

The complaint

Mr A complains that Bank of Scotland plc trading as Halifax ("Halifax") won't refund a payment he made as part of a scam.

What happened

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

Mr A was made aware of an investment opportunity. It was explained that the company handling the investment (Company A) were able to buy gold from Dubai and sell it in the United Kingdom, at a profit, in their capacity as a wholesaler.

Satisfied with the information he'd seen regarding the investment, Mr A made a payment of £15,000 in May 2022 to Company A.

In March 2024, Mr A, via a professional representative, complained to Halifax that he'd fallen victim to a scam and that they failed to prevent his loss by intervening at the time of the payment.

Halifax investigated the matter but declined to reimburse Mr A on the basis that this was a civil dispute between Mr A and Company A. Unhappy with this response, Mr A's complaint was referred to our service through his professional representative.

An investigator looked into Mr A's complaint but didn't uphold it. The investigator said that they didn't think there was sufficient evidence to demonstrate Mr A had fallen victim to an APP scam and Halifax weren't liable to refund him.

Mr A disagreed with the investigator's findings and supplied further evidence and arguments, including the following:

- Company A knew they were in financial trouble, and it was irresponsible for them to take on further investments knowing they were insolvent.
- Mr A's payment likely funded Company A's immediate financial obligations or was misappropriated for their own benefit. This means that the purpose Mr A made the payment, and Company A received the payment, do not align.
- Police are investigating, and have made arrests in relation to, the conduct of Company A.

The investigator considered this additional information but still felt that this was a civil dispute between Mr A and Company A.

As the complaint couldn't be resolved by the investigator it was been passed to me for a decision.

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.

Mr A has provided detailed submissions to our service in relation to this complaint. In keeping with our role as an informal dispute resolution service, I will focus here on the points I find to be material to the outcome of Mr A's complaint. This is not meant to be a discourtesy to Mr A and I want to assure him I have considered everything they've submitted carefully.

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to be good industry practice at the time.

In broad terms, the starting position at law is that a bank 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.

Halifax are a signatory of the Contingent Reimbursement Model (CRM) Code which requires firms to reimburse customers who have been the victims of APP scams in all but a limited number of circumstances.

The relevant part of the CRM Code definition of an APP scam requires that the payment was made to: *"another person for what they believed were legitimate purposes but which were in fact fraudulent."*

The Code also explains that it does not apply to *'private civil disputes, such as where a Customer has paid a legitimate supplier for goods, services, or digital content but has not received them, they are defective in some way, or the Customer is otherwise dissatisfied with the supplier'*.

In order to reach my decision on this complaint, I've considered the purpose for which Mr A made, and Company A received, the payment. And, if there is a significant difference in these purposes, whether I can be satisfied that this difference was as a result of dishonest deception.

It's clear that Mr A made the payment to fund an investment in, and purchase of, gold. So, I've gone on to consider what purpose Company A had in mind and whether that was in line with the purpose Mr A made the payment.

Mr A has argued Company A were aware of their financial troubles at the time of his investment. To evidence this, Mr A has pointed to Company A's accounts becoming overdue on Companies House a few days after Mr A made his investment, as well as them voluntarily applying to be struck from Companies House's register around two months after his investment.

Without any further context as to why Company A and its directors took this action, I can't agree that it is evidence that they set out to defraud Mr A. I accept that the timing of his investment is particularly unfortunate, but it remains that Company A could plausibly have been attempting to trade themselves out of any financial difficulty they were encountering.

There could be a whole host of reasons behind the failure of Company A and the financial mismanagement or failure of a business doesn't mean that Mr A's payment would meet the

definition of an APP scam as per the CRM Code. The evidence and arguments put forward by Mr A do not clearly demonstrate that Company A received his payment with the knowledge they'd be unable to fulfil their agreement or that they were acting fraudulently.

Mr A states his payment likely funded Company A's immediate financial obligations or were misappropriated for their own benefit. This isn't supported by any documentary evidence, so I don't find this argument to be persuasive.

Mr A has provided evidence relating to current investigations by law enforcement. This evidence includes correspondence from a police officer confirming they've received reports regarding Company A and that they've made arrests as part of their investigation. But, importantly, this correspondence doesn't confirm that Company A, or its directors, have been prosecuted or found guilty of fraud, or that Mr A's funds weren't used in the agreed manner.

Furthermore, an investigation by a statutory body isn't, in and of itself, proof that fraud has occurred. So, I don't find this evidence persuasive that Company A set out to scam Mr A. Ultimately, Mr A hasn't provided sufficient evidence to demonstrate that his funds were not used in the purpose agreed by him and Company A, nor has he shown that Company A had set out to defraud him at the time of the payment.

Taking all the above into account, I'm not satisfied that Mr A has been able to sufficiently demonstrate that his funds weren't used for the agreed purpose or that Company A acted fraudulently. Because of this, I'm unable to agree that he is the victim of an APP scam as defined by the CRM Code.

Mr A feels that Halifax should've done more to prevent the payment at the time it was being made, given its high value and unusual appearance in contrast with his typical account activity.

I agree that Halifax ought to have discussed the payment with Mr A. But, even if they had intervened and discussed the payment with Mr A, I don't believe any information Halifax could've obtained would've suggested that he might be at risk of financial harm. I say this as Company A had been registered on Companies House for around three years, had a physical shop and Mr A had seen evidence of other investors receiving returns. As a result, I can't fairly say Halifax could've prevented his loss at the time of the payment.

Overall, I'm not persuaded that Mr A has fallen victim to a scam, based on the evidence available. I'm also satisfied that Halifax couldn't have prevented Mr A's loss at the time of the payment. Should any material new evidence come to light at a later date, for example from the liquidator of Company A or the police, Mr A can ask Halifax to reconsider his claim.

My final decision

My final decision is that I do not 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 A to accept or reject my decision before 26 June 2025.

Billy Wyatt
Ombudsman