

The complaint

Mrs Y complains that Bank of Scotland plc trading as Halifax ('Halifax') won't refund the money she says was lost as the result of a scam.

What happened

In December 2020, Mrs Y's partner saw an advertisement for investments through a company I'll refer to as M.

Mrs Y says she looked online for information about M, saw positive reviews and found they were registered on Companies House. Mrs Y was interested and provided her contact information. Mrs Y says she had several calls with a contact at M before deciding to invest. She agreed to an investment of £12,000 with payments to M of £1,000 per month. Then in October 2021, after receiving the proceeds from the sale of her house, she invested £125,000.

Mrs Y says she had invested in a 5 year bond, which offered a return of 13.5%.

These are the payments that Mrs Y made as part of her investment. Initially Mrs Y made payments to N, who acted as an intermediary in relation to investments with M. Later she made payments directly to M.

Date	Pmt	Details of transaction	Amount
27.1.2021	1	Cheque – payable to N	£1,000
16.2.2021	2	Cheque – payable to N	£1,000
9.4.2021	3	Faster payment to N – made in branch	£2,000
17.5.2021	4	Standing order to N	£1,000
15.6.2021	5	Standing order to N	£1,000
15.7.2021	6	Standing order to N	£1,000
16.8.2021	7	Standing order to M	£1,000
15.9.2021	8	Standing order to M	£1,000
1.10.2021	9	Faster payment to M – made in branch	£125,000
15.10.2021	10	Standing order to M	£1,000
15.11.2021	11	Standing order to M	£1,000
16.11.2021		<i>Return of funds from M</i>	<i>£1,000 cr</i>
16.11.2021		<i>Return of funds from M</i>	<i>£1,000 cr</i>

The regular calls that Mrs Y was having with her contact at M stopped in November and she was told that he no longer worked for the company. So, Mrs Y cancelled her monthly standing order.

Ultimately, the contact information Mrs Y had for M stopped working and she hasn't received the promised returns or her capital back.

Through a professional representative, Mrs Y raised a scam claim with Halifax in December 2023.

Halifax investigated Mrs Y's scam claim but declined to refund her. Halifax say it was a genuine investment that failed, not a scam.

Mrs Y wasn't happy with Halifax's response, so she brought a complaint to our service.

An investigator looked into Mrs Y's complaint and recommended that Halifax refund all of the payments (excluding the two cheque payments), less the £2,000 that had been returned to Mrs Y. The investigator explained that all of the payments, except for the two cheques, were covered by the Contingent Reimbursement Model Code (CRM Code). Under the CRM Code, the evidence supported Mrs Y was the victim of an APP scam and was entitled to a full refund, as she had a reasonable basis for believing the investment was genuine. The investigator wasn't satisfied that Halifax should have been concerned or intervened when Mrs Y made the two cheque payments, so Halifax weren't liable to refund those two payments.

Halifax disagreed with the investigator's opinion and raised the following points:

- There isn't any evidence to show that the funds weren't used for their intended purpose.
- There isn't any evidence that Z (who took over M) were linked to M at the time Mrs Y made her payments.
- When Z took over M in October 2022, the company accounts were up to date.
- There isn't any evidence that this wasn't a legitimate investment.
- There isn't any evidence that M mislead investors about their lack of FCA authorisation.
- The accounts filed with Companies House suggest M had assets in excess of £800k.

Halifax asked for an ombudsman to review the case.

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.

Where there is a dispute about what happened, and the evidence is incomplete or contradictory, I've reached my decision on the balance of probabilities. In other words, on what I consider is most likely to have happened in light of the available evidence.

The cheques that Mrs Y paid to N

Halifax are a signatory of the CRM Code, but the CRM Code doesn't cover cash payments or cheques. So, I can't apply the provisions of the CRM Code to the cheques Mrs Y issued.

However, there is an obligation on Halifax to be on the lookout for, and to protect its customers from, potentially falling victim to fraud or scams. This includes monitoring accounts and identifying suspicious activity that appears out of character. In situations where potential fraud is identified, I would expect Halifax to intervene and attempt to prevent losses for the customer.

I'm not satisfied that the two cheques Mrs Y issued for £1,000 were so unusual or out of character compared to her previous account activity, that Halifax should've been concerned that she might be at risk of financial harm.

On that basis, I can't fairly say Halifax should've intervened or shouldn't have allowed the cheques to clear.

The other payments Mrs Y made to N and M – are they covered by the CRM Code?

The CRM Code requires firms to reimburse customers who have been the victims of Authorised Push Payment (APP) scams, in all but a limited number of circumstances.

I'll start by saying that the involvement of a genuine intermediary, in this instance N, does not exclude the possibility of the CRM Code applying. The CRM Code doesn't require the initial recipient of a payment to be an account owned by and for the benefit of the fraudster. Here I'm persuaded the funds were under the control of M at the point they arrived at the intermediary N.

Mrs Y doesn't appear to have a customer relationship with N, and I'm satisfied that N was acting on behalf of M and not Mrs Y. The money was out of the Mrs Y's control, so the payments made here are capable of being covered by the provisions of the CRM Code.

But, the CRM Code defines what is considered an APP scam as "where the customer transferred funds to another person for what they believed were legitimate purposes, but which were in fact fraudulent".

In order to decide whether the circumstances under which Mrs Y made the payments, meets the definition of an APP scam, I need to consider:

- The purpose of the payments and whether Mrs Y thought this purpose was legitimate.
- The purpose the recipient (M) had in mind at time of the payments and whether this was broadly in line with what Mrs Y understood the purpose to be.

And, if I decide there was a significant difference in these purposes, whether I'm satisfied that was as a result of dishonest deception.

