

The complaint

Miss N complains that Bank of Scotland plc trading as Halifax didn't do enough to protect her from the financial harm caused by an investment scam, or to help her recover the money once she'd reported the scam to it.

What happened

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here.

In 2011, Miss N was introduced to an investment opportunity with Company K. She was told she'd receive returns of 15% per year, and that she could withdraw her funds with twelve weeks notice.

Miss N received paperwork and was able to visit the property she was investing in. She made an initial payment of £12,000 and received £473.63 in May 2012, followed by monthly credits of up to £5,800 per month up until May 2020 totalling £418,710.29. She made the final payment on 21 May 2018, bringing the total to £473,000 over 17 payments.

She suspected she'd been scammed when she stopped receiving monthly interest and couldn't withdraw her funds. She sought legal advice and eventually, on 4 September 2023, she complained to Halifax about the payments she'd made from her account.

She said K dishonestly made a false representation and/or failed to disclose information with the intention of making a gain or causing loss to another or exposing another to the risk of loss. And Halifax should have told her to check the Financial Conduct Authority ("FCA") warning list, which would have revealed K was an unauthorised firm.

But Halifax refused to refund any of the money she'd lost. It said it didn't intervene because the payments weren't unusual compared to her usual account activity. It also explained the payments weren't covered by the Contingent Reimbursement Model ("CRM") Code, which aims to protect customers who have lost money to scams, but this involved a dispute between Miss N and a legitimate business.

Miss N wasn't satisfied and so she complained to this service with the assistance of a representative who said the payments were out of character because they were significantly higher than the previous payments on the account. They said Halifax should have asked Miss N questions about the payments, and had it done so it would have discovered an FCA warning dated in 2012, and the scam would have been exposed.

Responding to the complaint, Halifax maintained this was a civil dispute because K is a genuine company which is registered on Companies House.

Our investigator didn't think the complaint should be upheld. He thought Halifax should have identified the payments as unusual and contacted Miss N to question her. But he didn't think this would have made a difference because K was a registered company and even though it stated on the FCA website that it wasn't authorised to provide financial services/products,

this wouldn't have been a concern because investing in property isn't regulated by the FCA. He also noted that K went into liquidation after the final payment, so there would have been no indication that she was at risk of financial harm.

Finally, our investigator was satisfied there would have been no prospect of a successful recovery because by the time Miss N complained, K was in liquidation.

Miss N has asked for her complaint to be reviewed by an Ombudsman. Her representative has argued that the largest payment was £200,000, and if Halifax had intervened it would have seen the FCA warning, which would have been a major red flag. They also said she was vulnerable to the scam because of chronic illness, which affected her decision making and made her a target for scammers.

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've reached the same conclusion as our investigator. And for largely the same reasons. I'm sorry to hear Miss N has lost money. I know she feels strongly about this complaint, and this will come as a disappointment to her, so I'll explain why.

The CRM Code requires firms to reimburse customers who have been the victims of Authorised Push Payment ('APP') scams, but the Code doesn't apply because it came into force after Miss N made the final payment.

Prevention

I'm satisfied Miss N 'authorised' the payments for the purposes of the of the Payment Services Regulations 2017 ('the Regulations'), in force at the time. So, under the Regulations, and under the terms and conditions of her bank account, she is presumed liable for the loss in the first instance.

Not every complaint referred to us and categorised as an investment scam is in fact a scam. Some cases simply involve high-risk unregulated investments that resulted in disappointing returns or losses. Some of these investments may have been promoted using sales methods that were arguably unethical and/or misleading. However, while 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).

There is a dispute in this case as to whether K was operating a scam. But I don't need to make a finding on that because I don't think Halifax missed an opportunity to prevent Miss N's loss.

Halifax ought fairly and reasonably to be alert to fraud and scams, so I've considered what would have happened if it had intervened when Miss N made the payments. If it had contacted Miss N to ask questions about the payments she was making, I'm satisfied she'd have explained she was dealing with a registered company, she'd met one of the directors in person, and she'd visited the property to which the payments related. Depending on the timing of the intervention, she'd have also explained that she was receiving monthly interest payments, and that she'd been told she could withdraw her money with twelve weeks notice.

I'm satisfied that if Miss N had provided this information, there would have been no reason for Halifax to provide a scam warning. I think it's unlikely she'd have been advised to check the FCA website, but if she'd seen the notice that K was an unauthorised firm, I don't think it would have made a difference to her decision to send the payments. And as I'm not aware of there being any other information (for example negative reviews suggesting K was operating a scam) available online to indicate that she was at risk of financial harm due to fraud, I think she'd have gone ahead with the payment. So, I don't think Halifax missed an opportunity to prevent her loss.

Finally, I'm satisfied there would have been no way for Halifax to recover the funds and that Miss N would need to contact the liquidator to discuss the recovery of funds.

I'm sorry to hear Miss N has lost money and the effect this has had on her. But for the reasons I've explained, I don't think Halifax is to blame for this and so I can't fairly tell it to do anything further to resolve this complaint.

My final decision

For the reasons I've outlined above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss N to accept or reject my decision before 22 April 2025.

Carolyn Bonnell
Ombudsman