

Complaint

Mr and Mrs R are unhappy that Bank of Scotland plc trading as Halifax ('Halifax') didn't reimburse them after they reported falling victim to an investment scam.

Background

The background to this case is well known to the parties, so I don't intend to set it out in full here. Briefly, in mid-2020, Mr and Mrs R were looking for an investment opportunity. They learned about the opportunity to purchase bonds issued by a company. That company told them that they provided short-term bridging loans. Mr and Mrs R thought the investment opportunity was an attractive one and so they agreed to go ahead. In July 2020, they made two payments (£25,000 and £5,000 respectively) and received bond certificates. Quarterly interest payments were received as expected in October 2020 and January 2021.

Later, the company contacted Mr and Mrs R and asked whether they'd consent to switching from quarterly interest payments to annual ones. They also told them that, in exchange for a further investment, they could shorten the time to maturity on their existing bonds. They agreed to go ahead with the proposal. In September 2021, Mr and Mrs R made a further payment of £15,000.

The company with which they invested has since gone into liquidation. Mr and Mrs R determined that they'd fallen victim to a scam. They complained to Halifax, but it didn't agree to refund their losses. It said it wasn't persuaded that they'd fallen victim to a scam – instead, the bank considered it was more likely this was an investment that had gone wrong. Mr and Mrs R weren't happy with that response and so they referred their complaint to this service. It was looked at by an Investigator who upheld it. Halifax disagreed with the Investigator's opinion and so the complaint has been passed to me to consider and come to a final decision.

Findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

In broad terms, the starting position at law is that a firm is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. However, that isn't the end of the story. Halifax is a signatory to the Lending Standards Board's Contingent Reimbursement Model Code ("CRM Code"). That Code requires signatories to pay refunds to victims of authorised push payment ("APP") scams in all but a limited set of circumstances.

The CRM Code doesn't cover all payments. For these payments to fall within its scope, they must meet the relevant parts of the CRM Code's definition of an APP scam. Halifax has argued that it's an open question whether this was a scam.

I've considered the submissions of both parties carefully, but I'm satisfied that Mr and Mrs R fell victim to a scam. I say this because a detailed investigation by the Insolvency Service indicated that there is little evidence that the company was providing bridging loans as it told its investors it would. It also stated that the company appears to have been operating like a Ponzi scheme. While I acknowledge that some investigations are ongoing, this is compelling evidence that the funds Mr and Mrs R transferred were not used for the purpose for which they were intended and that they were deceived about that.

Halifax has pointed to a third-party review website that appears to contain customer reviews from borrowers. It suggests that this indicates that perhaps the company *did* provide bridging loans to some customers. I've considered that argument, but I'm not convinced that the verification process for that third party site was strong enough to stop manipulation by a company which might have used it to engineer false credibility. It's also more significant to note that, despite a thorough investigation by the Insolvency Service, no evidence of any loans has been found.

Halifax has also pointed out that the company doesn't appear to be the subject of an active police investigation. I've taken that into account, but I'm also mindful of the fact that resource constraints and other practical considerations mean that a police force won't necessarily investigate every criminal complaint that is referred to it. The lack of a police investigation isn't, to my mind, determinative here.

I can understand why Halifax has argued that, since there are ongoing investigations, it's appropriate to wait until those are concluded. However, a significant amount of time has elapsed since these concerns about the company first came to light and, as far as those investigations are concerned, there is no indication as to when they might conclude. I don't think it's fair to delay matters to a future date that is unknowable.

The evidence provided by the Insolvency Service that I've described above is compelling and persuasive. I'm persuaded it's sufficient to support the finding that Mr and Mrs R fell victim to an investment scam.

CRM Code

The remaining question then is whether a refund should be paid under the CRM Code. The Code requires signatories to refund customers who fall victim to APP scams, unless an exception to reimbursement applies. I'm not persuaded that an exception does apply here (and Halifax hasn't argued otherwise).

Overall, I think Mr and Mrs R had a reasonable basis for believing the investment was legitimate. The investment company featured a polished website and accompanying materials, which likely put their minds at ease. Even though a return of more than 9% annually was above the usual rates at that time, I must take that into account along with other relevant details. For example, the company did not market this investment as guaranteed. The bond's brochure mentioned that investor capital is at risk and that "*... all investment is speculative and involves risk.*" While the returns promised were quite high, I don't think they were so outlandish as to immediately raise concerns, particularly when viewed alongside other indicators of potential legitimacy.

I considered the fact that they didn't receive all the returns that they were promised at the outset and yet went on to make a further investment. Mr R told our Investigator that he received a call from a representative of the company who offered him the chance to switch from quarterly interest payments to annual payments in exchange for the maturity date of the bonds being brought forward - in other words, he'd get his investment back a little sooner than anticipated. The new maturity date apparently coincided with the date Mr R had

planned to retire from work and so it made sense to him to agree to the change. In view of that, I don't think it was unreasonable for them to have made the third payment in 2021 or that it should've made them consider the possibility that the investment might be a scam.

Overall, I'm persuaded that this was an APP scam, and that Halifax should've refunded Mr and Mrs R in line with the CRM Code

Final decision

For the reasons I've set out above, I uphold this complaint.

If Mr and Mrs R accept my final decision, Bank of Scotland plc trading as Halifax needs to:

- Refund the payments they made in connection with the scam; and
- Add 8% simple interest per annum calculated from the date the claim was declined until the date any refund is paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R and Mr R to accept or reject my decision before 8 April 2025.

James Kimmitt
Ombudsman