

The complaint

Mr and Mrs J complain about Bank of Scotland plc trading as Halifax.

The account the payment was made from is held in joint names, but as it was Mr J who made the payment, I will refer to him throughout the decision.

Mr and Mrs J say that Mr J fell victim to a scam and would like Halifax to refund them the money they have lost as a result.

What happened

Mr J came across an investment opportunity with a company I will refer to as HSG. The opportunity was investments in property development.

Mr J reviewed the company literature, and was satisfied with what he had found, and agreed to invest £10,000 in January 2021. Mr J understood that he would be receiving returns of around 10%, which would be paid monthly.

However, the returns never materialised, and Mr J believed that he had been taken in by an elaborate scam.

A complaint was made to Halifax, but it said that it didn't agree that Mr J had fallen victim to a scam – and that it was more likely the investment had failed. So it treated the loss as a civil dispute.

Mr and Mrs J brought the complaint to this Service, and our Investigator looked into things under the Lending Standards Board's Contingent Reimbursement Model ("CRM") Code. They agreed it was more likely a civil dispute between Mr and Mrs J and HSG. On balance, they did not think the evidence showed HSG didn't intend to act in line with the agreement or pay the funds described in the contract. And instead, they felt it was more likely this was an investment that failed.

Mr and Mrs J and their representatives disagreed and asked for an Ombudsman to make a final decision, so the complaint has been passed to me.

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 J, so I'll explain why.

It isn't in dispute that Mr J authorised the payment he made to HSG. Because of this the starting position – in line with the Payment Services Regulations (PSR's) 2017 – is that he is liable for the transaction. But he also says that they have been the victim of an authorised push payment (APP) scam.

Halifax has signed up to the voluntary 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 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 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.

I've therefore considered whether the Mr J made to HSG fall under the scope of an APP scam as set out above. Having done so, I don't think that they do. I'll explain why in more detail.

In order to determine if Mr J has been the victim of a scam, I have to consider if his intended purpose for the payments was legitimate, whether the intended purposes Mr J and HSG were broadly aligned and, if not, whether this was the result of dishonest deception on the part of the HSG.

Based on the evidence available to me, it appears Mr J was intending for the funds to be invested in specific building projects around the country. He then expected to receive regular returns on his investment of around 10% over the course of the investment. The paperwork he received prior to investing appeared to be professional and detailed, and HSG was listed on Companies House as being incorporated since 2011. So, I see no reason why Mr J would not have thought this was a legitimate investment.

I've gone on to consider whether HSG's intended purpose for the payments aligned with what Mr J intended. I've seen evidence that three building projects were completed by HSG. They also had other projects ongoing, however these had to be sold to other developers after they entered into financial difficulty. On balance, I think this shows HSG was a legitimate company involved in legitimate building projects and I think it's unlikely a scam company would have completed three large scale building projects at significant cost in order to entice more funds from investors.

Mr J's representatives have said HSG paid unregulated introducers a high level of commission which in turn made the level of interest offered to investors unlikely. They felt that a credit event was inevitable in the circumstances. However, whether or not unregulated investors were used to introduce the investment does not indicate that HSG set out to defraud investors of their funds, with no intention to invest the funds into building projects. And while I have not seen evidence of the levels of commission paid to introducers, I don't think there is a correlation between the level of commission and Mr J being the victim of a scam in the circumstances.

It should be noted that the liquidator for HSG has not provided any evidence to suggest they were acting fraudulently or operating a Ponzi scheme. They are still in the process of investigating a significant number of transactions made from HSG to various subsidiary companies, due to the way in which the HSG network was set up. However, at the moment there is no indication that these transactions were made with the intention of hiding these funds and not using them towards development projects.

Mr J's representatives have also highlighted that HSG had not filed accounts since 2018, before Mr J made his investment. And they felt Halifax should reasonably have picked up on this fact before processing the payments in question and revealed what they feel is a scam. While it appears HSG has not managed its finances correctly, I don't think this therefore means they were conducting a scam or that they intended to scam investors at that time. During this period in question, HSG were completing development projects around the country, and I think this highlights that they intended to use customer's investments in these development projects.

On balance, I think HSG's intended purpose for the funds aligned with Mr J's and nothing I have seen indicates to me that HSG intended to defraud him. Instead, I think it's more likely this was a failed investment, So 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.

It is possible that further evidence may come to light at a later date, which may indicate HSG was operating a scam. Should such evidence come to light, then Mr and Mrs J can complain to Halifax again, and refer the matter to this office, should she not be happy with the outcome.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J and Mrs J to accept or reject my decision before 18 April 2025.

Claire Pugh
Ombudsman