

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 into a UK-based environmental firm. She was provided with literature. She invested £10,000 by cheque into a corporate bond with an annual return of under 8% for the initial 5 years, then at a moderately increased rate if kept for an additional 2 years.

Ms D says she didn't get her returns. 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. 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.

There is a high legal threshold or burden of proof to conclude that someone was intentionally trying to commit fraud. And here, I've not found or been given much evidence to substantiate that the environmental firm set out to defraud investors. Investments can fail for a number of reasons, such as financial difficulties, external problems they didn't predict, mismanagement and so on. The firm's failure to pay Ms D's returns is not, on its own, proof that it was intending to defraud her from the start. Instead, it seems likely that this is a civil dispute over a failed investment. I say this because:

- The firm is a real, longstanding UK company which is still active. This was not a case where, for example, Ms D was tricked into investing into a non-existent firm.
- The firm were actually attempting to carry out activities they said they would, such as by getting planning permission, and even won government backing.
- The firm was supported by a longstanding FCA-registered business.
- Ms D was provided with detailed information and a written agreement.
- The firm continued to send investors updates over the years. This is not a case where, for example, a scammer took the money and disappeared.

- The firm offered investors the opportunity to redeem their bond early. It is unlikely a scammer would do this if they were intending to run away with the money.
- While I have found some evidence that some people were misadvised into investing into such a high-risk project, I've found no relevant warnings, convictions, or other public evidence which shows that this firm were actually defrauding people.

As such, I don't seem to have sufficient evidence that this was actually a scam. It seems likely that Ms D simply made a bad investment, possibly after getting poor advice. And I can completely understand why that would be dismaying for Ms D, and why she'd want her money back. But Halifax wouldn't be responsible for that.

With that said, even if I were to conclude that this was a scam, I'm afraid I still couldn't reasonably hold Halifax responsible for the loss. 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 investing in a longstanding UK-based company who'd won government backing. Her payment was going to a longstanding FCA-regulated UK-based registrar supporting the firm. Ms D was given detailed, professional documents which looked legitimate and were approved by the FCA-regulated business. While the investment was unregulated, the firm's literature was upfront about this. It was not hidden, Ms D would reasonably have been aware of this fact already, and legitimate unregulated investments do exist. The literature did not say the investment was a sure thing. Instead, it set out a list of significant risks at length, warned that the bond was only secured against the company's assets and had no external guarantee, set out the possibility it could default, and repeatedly told investors to consider the risks carefully and seek independent financial advice. 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 the nature of the investment. And, as I noted before, we don't seem to have sufficient evidence that this was a scam now, with the benefit of hindsight. It would've been even harder for Halifax to identify it as one back in 2016, before things had even gone wrong.

While the investment may have been high-risk, it seems that was already set out for Ms D in the literature, and it wouldn't necessarily have meant it was a scam. And Halifax were not giving Ms D investment advice here, they were just processing her payment. So I would not have expected Halifax to have assessed the investment's suitability for her.

I do appreciate that Ms D now suspects this was a scam. But back in 2016, it seems 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 approved by an FCA-regulated business for a longstanding UK 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. As above, it's not clear that this was a scam, so it's not clear that Halifax had grounds to recover her money at all. But in any case, Ms D only reported the matter seven years after her payment, by which time the party she paid – the registrar – had already gone into liquidation years before. So I'm afraid it wasn't realistically possible for Halifax to recover the money from the receiving bank.

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