

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 2018, Ms D was introduced to an investment into a UK-based natural resources firm, who were working in partnership with a US-based company. She was provided with literature. She invested £10,000 by bank transfer into a fixed-term loan note with a 12% annual return.

Ms D received returns until 2020. A few years later, the firm was wound up due to insolvency, and 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 natural resources firm set out to defraud investors. Investments can and do fail for a number of reasons, even in industries which are otherwise doing well. For example, due to external problems they didn't expect or poor management. The fact that the firm fell into difficulties and stopped paying Ms D's returns is not, on its own, proof that it was intending to defraud her from the start.

Here, the natural resources firm was an established UK company, working with another real company. From what I can see, it looks like they really were extracting natural resources in the place they said they were. They provided Ms D with a written agreement, gave her returns for some time, and provided updates until at least 2022. They also offered her confirmation of their funding from a solicitor, though Ms D turned that down. And I've not found any relevant warnings, convictions, or other evidence which reasonably substantiates that the firm were actually defrauding people.

So it seems likely that this was just a company which fell into difficulties and became unable to repay its investors, rather than a scam. It may be that Ms D made a bad investment, possibly after receiving some 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 paying an established UK company with seemingly no relevant warnings or other significant negative information publicly-available against them at the time. Ms D was given professional documents which looked legitimate, and a written agreement. 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. It also set out that the returns were at a fixed rate (as loan interest often is) rather than guaranteed, directed potential investors to a memorandum outlining the risks, warned that investors must satisfy themselves that they can afford to absorb the risks involved, and suggested they got 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 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 Ms D had been introduced to the investment by an introducer she'd been using for about two years by that point, who she'd invested through at least twice before, and who her representatives said she felt able to rely on. Further, as I noted before, we don't seem to have sufficient evidence to confirm that this was a scam even now, with the benefit of hindsight. It would've been even harder for Halifax to identify it as one back in 2018, before things even went wrong.

While the investment may have been high-risk, high-risk investments are not necessarily scams, and it seems that Ms D was directed to look at the risks. And Halifax were not giving Ms D investment advice, they were just processing her payment here. 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 2018, 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 from a registered UK company who she'd been introduced to by a party she trusted. 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 five years after her payment, by which time the firm had been ordered to wind up due to insolvency. 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