

Complaint

Mr R is unhappy that Halifax didn't reimburse him after he told it he'd fallen victim to a scam. He has brought this complaint with the assistance of a professional representative. For simplicity's sake, I've generally referred to Mr R in the text of the decision.

Background

In 2018, Mr R received an unsolicited email offering various investment opportunities. He expressed interest and was subsequently sent information about several schemes, including one involving loan notes with a company I'll refer to as Company A. He was told the scheme would pay him guaranteed returns of 15% over a three-year term. He understood that his funds would be used for property development projects across the UK.

Since he was happy to proceed, Mr R made the following payments to Company A:

- £10,000 on 24 May 2018
- £10,000 on 2 August 2019
- £10,000 on 12 September 2019

Company A fell into administration just a couple of years after the third payment. Mr R concluded that he must have been the victim of a scam. He notified Halifax, but it didn't agree to reimburse him. It said this appeared to be a failed investment rather than a scam, and so it considered it a civil dispute between Mr R and Company A.

Mr R wasn't happy with that response and so he referred his complaint to this service. It was looked at by an Investigator who didn't uphold it. Her findings were broadly along the same lines as those of the bank. Mr R disagreed with the Investigator's opinion and so the complaint has been passed to me to consider and come to a final decision.

Findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Under the relevant regulations, the starting position is that customers are responsible for payments they have authorised. Since Mr R authorised the payments in question, he is presumed liable for them. However, this is not the end of the matter. Banks are also expected to monitor account activity for signs of potential fraud. If a bank identifies indicators of risk, such as a payment being unusual or out of character, it should respond to that risk in a proportionate way. The response could range from presenting a written warning during the payment process or temporarily pausing the transaction while it contacts the customer to discuss the circumstances. The nature and level of intervention should reflect the level of risk involved. Whatever steps are taken, the bank's response must ultimately be proportionate to the warning signs it has identified.

The first payment was made in May 2018, before the introduction of the Contingent Reimbursement Model (CRM) Code, so it doesn't fall within the scope of those rules. However, the second and third payments were made after the CRM Code came into effect and are therefore covered by its provisions. The first payment was sufficiently unusual and out of character for Mr R that I think Halifax ought to have taken further steps to verify its legitimacy before allowing it to proceed. That said, I agree with the Investigator that, even if the bank had intervened, it's unlikely this would have made a difference.

In any event, even if I had concluded that Halifax failed to query the payment with Mr R, the core of this complaint is the allegation that the bank failed to protect him from fraud by not meeting the obligations I've described above. I can't fairly conclude that Halifax failed in that duty unless I'm also satisfied that the investment itself was, in fact, fraudulent. Based on the evidence available, I'm not persuaded that was the case.

To find that this was fraud, I'd expect (a) there to be a misalignment between the purpose for which Mr R made the payment and the purpose for which it was procured by Company A; and (b) that difference to have been due to dishonest deception on the part of Company A. The key consideration here is what the intentions were of the directors of Company A. I obviously can't know what they were for sure, so I have to look at what the other available evidence shows and use that to infer what their intentions likely were.

I've carefully reviewed what both Mr R and Halifax have told us, as well as the information available from third parties such as the company's liquidators. I haven't seen persuasive evidence that Company A never intended to carry out the development work or that it didn't attempt to do so. In fact, I've seen evidence that Company A completed at least three large-scale projects and was involved in others that were later transferred to different developers.

It's been suggested that Company A paid unusually high commissions to unregulated introducers and that this made the returns it offered unrealistic. That may be true, but it doesn't necessarily mean the business was fraudulent or that Company A never intended to deliver what it promised. There are other equally plausible explanations – such as poor financial planning, overly optimistic business modelling, or mismanagement – that could account for the high commission structure and the failure to deliver returns, without indicating fraudulent intent.

I accept that Company A hasn't filed audited accounts since 2018, and that there are concerns about governance and transparency. In my view, these are more indicative of mismanagement than of any deliberate criminal intent. The liquidators have said they are still investigating thousands of transactions, but to date they haven't provided any evidence that the company was operating a scam or Ponzi scheme.

Mr R's representatives argued that, had Halifax questioned the first payment more thoroughly, it might have discovered that the investment was unregulated or potentially a UCIS (Unregulated Collective Investment Scheme). While I understand their point, it's important to note that it isn't unlawful for a consumer to invest in an unregulated scheme. Such investments may carry greater risk, but that doesn't mean the bank was under an obligation to prevent Mr R from proceeding. It wasn't expected to protect Mr R from making a high-risk investment decision.

Overall, I'm not persuaded that the evidence shows it's more likely than not Mr R was the victim of a scam. The evidence suggests that the funds were used (at least in part) for the intended purpose of property development. I realise this will be disappointing, and I sympathise with Mr R. It's understandably upsetting to have lost a significant sum of money in circumstances like these. However, for the reasons I've set out above, I don't think it would be fair or reasonable to require Halifax to reimburse him.

Final decision

For the reasons I've explained above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 16 July 2025.

James Kimmitt
Ombudsman