

The complaint

Ms D has complained that Bank of Scotland plc (trading as Halifax) won't refund the money she lost in what she says was a scam.

What happened

In 2016, Ms D was introduced to an investment in a European property firm. She was provided with literature, and invested £10,000 by cheque into a fixed-term loan note with a 10% annual return and a potential bonus if carried to term.

Ms D says she didn't get any returns. A few years later, the firm fell into liquidation. In late 2023, Ms D complained to Halifax, saying she was scammed. Halifax didn't think they were liable for the loss.

Our Investigator looked into things independently and didn't uphold the complaint. They found that Halifax didn't have sufficient reason to think this was a scam at the time. Ms D didn't agree, so the complaint's been passed to me to decide.

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.

In doing so, I have read and carefully considered everything which both sides have provided. Though I won't necessarily address every point. We're an informal alternative to the courts, here to resolve complaints more quickly and with minimal formality. So I'll keep my decision focused on what I've found to be the key points.

From what I can see, investigations are still ongoing into the property firm in question, and it has not been established for certain whether they were really operating a scam or not. But given the concerns that have been raised about the firm, and given that I wish to address the crux of Ms D's complaint, for the purposes of this decision I will assess things on the basis that she might've been scammed.

I appreciate that it cannot have been easy for Ms D to lose such an amount of money, not least if it's possible it may have been done fraudulently, and so she has my sympathy. I also appreciate why she feels her money should be returned. It's worth keeping in mind that it's the scammers who are primarily responsible for any given scam, and who would really owe Ms D her money back if this were a scam. But in this complaint about Halifax, I can only look at what Halifax are responsible for. Having carefully considered everything that both sides have said and provided, I can't fairly hold Halifax liable for the lost money. I'll explain why.

It's not in dispute that Ms D authorised the payment involved. So although she didn't intend for the money to end up with what she now thinks are scammers, under the Payment Services Regulations she is liable for the loss in the first instance. And broadly speaking, Halifax had an obligation to follow her instructions – the starting position in law is that banks are expected to process payments which a customer authorises them to make.

Halifax should have been on the lookout for payments which could be the result of fraud or scams, to help prevent them. I also accept that a balance must be struck between identifying and responding to potentially fraudulent payments, and ensuring there's minimal disruption to legitimate payments. Having thought carefully about the circumstances of this case, such as the size of the payment relative to Ms D's normal account activity, I think Halifax should probably have made further reasonable enquiries about it with Ms D at the time.

However, even if Halifax had flagged the payment and given Ms D proportionate scam warnings or asked reasonable questions about her reasons for paying, I think it's most likely that they would not have uncovered a scam, and that Ms D would still have gone ahead.

I say this because Ms D was paying a longstanding company, which at that time had no relevant warnings linked to it. While it was based abroad, the country was a major EU power and trading partner with stable governance, not a country which should cause alarm. While the investment was unregulated, the firm's literature was upfront about this. It was not hidden, Ms D would have reasonably already been aware of this fact, and legitimate unregulated investments do exist. The literature was professional and would've looked legitimate, and it was prepared and approved by a longstanding FCA-regulated business. It did not say the investment was a sure thing, and instead directed potential investors to a risk warning, reminded them that this was unregulated and was not covered by schemes like the FSCS or our service, and warned that investors must satisfy themselves that they can absorb the risks involved. The returns on offer, while substantial, were not so unviable or excessive that I'd expect them to have been of particular concern to Halifax – bearing in mind it was set out clearly that this money was being given as a loan, where a set level of interest is normal and can commonly sit in this region. And the subsequent investigations, warnings, and so on hadn't happened yet at the point of this payment. Indeed, I can see that other FCA-regulated businesses were directing customers to this firm, and that Ms D was still treating it as genuine as late as 2020. So I don't seem to have a reasonable basis to say that Halifax should've known it was a scam as far back as 2016.

Ms D's representatives made a number of arguments about the way the property firm operated. But I would not expect Halifax to have carried out a deep dive into the firm's accounts, how it allocated funds, and so on. Halifax were not giving Ms D investment advice, they were just processing her payment here. Similarly, the representatives made arguments around the suitability of such a high-risk investment. But high-risk investments are not necessarily scams. And again, as Halifax were not giving Ms D investment advice here, I would not expect them to have assessed the investment's suitability.

I do appreciate that with the benefit of hindsight, Ms D now thinks this was a Ponzi scheme or similar. But back in 2016, there were not sufficient hallmarks of a scam for Halifax to have picked up on here. Ultimately, I don't see that Halifax would've had sufficient basis to conclude this was a scam at the time.

So I would not expect Halifax to have blocked the payment outright, nor for proportionate scam warnings to have most likely dissuaded Ms D. At the time, the matter would've looked legitimate to her, having been provided with professional literature prepared and approved by an FCA-regulated business for a longstanding company. I cannot reasonably conclude that Ms D would have avoided this loss but for any clear error on Halifax's part.

Next, I've considered whether Halifax could have reasonably done more to recover Ms D's money after she told them she thought this was a scam. But the firm involved was based outside the UK, and had already gone into liquidation long before she reported this to Halifax. I'm afraid it was not realistically possible for Halifax to recover the money here.

So while I'm very sorry to hear about the money Ms D lost, I don't think Halifax should be held responsible for that loss. And so I can't fairly tell Halifax to reimburse Ms D in this case.

My final decision

For the reasons I've explained, I do not uphold this complaint.

This final decision marks the end of our service's consideration of the case.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms D to accept or reject my decision before 2 June 2025.

Adam Charles
Ombudsman