

The complaint

Mrs M complains that Bank of Scotland plc (trading as Halifax) didn't protect her from an investment scam.

Mrs M is being supported in making her complaint by a representative. But for ease, I'll only refer to Mrs M in this decision.

What happened

Mrs M's husband (Mr M) introduced her to an investment with a company (which I'll refer to here as 'H') in relation to Forex trading. The investment offered a refund of the capital in 12 months, paying interest at 5% a month.

Another company (which I'll refer to here as 'P') facilitated the transfer of the funds Mrs M was investing in 'H' via a payment processor (which I'll refer to here as 'MA'). Mrs M has said that 'P' was the 'broker' that initially introduced Mr M to the investment in 'H'.

Mrs M has confirmed that £23,000 transferred into her Halifax account on 30 August 2018 came from Mr M's account from their joint savings.

Mrs M made the following faster payments as part of the investment:

Date	Amount
31/8/2018	£13,000
31/8/2018	£10,000
Total	£23,000

Mrs M has said that a further payment of £7,000 was made towards the investment from Mr M's bank account.

Between October 2018 and March 2019 Mrs M received six monthly returns on the investment totalling £9,000. But since then, she says she's been unable to recover any funds from 'P' or 'H'. Mrs M's total loss is therefore £14,000.

'H' and 'P' went into liquidation in June 2019 and March 2020 respectively.

On 22 November 2023 Mrs M made a complaint to Halifax. In short, she said she'd been the victim of a scam, and that Halifax hadn't done enough to protect her. Mrs M therefore held Halifax responsible for her loss. She wanted Halifax to refund her the £14,000 together with 8% interest and £1,000 for the distress and inconvenience caused.

In short, Halifax said it didn't consider the payments to represent fraud and wouldn't reimburse the funds. It said both 'H' and 'P' were genuine companies and so considered this to be a civil dispute.

Mrs M referred her complaint to the Financial Ombudsman.

One of our Investigators considered the complaint but didn't uphold it. In summary, she said it was likely Mrs M had been the victim of a scam, and that Halifax should've questioned her about the payments; but that it wasn't required to give investment advice. And given there was no adverse information about 'P' or 'H' available at that time, and specifically because Mr M had seemingly successfully invested in 'H', our Investigator didn't think further questioning by Halifax would've given it, or Mrs M, any obvious cause for concern.

Our Investigator also found there was no reasonable prospect of Halifax recovering the lost funds or any grounds to award Mrs M compensation for distress and inconvenience.

Mrs M didn't agree. In short, she agreed with our Investigator that the payments should've been questioned by Halifax and that it couldn't provide investment advice. Mrs M also said she wanted:

'to stress that just because [Mr M] may have received returns on his investment it is not a reason for [Halifax] to fail in their duty of care and this should not be used to distract the issue at hand'.

Mrs M further maintained that an intervention by Halifax, her trusted FCA regulated bank, especially any warnings it had given about the risks involved with unregulated forex investment schemes, would've resonated with her. This is despite any initial assumptions she'd made about the legitimacy of the investment, as she said she couldn't afford to lose so much money. Mrs M said she'd have taken any warnings from Halifax seriously, discussed the investment further with Mr M, and carried out more checks into both 'H' and 'P'.

Mrs M also said that Halifax should've asked to see the paperwork she had from 'H' - at which point she said it would've had concerns over its authenticity and noticed the unrealistic rate of return. She said Halifax should've also been concerned that she'd not been introduced to the investment by a regulated broker.

Mrs M added that Mr M receiving returns on the investment shouldn't be seen as evidence that the investment with 'H' was legitimate. Rather, she said arguably this was part of the scam process – whereby investors were lured into investing *because* returns were received.

Finally, Mrs M said that the Financial Ombudsman had upheld cases like hers – and that there was an apparent inconsistency in our approach.

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.

Having done so, I've decided not to uphold this complaint. I know this is not the answer Mrs M was hoping for, and so this will come as a disappointment. I'm really sorry to hear about the situation she's found herself in, and I can understand why she'd want to do all she can to recover the money she lost. But I need to decide whether Halifax can fairly and reasonably be held responsible for Mrs M's loss. Overall, I've decided that it can't be. I'll explain why.

But first, I would like to say at the outset that I've considered this case on its own merits and have summarised it in far less detail than the parties involved. I want to stress that no discourtesy is intended by this. It's simply because my findings focus on what I consider to be the central issues in the specific circumstances of this complaint – that being whether Halifax could've prevented Mrs M's loss.

