

The complaint

Mrs D 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 2021, Mrs D was introduced to an investment opportunity by a broker. I'll refer to the company offering the investment as E.

Mrs D understood the investment to be a one year bond with a return of 11.75% per annum. E was investing in, and loaning to, research and development companies in the medicinal cannabis sector.

Mrs D made two payments from her Halifax account of £5,000. The first was in November 2021, the second was in January 2022. Mrs D also made another payment from an account she held with another bank.

Mrs D received three returns of £587.50 each. Mrs D didn't receive any further returns or her original investment back.

In March 2024, through a professional representative, Mrs D raised a scam claim with Halifax asking that they refund her.

Halifax declined to refund Mrs D, saying E is a genuine company and Mrs D has a civil dispute with them.

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

An investigator looked into Mrs D's complaint but didn't uphold it. The investigator wasn't satisfied that Mrs D had been the victim of an APP scam, as defined by the Contingent Reimbursement Model Code (CRM Code). They also weren't satisfied that Halifax could've prevented Mrs D's loss at the time she made the payments.

Mrs D disagreed with the investigator's view and raised the following points:

- There isn't any evidence that E invested in or loaned money to other companies as per the terms of the investment.
- It's unclear what investors' funds were used for.
- The rate of return offered by E was unrealistic.
- There isn't any evidence that E operated as a legitimate business, as there is no evidence of them trading or generating an income.
- E failed to meet the repayments due to investors and investors have lost money.

Mrs D 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.

I realise that Mrs D has suffered a financial loss, but I'm not making a decision as to whether E owes Mrs D money. I'm deciding whether Halifax can fairly be held liable for that loss.

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to be good industry practice at the time.

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.

In broad terms, the starting position at law is that a bank such as Halifax are expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations (in this case the 2017 regulations) and the terms and conditions of the customer's account.

Is Mrs D entitled to a refund under the CRM Code?

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

But, the CRM Code does not apply to private civil disputes, and 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 D made her payments meets the definition of an APP scam, I need to consider:

- The purpose of the payments and whether Mrs D thought this purpose was legitimate.
- The purpose E had in mind at the time of the payments and whether this was broadly in line with what Mrs D 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.

Mrs D was making payments to E as part of an investment. I haven't seen anything that suggests Mrs D didn't think this was a legitimate purpose.

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

In reaching an answer on what purpose E had in mind, the key information to this case is:

- E are a UK incorporated company who are still active. Their accounts are overdue, but they haven't dissolved, gone into administration or been struck off. So, it's possible that Mrs D can still recover her funds from E.
- It appears that a separate bond and ISA administration company, who are FCA

regulated, facilitated investments into E. This doesn't support that E set out with the intention to defraud Mrs D.

- There is no evidence of an external investigation into E or E's directors, which I would expect to see in a situation where E defrauded its investors. Also, an external investigation would most likely be able to identify what investors' funds were used for, and E's intentions in obtaining those funds.
- We've received third party information from the receiving bank (where Mrs D funds were paid to) which I can't share due to data protection legislation. But that evidence doesn't support Mrs D's claim that she has been the victim of an APP scam.
- While the rate of return is high, this in itself, doesn't show that E took Mrs D's funds with a different purpose in mind, or that Mrs D's funds weren't used for the intended purpose.
- A failed firm or investment doesn't necessarily mean that Mrs D was the victim of an APP scam. It's possible that E has failed due to mismanagement or financial difficulties at a point after Mrs D made her payments.
- It's possible that material new evidence may come to light at a later date, for example, after an investigation by Trading Standards, a liquidator or the police. If it does, Mrs D can ask Halifax to reconsider her claim.

Mrs D has raised a number of concerns about E, including their finances and accounting, but this hasn't been supported by evidence that points to E's intent at the point Mrs D made her payments. And, while I appreciate that Mrs D along with other investors may have suffered a financial loss, that doesn't mean that E obtained Mrs D's funds by dishonest deception.

Having considered all of the points above as a whole, I'm not satisfied that Mrs D has evidenced that her funds weren't used for the intended purpose or that her payments meet the definition of an APP scam under the CRM Code. So, I can't fairly hold Halifax liable under the Code's provisions.

Is there any other reason I could hold Halifax liable for Mrs D's loss?

Taking into account the law, regulators rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider Halifax should fairly and reasonably have been monitoring accounts and any payments made or received to counter various risks, including preventing fraud and scams.

Also, I'd expect Halifax to have systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). And where a potential risk of financial harm is identified, to have taken additional steps, or made additional checks, or provided additional warnings, before processing a payment.

But, even if I was satisfied that Halifax should've intervened when Mrs D made these payments, I'm not persuaded that Mrs D's loss would've been prevented.

I say this because I'm not satisfied that Mrs D would've shared any information with Halifax that would've concerned them. As part of an intervention, I would expect Halifax to have asked Mrs D questions about the investment, how she found it and what research she had done. In this case, Mrs D was introduced to the investment by a broker, there was a FCA regulated administration company involved, and E was an active UK incorporated company. So, I'm not satisfied that the information Mrs D would've provided should've concerned Halifax or meant they acted unreasonably in following her payment instructions.

I'm really sorry to disappoint Mrs D, but I'm not satisfied that I can fairly hold Halifax liable or ask them to refund her.

My final decision

My final decision is that I don't uphold this complaint against Bank of Scotland plc trading as Halifax.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D to accept or reject my decision before 25 June 2025.

Lisa Lowe
Ombudsman