

The complaint

Mrs I complains that Bank of Scotland plc, trading as Halifax ('Halifax'), won't refund the money she lost when she says she fell victim to an 'Authorised Push Payment' ('APP') investment scam.

Mrs I brings her complaint with the assistance of professional representation, but for readability, in this final decision, I will refer solely to Mrs I.

What happened

The background to this complaint is well known to both parties, so I won't repeat it all in detail here, but in summary I understand it to be as follows.

Mrs I says she was persuaded to invest with a company whom I'll refer to as 'Company H' in my decision. Company H was a private rental development company which offered loan notes to investors to raise money for its projects. It was the parent company of a group of companies. Mrs I says that sale and rent of Company H's assets would later generate company income which would be used to pay investors income and capital.

Mrs I made two payments totalling £25,000 from her account with Halifax to Company H. One payment was for £15,000 on 6 August 2019 and the other was for £10,000 on 25 June 2020. Mrs I had also made an earlier payment of £10,000 from her account at Halifax to an account she held at another banking provider on 13 May 2019 – which Mrs I says then went to Company H. Mrs I received interest payments / returns between November 2019 and April 2021 totalling approximately £4,400.

Company H has gone into administration. Mrs I believes the investment wasn't genuine and that she is the victim of a scam. She complained to Halifax advising it failed in its duty of care and it should reimburse her under the Lending Standards Board's Contingent Reimbursement Model Code ('CRM Code').

Halifax issued a final response to Mrs I. It declined reimbursing Mrs I, advising it was a private civil dispute as Company H was a genuine company that went into liquidation and there was no conclusive evidence of fraud or that the firm was set up with the sole intention to defraud investors. Halifax also advised it didn't think it could have prevented Mrs I's loss at the time of making the payments either given the information available about Company H. Halifax directed Mrs I to the administrators of Company H and also explained that if further information came to light, such as legal or police action, which proved Company H were a scam from the start – then it would be happy to review its position.

Mrs I provided detailed evidence to support her contention as to why she considers she was the victim of a scam.

Our investigation so far

The overarching and main point made was that Company H (and its subsidiaries) were operating a very sophisticated scam.

The evidence from Mrs I was lengthy, so I have summarised what I consider to be the main points, although I would like to assure Mrs I that I have carefully considered everything that has been said and provided.

In summary, Mrs I says:

- Company H was taking money from individuals with no intention of providing, and knowingly unable to provide, the investment opportunity that had been promoted to her from January 2019 at the latest (so before Mrs I made her payments).
- Capital was extracted from the company in the form of assets.
- Priority charges were registered for non-existent loans, providing a company with the ability to remove assets.
- Subsidiary companies were sold on for far less than the value of assets within them.
- Company H was trading insolvent and as a result running a Ponzi scheme from January 2019 at the latest.
- Company H was showing loans as assets within their accounts to show healthier accounts.
- The subsidiary companies evidently manipulated their financial accounts by deliberately concealing bank accounts (potentially – amongst other things)
- On the ‘completed’ projects, a vast amount of money had not been used for property development and this is in addition to the vast amount paid in commissions to introducers.

The Investigator who considered this complaint didn’t recommend that it be upheld. She said there was insufficient evidence to conclude that Company H didn’t intend to provide the agreed investment or make the returns it set out – meaning she didn’t consider there was sufficient evidence to conclude that the definition of an APP scam had been met. This meant that she couldn’t ask Halifax to consider Mrs I’s complaint under the CRM Code for the two payments Mrs I made directly to Company H.

Mrs I didn’t agree with the Investigator’s findings, so the complaint has been passed to me to decide.

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.

In deciding what’s fair and reasonable, I’m required to take into account relevant law and regulations; regulatory rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

Where evidence is unclear or in dispute, I reach my findings on the balance of probabilities – in other words on what I consider most likely to have happened based on the evidence available and the surrounding circumstances.

In broad terms, the starting position at law is that a bank 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. But there are circumstances when it might be fair and reasonable for a firm to reimburse a customer even when they have authorised a payment.

