

The complaint

Mr and Mrs S complain Bank of Scotland plc trading as Halifax won't refund the money they say they lost to a scam.

What happened

The background to this complaint is well-known to both parties, so I won't repeat it in detail here. In summary, Mr and Mrs S say they fell victim to an investment scam after investing £145,000 with the alleged scammers into what they believed to be a property development company. They argue it was a Ponzi-style scheme and ultimately it had the hallmarks of a scam.

Halifax looked into the complaint but didn't uphold it because it said it was more a civil dispute than a scam. So, Mr and Mrs S brought their complaint to our service. Our Investigator reviewed the complaint and did not uphold it because they also thought the evidence showed this was a civil dispute.

However, Mr and Mrs S disagreed with this and so the complaint has been passed to me to issue 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.

Having done so, I have decided to not uphold this complaint. I know this will be disappointing for Mr and Mrs S, so I'll explain why.

I'm aware that I've summarised this complaint briefly, in less detail than has been provided, and in my own words. No discourtesy is intended by this. Instead, I've focused on what I think is the heart of the matter here. If there's something I've not mentioned, it isn't because I've ignored it. I'm satisfied I don't need to comment on every individual point or argument to be able to reach what I think is the right outcome. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts.

I am sorry to learn of Mr and Mrs S's loss of funds. However, it would only be fair for me to tell Halifax to reimburse the loss (or a proportion of it) if: I thought it reasonably ought to have prevented all (or some of) the payments they made – whilst ultimately being satisfied that such an outcome was fair and reasonable for me to reach.

Banks have various and long-standing obligations to be alert to fraud and scams and to act in their customers' best interests. These are predicated on there having been a fraud or scam. So, the first consideration in determining Halifax's obligations would be whether there is evidence to show Mr and Mrs S have been scammed.

As highlighted by Mr and Mrs S, Halifax have signed up to the voluntary Contingent Reimbursement Model (CRM) Code - which provides additional protection to scam victims.

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 an APP scam, as set out in it, is met. I have set out the definition of an APP scam as set out in the CRM Code below:

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

- (i) The Customer intended to transfer funds to another person, but were 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.

CRM Code is not retrospective and so I will only be considering this in relation to the payments Mr and Mrs S made on/after 28 May 2019. Having considered whether these particular payments fall under the scope of an APP scam as set out above, I don't think they do.

To determine if Mr and Mrs S have been the victim of a scam, I have to consider if their intended purpose for the payments were legitimate, whether the intended purposes Mr and Mrs S and the investment firm were broadly aligned and, if not, whether this was the result of dishonest deception on the part of the firm.

Based on the evidence available to me, it seems Mr and Mrs S were intending for the funds to be invested in specific building projects around the country. The paperwork they received prior to investing also looked to be professional and detailed. The firm was also listed on Companies House as being incorporated since 2011. Such a situation is not what we normally see from an investment scam. So, I see no reason why Mr and Mrs S would not have thought this was a legitimate investment they were sending their money to.

I've next considered whether the firm's intended purpose for the payments aligned with what Mr and Mrs S intended. On balance, I think what I've said above shows the company Mr and Mrs S made the payments to was a legitimate company involved in legitimate projects.

During this period in question, the firm was completing development projects around the country and I think this highlights that they intended to use Mr and Mrs S's invested monies in such projects. Although I've noted administration issues such as the accounts not being filed since 2018, this doesn't show a scam occurred. Similarly, I do not consider whether or not unregulated introducers were used to promote the investment indicates that the firm was setting out to defraud investors of their funds and not invest the funds into its projects.

Consequently, I'm satisfied the investment firm's intended purpose for the funds aligned with Mr and Mrs S's - and nothing I have seen indicates to me that they intended to defraud them. Instead, I think it's more likely that this was a failed investment. Therefore, I don't think it meets the definition of an APP scam. And I think Halifax acted reasonably when it treated the case as a civil dispute.

For completeness, even if I was persuaded this was a scam from the outset, I do not think Halifax could have prevented Mr and Mrs S's losses. I say this because, although I do think Halifax should have intervened, such as via human intervention, before allowing the payments to be made, I do not think it would have made any difference. I am persuaded Mr and Mrs S's belief in the investment would have impacted how they would have responded. I do not doubt their answers would have been open and honest, but they most likely would have alleviated Halifax's concerns as the investment at that time would have seemed a legitimate one. I'm not aware of any information Halifax could or should have known at the time which ought to have concerned it.

Halifax could have given Mr and Mrs S general fraud and scam advice in relation to investing. However, I do not think I can fairly say it would have been able to give them any information that would have led them to doubt what they already knew about what they were doing, including if they'd undertaken further reasonable research at the time. So, even if Mr and Mrs S had been questioned in more detail about the investment, I do not think it would have highlighted anything that would have caused concern or led Halifax to believe Mr and Mrs S were at risk of financial harm from a fraud or scam. So, even if Halifax did intervene and tell Mr and Mrs S to conduct further checks on their investment, I'm not persuaded they would have found any negative information.

I am sorry to hear about the vulnerable situation Mr S said he was in at the time of sending the funds. However, I have not seen a pattern emerge that would have highlighted to Halifax that any vulnerabilities may have been impairing their decision-making. I am empathetic towards Mr and Mrs S, but I do not consider the vulnerabilities I've been made aware, in isolation of any other clear indicators of a potential risk of financial harm, to be something that should have triggered further red flags for Halifax. And, as highlighted above, even had an intervention occurred I do not think it would have made any difference.

I do appreciate how disappointing this is for Mr and Mrs S. However, based upon the available evidence I don't think Halifax needs to compensate them for the losses they have incurred.

My final decision

My final decision is that I don't 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 and Mrs S to accept or reject my decision before 1 August 2025.

Lawrence Keath
Ombudsman