In this case, Mrs Y was making the payments to M to invest in a 5 year bond, and I haven't see anything that would suggest that Mrs Y didn't think this was legitimate.

So, I've gone on to consider what purpose M had in mind and whether it was in line with what Mrs Y thought.

In reaching an answer on what purpose M had in mind, I've considered the wider circumstances surrounding M, it's directors and any linked businesses including Z. The key information to this case is:

- There was a FCA warning issued in October 2021 against M for providing financial services when not authorised to do so. This means they didn't have the relevant permissions. But, I appreciate that this was issued towards the end of the payments Mrs Y made.
- While M was a UK incorporated company listed on Companies House, they haven't posted accounts since 2021 and the accounts that they posted in 2021, weren't audited. I wouldn't expect this of a company that was trading legitimately. Halifax has referred to the accounts of 2021, saying it showed assets/investments of over £800,000. But, as the accounts weren't audited, I'm not satisfied that I can fairly say this proves M was operating legitimately.

- There is a lack of evidence to support that M was a genuine company, and no evidence that they were investing in line with what Mrs Y and the other investors believed.
- The nature of business listed on Companies House for M was development of building projects and activities auxiliary to financial mediation. The investment literature referred to lending to sophisticated renewable energy investors and experienced renewable energy developers. But there is no evidence that any investment of this type was made with Mrs Y funds. So, it doesn't appear that M's purpose for the funds was the same as Mrs Y's.
- In October 2022, M was taken over by Z and there is limited information about this company. Also, M described Z as a "leading private family office operating out of Asian markets" and that they had a strong investor network. But, there is a lack of evidence that Z was a legitimate company, or that backs up M's claims – which is concerning. Also, Z told investors that the FCA warning only related to clone companies impersonating M – which doesn't appear to be true.

Taking all of these points into consideration as a whole, I'm not satisfied that there is sufficient evidence to say Mrs Y's funds were used in the manner agreed by M or that the purpose M had in mind was the same as Mrs Y's. And, based on the evidence, I think it's more likely than not that M obtained the funds from Mrs Y through dishonest deception. On that basis, I'm satisfied that Mrs Y's payments meet the definition of an APP scam as per the CRM Code.

What refund is Mrs Y entitled to under the CRM Code?

Under the CRM Code, a bank may choose not to reimburse a customer if it can establish that:

- The customer made payments without having a reasonable basis for believing that the payee was the person the customer was expecting to pay; the payment was for genuine goods or service; and/or the person or business with whom they transacted was legitimate.
- The customer ignored effective warnings, by failing to take appropriate action in response to such an effective warning.

I'm satisfied that Mrs Y did have a reasonable basis for believing this was a genuine investment for the following reasons:

- All of the literature and marketing material that she received was professional and looked legitimate. Mrs Y was also given an account manager who she dealt with in relation to her payments.
- The returns that Mrs Y was promised weren't too good to be true. Also, most of the payments were made through an intermediary N, who was a genuine FCA regulated company. This provided reassurance about the legitimacy of the investment.
- When Mrs Y made the payment of £125,000 in the branch, she was taken into a room to discuss the payment with a manager. Halifax don't have notes of what was discussed but have told us that their staff undertook checks into M, including checking the FCA website, and found nothing that would indicate the investment wasn't genuine. Mrs Y says she was reassured because the branch staff told her everything looked legitimate.

So, I'm not satisfied that Halifax can rely on this exception to reimbursement.

Halifax weren't required to provide a warning on the payments of £1,000 and £2,000 that Mrs Y made to M and N. But they should've provided an effective warning when Mrs Y made the payment of £125,000.

Halifax say that they had concerns when Mrs Y made the payment of £125,000 in branch and that they transferred her to their fraud team to discuss the payment. However, they don't have a copy of the call recording or any notes about what was discussed. Halifax have provided a "high value checklist" which they say would've been completed, but don't have the one completed at the time and signed by Mrs Y.

Halifax haven't evidenced that they provided Mrs Y with an effective warning on the payment of £125,000, so I'm not satisfied that they can rely on that exception to reimbursement either.

As no exceptions to reimbursement apply, Mrs Y is entitled to a full refund under the CRM Code for payments three to 11.

Mrs Y made payments totalling £134,000 (excluding the two cheque payments) and she received back £2,000 (as indicated in the table above). So, the refund Halifax should pay Mrs Y is £132,000.

As Mrs Y has been deprived of the use of these funds, she is entitled to simple interest paid on the refund of 8%, calculated from the date Halifax declined Mrs Y's claim under the CRM Code until the date of settlement.

Mrs Y's vulnerability

Mrs Y's representative has raised points regarding Mrs Y's vulnerability at the time she made the payments. However, as I'm already refunding Mrs Y in full under the CRM Code for the payments covered by it, I don't need to decide whether her circumstances meet the bar for her to be considered vulnerable under the Code.

In relation to the two cheques that Mrs Y paid to N, I haven't seen anything that says Halifax were aware of any vulnerabilities at the time Mrs Y issued these cheques. So, I can't fairly say they should've taken any additional steps or that they acted unreasonably in allowing the processing of the cheques.

Putting things right

To put things right I require Bank of Scotland plc trading as Halifax to:

- Refund Mrs Y in full, which is £132,000 and
- Pay simple interest on the refund of 8%, calculated from the date Halifax declined Mrs Y's claim under the CRM Code until the date of settlement.*

*If Halifax considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mrs Y how much it's taken off. It should also give Mrs Y a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

My final decision is that I uphold this complaint against Bank of Scotland plc trading as Halifax and require them to compensate Mrs Y, as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms Y to accept or reject my decision before 8 May 2025.

Lisa Lowe
Ombudsman