Under the CRM Code, the starting principle is that a firm should reimburse a customer who is the victim of an authorised push payment ('APP') scam, except in limited circumstances. But the CRM Code only applies if the definition of APP scam, as set out in it, is met.

I have considered whether Mrs I's claim falls within the scope of the CRM Code, which defines an APP scam as:

"...a transfer of funds executed across Faster Payments...where:

- (i) The Customer intended to transfer funds to another person, but was instead deceived into transferring the funds to a different person; or*
- (ii) The Customer transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent."*

It is for Mrs I to demonstrate that she is the victim of an APP scam.

To decide whether Mrs I is the victim of an APP scam as defined in the CRM Code I have considered:

- The purpose of the payments and whether Mrs I thought this purpose was legitimate.
- The purpose the recipient (Company H) had in mind at the time of the payments, and whether this broadly aligned with what Mrs I understood to have been the purpose of the payments.
- Whether there was a significant difference in these purposes, and if so, whether it could be said this was as a result of dishonest deception.

Mrs I thought she was investing in a property development company. I haven't seen anything to suggest that she didn't consider this to be a legitimate purpose.

In reaching an answer on what purpose Company H had in mind, I've considered the wider circumstances surrounding Company H and any linked businesses.

The key information to this case is:

- Company H completed three different development projects. Company H also worked on other developments which it then sold to developers when it experienced financial difficulties. The completion of three development projects is strongly indicative of a legitimate business carrying out the activities I would expect of it.

I appreciate that Mrs I believes Company H completed these developments to draw in investors. But no persuasive evidence has been put forward to make me believe this is the more likely scenario.

- Points raised by Mrs I are largely based on assumptions and indicate poor business and financial management but don't go far enough to bring their claim within the scope of the CRM Code. Whilst Company H may have, for example, misrepresented certain information, failed to cooperate with administrators, not filed accounts and paid high commissions to introducers, there is currently no evidence to say this was done with the intention of scamming investors. A lot of adverse inferences have been drawn here.
- I've not seen anything from the administrators of the company to suggest the company was operating a scam or that the transactions carried out by the company and connected companies were done with any intention other than putting investors' funds towards development projects. Whilst transactions have been investigated, there is currently no evidence that funds weren't used for the intended purpose.
- I also haven't been provided with evidence following an investigation by any other external organisation which concludes that Company H intended to use Mrs I's funds for a different purpose.

Having carefully considered all the evidence provided to me, I'm not persuaded there is sufficient evidence to conclude that the purpose Company H had in mind when it took payments from Mrs I was different to hers. So, I consider Halifax acted fairly in not considering Mrs I's complaint under the CRM Code.

If material new evidence comes to light at a later date, Mrs I can ask Halifax to reconsider her fraud claim.

I've gone on to think about whether Halifax should be held responsible for Mrs I's loss for any other reason. In broad terms, the starting position at law is that a financial institution such as Halifax is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations (in this case the 2017 regulations) and the terms and conditions of the customer's account.

Taking into account the law, regulations, guidance, standards, codes, and industry practice I have referred to above, (including the PAS Code), Halifax should have been on the look-out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things) though. And, in some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, or provided additional warnings, before processing a payment.

While the payments Mrs I made to Company H were significant amounts (including the payment she made to another of her accounts – which Mrs I says then went to Company H), I'm not persuaded that Halifax would have had any concerns about the payments Mrs I made. Company H was a legitimate company and at the time the payment was made was paying returns to other investors. Detailed documentation was provided and there was nothing in the public domain at the time to suggest Halifax should have been concerned that Mrs I might be falling victim to a scam. Many of the points raised by Mrs I have come to light after detailed analysis years after they made the payments.

I'm really sorry to disappoint Mrs I, as I know she has lost a significant amount of money. But I'm not satisfied that I can fairly ask Halifax to refund her based on the evidence that is currently available.

My final decision

For the reasons given above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs I to accept or reject my decision before 1 May 2025.

Matthew Horner
Ombudsman