

The complaint

Mrs M complains that Bank of Scotland plc (trading as Halifax) didn't protect her from an investment scam.

Mrs M is being supported in making her complaint by a representative. But for ease, I'll only refer to Mrs M in this decision.

What happened

Mrs M has said she was introduced by a broker (which I'll refer to here as 'B') to an investment with a company (which I'll refer to here as 'H') in relation to Forex trading. Mrs M says 'B' was introduced to her by friends who had used their services before and believed them to be legitimate.

Prior to her decision to invest, Mrs M said she obtained further information from 'B' and arranged a face to face meeting. Mrs M said she also had direct contact with a representative from 'H'.

Another company (which I'll refer to here as 'P') facilitated the transfer of the funds she was investing to 'H'. Mrs M believes that 'B' was working on behalf of 'P' to introduce investors to the investment scheme.

Mrs M says 'H' promised a refund of the capital within 12 months, plus paying 5% interest per month.

Mrs M made the following payments as part of the investment:

Date	Amount
29/3/2018	£15,000
30/3/2018	£15,000

Mrs M received a receipt for the £30,000 from 'P' and confirmation that the funds had been invested. Between April 2018 and May 2019 Mrs M received monthly returns on her investment totalling £19,500. Her outstanding loss is therefore £10,500.

'H' and 'P' went into liquidation in June 2019 and March 2020 respectively. Mrs M has since tried to recover her funds by way of the liquidators.

On 21 September 2023 Mrs M made a complaint to Halifax. In short, she said she'd been the victim of scam and that Halifax hadn't done enough to protect her. Mrs M therefore held Halifax responsible for her loss. She wanted Halifax to refund her the lost funds together with 8% interest and £1,000 for the distress and inconvenience caused.

Halifax said it didn't consider the payments to represent fraud and would not reimburse the funds. It said both 'H' and 'P' were genuine companies that had now gone into liquidation, and that neither payment flagged on its fraud prevention system. Halifax considered this to be a failed investment. It also didn't think the payments were out of character for Mrs M's account.

Mrs M referred her complaint to the Financial Ombudsman.

One of our Investigators considered the complaint but didn't uphold it. In summary, she said Halifax should've intervened in the payments. But given there was no adverse information

about 'P' or 'H' at that time, and because Mrs M had carried out due diligence into 'B', with whom she'd checked the legitimacy of the investment, our Investigator didn't think any intervention by Halifax would've given it or Mrs M any obvious cause for concern.

Mrs M didn't agree. She said she couldn't afford to lose the sums of money involved here and would've heeded any warnings that Halifax provided – rather than relying on the assurances she'd been given from 'B'.

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've decided not to uphold this complaint. I know this is not the answer Mrs M was hoping for and so this will come as a disappointment. I'm really sorry to hear about the situation she's found herself in, and I can understand why she'd want to do all she can to recover the money she lost. But I need to decide whether Halifax can fairly and reasonably be held responsible for Mrs M's loss. Overall, I've decided that it can't be. I'll explain why.

But first, I would like to say at the outset that I have considered this case on its own merits and have summarised it in far less detail than the parties involved. I want to stress that no discourtesy is intended by this. It's simply because my findings focus on what I consider to be the central issues in this complaint – that being whether Halifax could've prevented Mrs M's loss.

I accept the £15,000 transactions Mrs M made were authorised payments. So, Mrs M is presumed liable for the loss in the first instance.

However, I consider that as a matter of good industry practice at the time (and now) that a bank, such as Halifax, ought to have taken steps to intervene prior to processing a payment instruction where it had grounds to suspect a payment might be connected to a fraud or a scam. Any such intervention should've been in proportion to the level of risk perceived.

The question then arises whether Halifax ought reasonably to have held such suspicions or concerns in relation to Mrs M's £15,000 payments — and if so, what might've been expected from a proportionate intervention.

So, taking all of this into account, I need to decide if Halifax acted fairly and reasonably in its dealings with Mrs M when she made the £15,000 payments. Specifically whether it should've done more than it did before processing the payments – and if it had, would that have made a difference. I also need to decide if Halifax could've reasonably recovered the lost funds.

I agree with Mrs M and our Investigator that there was justification here for an intervention by Halifax prior to processing Mrs M's first £15,000 payment instruction. This was a significantly larger than usual payment for Mrs M's account, and one being made to a new payee. The second payment was also made in close succession to the first, and left Mrs M's account with a minimal balance.

But for me to find it fair and reasonable that Halifax should refund the payments to Mrs M requires more than a finding that Halifax ought to have intervened.

I would need to find not only that Halifax failed to intervene where it ought reasonably to have done so — but crucially I'd need to find that but for this failure the subsequent loss would've been avoided.

