

The complaint

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

What happened

Mr E says he lives in a close-knit community and was told about the opportunity to invest in an established local business – a restaurant. I'll refer to this restaurant as W. Mr E says he met W's director, who I'll refer to as R.

For a £50,700 investment Mr E says he was promised 390 shares in W, which equated to a 39% holding.

Mr E made just over £24,000 in payments from his Halifax account. These payments were made between August 2021 and February 2023 and included cash withdrawals. There were three payees involved, W, R and a separate company (A).

Mr E also made payments of just over £23,000 between May 2021 and November 2022 from an account he held with another bank that I'll refer to as Bank B, this also included cash withdrawals. There were three payees involved, W, R and a separate company (D).

Mr E says he paid more than the £50,700 as he made small loans to R and there are multiple credits on both bank accounts from R.

Mr E says that shares in W were never transferred into his name and when R was removed as the director of W, all of his shares were transferred/sold to another party. As a result, he believes he was the victim of a scam and raised a fraud claim with Halifax in December 2023 through a professional representative.

Halifax declined to refund Mr E saying he has a civil dispute with R or W. Halifax highlighted that W is a genuine company and has positive reviews online.

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

An investigator looked into his complaint but didn't recommend that Halifax refund Mr E. The investigator wasn't satisfied that Mr E had evidenced he'd suffered the loss as the result of a scam, and said Mr E had a civil dispute with R or W.

Mr E disagreed with the investigator's opinion and raised the following points:

- As Mr E didn't receive the shares and they weren't transferred into his name, it should be considered a scam.
- R didn't set up W until September 2021, so he was selling Mr E shares in a company that didn't exist and he had no right to sell.
- R sold all of his shares in W to another party, which suggests he never intended to transfer ownership of any of the shares to Mr E.

- Mr E has signed a contract, which has no real value.

As the case couldn't be resolved informally, it was passed to me to review.

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.

I'm really sorry to disappoint Mr E but having carefully reviewed the evidence, I've reached the same answer as the investigator.

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).

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 considering the available evidence.

Did Mr E make the bank transfers as the result of a scam?

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. 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 E made his payments meets the definition of an APP scam, I need to consider the purpose of the payments and whether Mr E thought this purpose was legitimate. I also need to consider the purpose the recipient (R) had in mind at the time of the payments and whether this was broadly in line with what Mr E 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.

I'm satisfied that Mr E made the payment with the expectation that he was purchasing shares in W. R was the director of the company and provided Mr E with his driving licence. I haven't seen anything to suggest that Mr E didn't believe this was a legitimate purpose.

In reaching an answer on what purpose R had in mind, the key information to this case is:

- W became a UK incorporated company in September 2021 and was dissolved in January 2025. R was a director of W until July 2022. There is also a separate restaurant in the same name as the payee that Mr E made the majority of his payments to (A). This restaurant was UK incorporated in May 2021 and dissolved in April 2022 and R is the director. It's unclear from the evidence, exactly what the agreement was between Mr E, R and W and why Mr E was making payments to A and D.
- While W wasn't a UK incorporated company when Mr E started making payments in May 2021, it appears that the restaurant was operating as he says "it was well-established in the community".
- While Mr E has provided a document which appears to be signed by R, it hasn't been witnessed and doesn't say when the share ownership would be transferred or include any conditions around that transfer. This is important as Mr E didn't finish making his

payments until July 2023 on his Halifax account. So, it's possible that the transfer of the shares was going to happen at a later point. Also, it's unclear if Mr E received any other monetary benefits from his payments to W, A or D.

- A business failure, whether that's due to mismanagement or a change in their financial position, doesn't mean that Mr E's payments meet the definition of an APP scam. It's possible that W or R has fallen into financial difficulties which prevented them from transferring the ownership of the shares in 2022 or 2023, that doesn't prove that when they took Mr E's money, they had no intention of providing the shares.
- I can't see that Mr E has reported this to the police, which I would have expected. Our service is informal which means we can't require or obtain testimony or evidence from R or W (or even A and D). A statutory body like the police may be able to provide evidence that shows what R's intention was when Mr E made his payments and trace what Mr E's funds were used for.

I appreciate that Mr E hasn't received the shares in W, but I'm not satisfied that he has proven what R's intention was when he took the money or that R obtained the money by dishonest deception. Especially as W was a genuine company and R was its director until July 2022.

I realise that Mr E has experienced a financial loss, but that doesn't necessarily mean that Halifax can be held liable. And, based on the evidence, I'm not satisfied that I can conclude that R took the payments with a different purpose in mind, or through dishonest deception – so I can't hold Halifax liable for Mr E's loss under the CRM Code.

Is there any other reason I could hold Halifax liable for Mr E's loss?

The cash withdrawals that Mr E made aren't covered by the CRM Code, which covers faster payments between UK bank accounts.

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.

The two largest transfers that Mr E made were to A for £6,000 in January 2022 and to W for £7,450 in February 2023. Considering Mr E's previous account activity, I'm not satisfied that I can fairly say these payments were so unusual and out of character that I would've expected Halifax to have identified a potential scam risk. I'm also not satisfied that Halifax should've been concerned about any of the smaller transfers or cash withdrawals that Mr E made.

However, even if I thought Halifax should've intervened when Mr E made the payments, I'm not satisfied that I can fairly say Halifax shouldn't have followed Mr E's payment instructions or that it would've prevented Mr E's loss. I say this because it's unclear what Mr E would've told Halifax about the payments. W was a genuine company at the time and R was the director who Mr E had met in person. Also, Mr E says he lived in a close-knit community and

the investment had been referred to him. So, I'm not persuaded that it's more likely than not that Mr E would've said anything that would've concerned Halifax.

On that basis, I'm not satisfied that there is any other reason that I can fairly hold Halifax liable or ask them to refund any of the payments or cash withdrawals that Mr E made.

Recovery of funds

As Halifax aren't satisfied that Mr E made the payments as the result of a scam, they haven't been able to recover his funds. It's worth noting that by the time Mr E raised the fraud claim with Halifax in late 2023, nearly a year after he made the last payment, it's unlikely Halifax could've recovered the funds even if they were satisfied Mr E was the victim of a scam.

It's possible that material new evidence may come to light at a later date, for example from the police or Trading Standards. If it does, Mr E can ask Halifax to reconsider his fraud claim. Also, Mr E may be able to pursue his claim against R and W through other avenues, for example through the courts.

But, having carefully considered the evidence, I'm not satisfied that I can fairly hold Halifax liable for Mr E's loss or ask them to refund him.

My final decision

My final decision is that I don't uphold this complaint against Halifax Bank UK PLC

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 12 March 2025.

Lisa Lowe
Ombudsman