Following a court hearing in July 2020, it's now accepted that Mrs M has likely been the victim of a scam. But I accept the transactions she made towards the investment were authorised payments. So, Mrs M is presumed liable for the loss in the first instance.

However, I consider that as a matter of good industry practice at the time (and now) that a bank, such as Halifax, ought to have taken steps to intervene prior to processing a payment instruction where it had grounds to suspect a payment might be connected to a fraud or a scam. Any such intervention should've been in proportion to the level of risk perceived.

The question then arises whether Halifax ought reasonably to have held such suspicions or concerns in relation to Mrs M's payments — and if so, what might've been expected from a proportionate intervention.

So, taking all of this into account, I need to decide if Halifax acted fairly and reasonably in its dealings with Mrs M when she made the payments. Specifically, whether it should've done more than it did before processing the payments – and if it had, would that have made a difference. I also need to decide if Halifax could've reasonably recovered the lost funds.

Arguably, there was justification here for an intervention by Halifax prior to processing Mrs M's payment instructions on 31 August 2018. These were two payments in very close succession that were (individually and collectively) significantly larger than usual payments for Mrs M's account in the previous 12 months; and were being made to a new payee.

But for me to find it fair and reasonable that Halifax should refund the payments to Mrs M requires more than a finding that Halifax ought to have intervened.

I would need to find not only that Halifax failed to intervene where it ought reasonably to have done so — but crucially, I'd need to find that but for this failure the subsequent loss would've been avoided.

That latter element concerns causation. A proportionate intervention will not always result in the prevention of a payment. And if I find it more likely than not that such a proportionate intervention by Halifax wouldn't have revealed the payments were part of a fraud or scam, then I couldn't fairly hold it liable for not having prevented them from being made.

In thinking about this, I've considered what a proportionate intervention by Halifax at the relevant time would've constituted, and then what I think the result of such an intervention would most likely have been.

To reiterate, Halifax's primary obligation was to carry out Mrs M's instructions without delay. It wasn't to concern itself with the wisdom or risks of her payment decisions.

In particular, Halifax didn't have any specific obligation to step in when it received a payment instruction to protect its customers from potentially risky investments. The investment in 'H' wasn't an investment Halifax was recommending or even endorsing, and so I don't think it would've been reasonable for Halifax to have asked to see all the paperwork relating to the investment before processing the payments, as Mrs M has suggested.

Halifax's role here was to make the payments that Mrs M had told it to make. Mrs M had already decided on that investment. And I find that Halifax couldn't have considered the suitability or unsuitability of a third-party investment product without itself assessing Mrs M's circumstances, investment needs and financial goals.

Taking such steps to assess suitability without an explicit request from Mrs M (which there wasn't here) would've gone far beyond the scope of what I could reasonably expect of Halifax in any proportionate response to a correctly authorised payment instruction from its customers.

That said, I think it would've been proportionate here for Halifax, as a matter of good industry practice, to have taken steps to establish more information about these payments.

What matters here is what those steps might be expected to have uncovered at the time. While there may now be significant concerns about the operation of 'H' and 'P', and the legitimacy of the investment, I must consider what Halifax could reasonably have established during a proportionate enquiry to Mrs M about her payments back in August 2018. I cannot apply the benefit of hindsight to this finding.

Both 'H' and 'P' were genuine companies and there was no negative information about 'H' in the public domain until *after* it went into liquidation (June 2019). Having carefully reviewed all the material Mrs M has provided about 'H', it appears that allegations that 'H' was operating as a scam *only* came to light during the liquidation process which included a court hearing in 2020. As such, this correspondence or information couldn't have been accessed by either Halifax or Mrs M at the time the August 2018 payments were made.

I think it's also likely Mrs M would've told Halifax that she had documents from 'H' confirming the terms of the investment, which at the time all appeared entirely genuine.

In summary, I've considered everything submitted and the arguments made, but while there may now be concerns about the legitimacy of 'H' and 'P', everything I've seen indicates that these concerns only began to surface in the public domain *after* the relevant payments were made by Mrs M.

I've thought next about how Mrs M found out about the investment. Mrs M has referred to 'P' as being the initial 'broker' who introduced Mr M to the investment in 'H'. But it was her husband's apparent success from the investment that prompted her to invest. As I understand it, 'P' is unregulated and facilitated the payments to 'H'.

