

The complaint

Mrs S and Mr S are unhappy that Bank of Scotland plc (Halifax) won't refund the money they lost after they made an investment which they now believe to have been a scam.

Mrs S and Mr S have used a professional representative to bring this complaint to our service and they have made submissions on their behalf. For consistency, I'll refer to Mr S throughout, as I understand he is the lead complainant.

What happened

Mr S says he was introduced to a third party (that I'll call G) through a mutual friend in 2009. Around a year later, G completed some work at Mr S' home successfully. Some years later, in or around 2017, Mr S' friend told Mr S that he'd invested for some time in G's window and blind company (that I'll call C). He recommended Mr S also invest to make some extra money.

C was registered on Companies House and shows as dissolved in 2015, but Mr S understood C also traded under a different name. Mr S' investment involved him paying for resources and materials required to complete a project up front. Once the project was complete and payment had been received by G, Mr S would receive his investment back, together with a return.

In February 2018, Mr S agreed to invest £20,000, expecting a return of 25% and £15,000, expecting a return of 50%. He made two faster payments totalling £35,000 to G's personal account in February 2018. When Mr S stopped receiving returns and could no longer contact G, he suspected he'd been scammed.

Halifax considered Mr S' claim under the Contingent Reimbursement Model (CRM) Code, of which it's a signatory. The CRM Code sets out that Halifax should refund victims of authorised push payment (APP) scams, in all but a limited number of circumstances. However, Halifax said Mr S' payments pre-dated the introduction of the CRM code, so it didn't apply.

Mr S complained to Halifax in late 2023. Halifax didn't uphold Mr S' complaint because it said G was known to Mr S, and he had successfully invested with G in the past and received returns in line with what he expected. It noted it had intervened in November 2017, when Mr S made an undisputed payment to G, and based on this call and the returns Mr S had already received, it didn't think a further intervention in 2018 would have made a difference to preventing his loss.

Halifax told our service that it could see online that G was linked to a number of other companies involving blinds, suggesting he is a genuine businessman. Halifax also said Mr S made three prior successful investments with G, commencing July 2017, which he received returns for. It could see that the reference on the credits into Mr S' account from G said, 'loan repay'. However when it asked Mr S about this, he denied ever loaning G money and confirmed they were returns on his investments. Overall, it considered Mr S to have made a failed investment.

Our Investigator reviewed the evidence from both parties, but they too did not think Halifax ought to be held liable for Mr S' loss. They weren't persuaded Mr S' claim definitely met the definition of an APP scam – they thought there was a possibility the payments were genuine. But they also agreed that a further intervention from Halifax likely would not have made a difference to Mr S' decision to make the payments.

As no agreement could be reached, this case was passed to me to be decided.

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 agree with the outcome our Investigator reached and broadly for the same reasons. I'll explain why.

In reaching my decision, 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.

Mr S acknowledges he carried out the transactions in dispute. So, under the relevant regulations, namely the Payment Services Regulations 2017 (PSR 2017), the starting position is that Mr S is responsible for transactions he has authorised.

However, in some circumstances, where a consumer has fallen victim to an APP scam, it might be fair and reasonable for their bank to bear some liability for the consumer's losses, if its failures in relation to the disputed payments had a material impact on those losses.

But first and foremost, I'd need to be reasonably satisfied that Mr S made these payments as a result of an APP scam – as opposed to a civil matter, which is not something I'd expect the bank to get involved in.

I've considered the Financial Conduct Authority (FCA) handbook definition of an APP scam. That being:

a transfer of funds by person A to person B...where:

- (1) A intended to transfer the funds to a person other than B but was instead deceived into transferring the funds to B; or*
- (2) A transferred funds to B for what they believed were legitimate purposes but which were in fact fraudulent.*

There's no dispute that Mr S intended to transfer the funds to G, so I'm satisfied (1) isn't relevant here. But in order for Mr S' claim to fit the FCA's definition of an APP scam under (2), I'd need to be reasonably satisfied from the evidence that G intended to deceive Mr S by acting fraudulently with regards to the purpose for which he obtained Mr S' funds.

I accept that Mr S has parted with a significant sum of money, and I've no doubt this has caused him a great deal of distress. However, I've not seen sufficient evidence to persuade me that Mr S, more likely than not, made these payments as part of a scam. Ultimately, Mr S did successfully invest with G three times, prior to the disputed payments being made. And his statements show returns received into his account totalling £40,000 between September 2017 and February 2018. Whilst it's apparent that Mr S didn't receive the returns that he

expected from the investments he made in February 2018, I haven't seen any evidence to support that this was, more likely than not, a result of a fraudulent deception.

I accept it is *possible* that Mr S was scammed – but I don't think that's the most likely scenario here. However, even if I were to be persuaded that G scammed Mr S into making these payments, that doesn't automatically follow that Halifax would be liable for Mr S' losses. I'd need to be persuaded that any failing on Halifax's part was the cause of those losses.

I appreciate Mr S feels strongly that Halifax, considering the British Standards Institution's BSI: PAS Code, ought to have intervened on the payments Mr S was making, and this would have prevented his loss. As our Investigator explained, given Mr S' accounts showed he had made a number of undisputed transactions to G since mid-2017, and had received credits from G, this might have reasonably given Halifax some reassurance that the payments he was making were legitimate.

But even if Halifax had proactively contacted Mr S to make further enquiries about the payments he was making, I still have to consider that Mr S likely would have confirmed he'd met G many years prior, he'd successfully completed works at Mr S' property years before, he'd been investing with G for some months and he'd successfully received returns on those investments in line with what he'd been expecting. I think this information reasonably would have alleviated any concerns Halifax might have had that Mr S was at risk of being scammed. So, I don't find it's more likely than not, that Halifax should or could have prevented Mr S from proceeding with the payments he is now disputing.

And given Mr S first notified Halifax of his concerns about G in January 2020, I think it's highly unlikely it could have recovered Mr S' funds as they most likely had already been removed from the beneficiary account. But, even if funds did remain, Halifax would not be expected to attempt to retrieve funds which were sent as part of a legitimate investment.

Overall, I'm very sorry Mr S lost this money and I recognise how devastating it's been for him, especially against the backdrop of some of the difficult circumstances he said he was experiencing at the time. However, for the reasons I've explained, I don't find that Halifax is liable for his loss.

My final decision

My final decision is that I do not uphold this complaint about Bank of Scotland plc (Halifax).

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S and Mr S to accept or reject my decision before 3 January 2025.

Meghan Gilligan
Ombudsman