additional checks, or provided additional warnings, before processing a payment.

I'm satisfied that the first payment Mr M made of £25,000 was unusual and out of character compared to his usual account activity. So, I would've expected Halifax to have identified that Mr M could potentially be at risk of financial harm and intervened.

As part of that intervention, I would expect Halifax to have asked Mr M questions about the investment. The types of questions I'd expect would include: how Mr M found the investment, what checks he'd done on the company to ensure it was legitimate, what returns

Mr M was promised and whether Mr M had checked the FCA's website to see if F was authorised. Halifax might also have asked to see any documentation that Mr M had in relation to the investment.

In this case, Mr M was introduced to J by a long time friend that he trusted. Also, Mr M had already invested £9,000 and received a return of £30,000 which he had been paid. F were a UK incorporated company and had a website (which is still active). Mr M had a prospectus from F which set out the different investment options they offered, and a contract in relation to the investment he was making. I think it's worth noting that the documentation Mr M has provided, doesn't say what return was guaranteed on his investment, although he says J told him it would be 80%.

I acknowledge that the rate of return (if Mr M was told it was 80%) was too good to be true, but this has to be balanced against the previous investment that Mr M had made, which had been successfully returned to him with an unusually high rate of return.

Also, while F aren't authorised by the FCA, there is no reference in the paperwork Mr M has shared with us to suggest they told Mr M they were. And, not all investment companies who aren't authorised by the FCA are a scam, as they may be authorised and regulated under a separate regulatory body in another country.

I think the way Mr M found the investment and his initial investment experience with F, would've been sufficient to satisfy Halifax that Mr M wasn't likely to be the victim of a scam. So, I think Halifax acted reasonably in following Mr M's payment instruction. Also, I'm not satisfied that I can fairly conclude (on the balance of probabilities) that intervention by Halifax would've prevented Mr M from making the payments or prevented his loss.

Mr M has referred to friends who also invested with F who have been refunded in full. However, even if Halifax refunded another customer, that doesn't mean that I can ask them to refund Mr M. I have to look at the circumstances of Mr M's investment and the payments he made, then decide whether I can fairly hold Halifax liable for his loss. And, for the reasons provided above, I'm not satisfied that I can.

If there is material new evidence which comes to light at a later date, for example a conviction against J or F, Mr M can ask Halifax to reconsider his fraud claim.

I'm very sorry to disappoint Mr M as he's lost a significant amount of money. But I'm not satisfied that I can fairly hold Halifax liable for his loss or ask them to refund him.

My final decision

My final decision is that I don't uphold this complaint against Bank of Scotland plc trading as Halifax.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 25 November 2024.

Lisa Lowe
Ombudsman