Had Halifax asked Mrs M who'd advised her about the investment, then the involvement of Mr M and 'P' would've likely come to light at the time. But this type of unregulated investment could be entered into without obtaining regulated financial advice – as seems to have been the case here. 'P' and 'MA' were also genuine companies.

So, the regulatory status of the investment and how Mrs M was introduced to it weren't something that would necessarily have indicated 'H' was fraudulent (or that the investment was a scam) at the time Mrs M asked Halifax to make the payments.

Further to that, I've not seen any reason to suggest that Mrs M didn't fully believe, at the time, that Mr M's investment wasn't genuine or that the promised investment terms weren't being met. Mrs M has said:

'[Mr M], who had previously invested himself into [H] with no problems, had dealt with [P] since day one of his investment and had experienced no issues at all'.

Mr M's confidence in the investment is also evident from the fact he invested a further £7,000. All this would've, I believe, further reassured Mrs M that her money wasn't at obvious risk, nor that the returns were unrealistic.

Mrs M's main concern is that Halifax should've warned her about unregulated forex investments, and the fact Mr M was already investing in 'H', and receiving returns, shouldn't have meant that Halifax's duty to protect her was any less.

Firstly, 'H' makes it very clear in its documentation that it is unregulated and clearly outlines the risks involved. It states that:

'Before you decide to deal with ['H'] ... you should be aware of all of the associated risks and carefully consider your objectives, financial situation, needs and level of experience. ... ['H'] recommends that you seek advice from a separate financial advisor. By trading, you could sustain a total loss of your deposited funds and therefore, you should not speculate with capital that you cannot afford to lose'.

So, it appears that Mrs M (and Mr M) had been made fully aware of the risks involved, And, I believe, had a responsibility to carry out any necessary checks before deciding to invest. Regardless or not of whether Mrs M was prompted to do so by Halifax during a proportionate intervention about her payments.

Secondly, I believe the involvement of Mr M *is* of significance here. It's not that his involvement diminishes Halifax's responsibility to protect Mrs M – rather it's that this would've, in my opinion, alleviated any concerns either Halifax or Mrs M might've had.

I do take Mrs M's point about scams often enticing further loss and new investors by providing initial returns. And how she thinks Halifax should've questioned this when discussing the fact Mr M was receiving returns on his investment with 'H' – rather than accepting this as evidence the investment was genuine.

But it's equally true that from Mrs M's point of view, knowing her husband was receiving returns on his investment – returns that arguably would've benefited them both - would, I

believe in these circumstances back in August 2018, have further convinced Mrs M the investment was genuine. And in turn, this would've more than likely have outweighed any warnings Halifax might've provided to Mrs M in this regard.

Given all this, I don't think, on balance, that any advice or warning from Halifax about Mr M's investment with 'H' would've likely resonated with Mrs M or given her any cause for concern. And any concerns that might've been raised about 'H' or 'P' would've likely, in my opinion, have been allayed by Mr M.

All things considered; I don't think it would've been readily apparent in August 2018 that 'H' might be fraudulent rather than a higher risk investment. I simply don't think Halifax could readily have uncovered information – especially through proportionate enquiry in response to a payment - that would've led to significant doubts about the legitimacy of 'H' or 'P' at that point in time. Neither do I think Mrs M could've uncovered such information at the time – she wasn't at fault here.

To recap, I can only reasonably expect any intervention or enquiries made by Halifax to have been proportionate to the perceived level of risk of 'H' being fraudulent. I don't think that a proportionate enquiry in August 2018 would've led to either Halifax or Mrs M considering 'H' or 'P' being anything other than legitimate. With that in mind, and all considered, I'm not persuaded that Halifax was at fault for carrying out the relevant payment instructions, or for not preventing Mrs M from making her payments.

In terms of trying to recover the lost funds; I'd expect Halifax to attempt this at the point it's alerted to the loss. But more than five years had passed by the time Mrs M contacted Halifax. Furthermore, both 'H' and 'P' had gone into liquidation by this point and recovery from 'MA' wasn't possible as it was acting as a payment processor for 'P'.

Therefore, I can't say Halifax had any reasonable prospect of recovering the funds in 2023 given the passing of time; and because 'H' and 'P' had gone into liquidation more than three years before.

I have a great deal of sympathy for Mrs M and the loss she's suffered. But it would only be fair for me to direct Halifax to refund her loss if I thought it was responsible – and I'm not persuaded that this was the case. And so, I'm not going to tell it to do anything further.

My final decision

My final decision is that I don't uphold this complaint.

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

Anna Jackson
Ombudsman