That latter element concerns causation. A proportionate intervention will not always result in the prevention of a payment. And if I find it more likely than not that such a proportionate intervention by Halifax wouldn't have revealed the payments were part of a fraud or scam, then I couldn't fairly hold it liable for not having prevented them from being made.

In thinking about this, I've considered what a proportionate intervention by Halifax at the relevant time would have constituted, and then what I think the result of such an intervention would most likely have been.

To reiterate, Halifax's primary obligation was to carry out Mrs M's instructions without delay. It wasn't to concern itself with the wisdom or risks of her payment decisions.

In particular, Halifax didn't have any specific obligation to step in when it received a payment instruction to protect its customers from potentially risky investments. The investment in 'H' wasn't an investment Halifax was recommending or even endorsing.

Halifax's role here was to make the payments that Mrs M had told it to make. Mrs M had already decided on that investment. And I find that Halifax couldn't have considered the suitability or unsuitability of a third-party investment product without itself assessing Mrs M's circumstances, investment needs and financial goals.

Taking such steps to assess suitability without an explicit request from Mrs M (which there was not here) would have gone far beyond the scope of what I could reasonably expect of Halifax in any proportionate response to a correctly authorised payment instruction from its customers.

That said, I think it would've been proportionate here for Halifax, as a matter of good industry practice, to have taken steps to establish more information about these payments.

What matters here is what those steps might be expected to have uncovered at the time. While there may now be significant concerns about the operation of 'H' and 'P', and the legitimacy of the investment, I must consider what Halifax could reasonably have established during a proportionate enquiry to Mrs M about her payments back in March 2018. I cannot apply the benefit of hindsight to this finding.

Both 'H' and 'P' were genuine companies and there was no negative information about 'H' in the public domain until *after* it went into liquidation (June 2019). Having carefully reviewed all the material Mrs M has provided about 'H' and 'P', it appears that allegations that 'H' was operating as a scam *only* came to light during the liquidation process which included a court hearing in 2020. As such, this correspondence or information couldn't have been accessed by either Halifax or Mrs M at the time the £15,000 payments were made.

In summary, I've considered everything submitted and the arguments made, but while there may now be concerns about the legitimacy of 'H' and 'P', everything I've seen indicates that these concerns only began to surface in the public domain after the relevant payments were made by Mrs M.

I thought next about how Mrs M found out about the investment. Mrs M has told us that she was introduced to the investment by 'B' in 2017, whom she met through friends who'd used 'B's services before. She also said she met 'B' in person as well as a representative of 'H' to fully understand the legitimacy of the investment before deciding to proceed.

So, had Halifax asked Mrs M who'd advised her about the investment, then the involvement of 'B' would've likely come to light at the time. But I don't think this would've given Halifax any cause for concern. On the contrary, I think it's likely Mrs M would've told Halifax that she'd received information from 'B' about the investment and had spent some time researching 'B' and 'H' before deciding to invest.

Given this relationship between Mrs M and 'B'. I don't think, on balance, that any advice or warning from Halifax about the investment would've likely resonated with Mrs M or given her any cause for concern. And any concerns that Halifax might've raised about 'H' or 'P' would've likely, in my opinion, have been allayed by 'B'.

All things considered; I don't think it would've been readily apparent in March 2018 that 'H' might be fraudulent rather than a higher risk investment. I simply don't think Halifax could readily have uncovered information – especially through proportionate enquiry in response to

a payment - that would've led to significant doubts about the legitimacy of 'H' at that point in time. Neither do I think Mrs M could've uncovered such information at the time – she was not at fault here.

To recap, I can only reasonably expect any intervention or enquiries made by Halifax to have been proportionate to the perceived level of risk of 'H' being fraudulent. I don't think that a proportionate enquiry in March 2018 would've led to either Halifax or Mrs M considering 'H' being anything other than legitimate. With that in mind, and all things considered, I'm not persuaded that Halifax was at fault for carrying out the relevant payment instructions, or for not preventing Mrs M from making her payments.

In terms of trying to recover the lost funds; I'd expect Halifax to attempt this at the point it's alerted to the loss. But more than five years had passed by the time Mrs M contacted Halifax. Furthermore, both 'H' and 'P' had gone into liquidation by this point.

Therefore, I can't say Halifax had any reasonable prospect of recovering the funds in 2023 given the passing of time; and because 'H' and 'P' had gone into liquidation more than three years before.

I have a great deal of sympathy for Mrs M and the loss she's suffered. But it would only be fair for me to direct Halifax to refund her loss if I thought it was responsible – and I'm not persuaded that this was the case. And so, I'm not going to tell it to do anything further.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision **before 5 November 2024**.

Anna Jackson
Ombudsman