

## **The complaint**

Mr W complains that Bank of Scotland plc trading as Halifax did not refund the £30,000 he says he lost to a scam.

## **What happened**

Mr W says that he was introduced to an investment opportunity with a company I'll refer to as 'G' by a financial advisor. He has said the advisor set up a meeting with representatives from G and after this, Mr W carried out some checks on Companies House and was satisfied the opportunity was legitimate. Because of this, he agreed to take out a £30,000 loan note with them and made a transfer of £30,000 from his Halifax account to G on 18 September 2019.

However, Mr W says he did not receive any returns on the investment. In January 2024, Mr W raised a scam claim with Halifax via a representative as he felt he had been the victim of an investment scam. Halifax issued a final response letter on 21 March 2024 in which they explained G had entered into administration and they had seen no evidence of a Ponzi scheme. They did not agree to review the transaction under the Lending Standards Board's Contingent Reimbursement Model ("CRM") Code which gives additional protection to victims of authorised push payment ("APP") scams. This is because they did not think it met the definition of an APP scam, and instead felt it was a genuine investment that failed. So, they felt this was more likely a civil dispute and did not agree to reimburse Mr W.

Mr W referred the complaint to our service and our Investigator looked into it. They explained there was no information available either on file or in the public domain to show Mr W had been the victim of a scam. So, they felt Halifax had acted reasonably when it treated the case as a civil dispute.

Mr W's representatives disagreed with the findings. In summary, they felt the fact Mr W had not received any returns was indication of a scam, and they pointed out G appeared to still be operating and recording profits when Mr W was meant to be receiving the returns. They also highlighted that the active director of G was the director of another company, which also fell into financial difficulties and had a trustee take it over. And they felt this was indicative of a scam.

As an informal agreement could not be reached, the complaint has been passed to me for a final decision.

## **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.

It isn't in dispute that Mr W authorised the payment in question. Because of this the starting position – in line with the Payment Services Regulations 2017 – is that he is liable for the transaction. But he says that he has been the victim of an authorised push payment (APP) scam.

Halifax has signed up to the voluntary CRM Code, which provides additional protection to scam victims. Under the CRM Code, the starting principle is that a firm should reimburse a customer who is the victim of an APP scam (except in limited circumstances). But the CRM Code only applies if the definition of an APP scam, as set out in it, is met.

I have set out the definition of an APP scam as set out in the CRM Code below:

*...a transfer of funds executed across Faster Payments...where:*

*(i) The Customer intended to transfer funds to another person, but was instead deceived into transferring the funds to a different person; or*

*(ii) The Customer transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent.*

I've therefore considered whether the payment Mr W made to G falls under the scope of an APP scam as set out above. Having done so, I don't think that it does. I'll explain why in more detail.

In order to determine if Mr W has been the victim of a scam, I have to consider if his intended purpose for the payments were legitimate, whether the intended purposes he and the company he paid were broadly aligned and, if not, whether this was the result of dishonest deception on the part of the company.

This is difficult to determine, due to the lack of evidence that I have been provided in this case. Mr W has been represented by a professional claims management company in this case. However, there has been a lack of the relevant evidence on file I would expect to be provided where an alleged scam has occurred.

I have account statements for Mr W's Halifax account showing the payment debiting, as well as the loan note signed by Mr W that includes the general terms of the loan note. However, these do not indicate what Mr W thought he was investing in, which subsidiary of G was providing the investment opportunity, what the expected rates of return were or even where his returns would be paid to. I also have not seen any correspondence between Mr W and G to show why he did not receive any returns or even if he queried this.

Considering all of the above, it is difficult for me to know if Mr W's intended purpose for the payments were legitimate and broadly aligned with G's intended purpose for them. And while Mr W's representatives have highlighted some issues that they feel indicate dishonest deception on G's part, I don't think this is enough for me to agree the high bar of an APP scam has been met in the circumstances.

The fact that G continued to record their annual statements on Companies House, which showed a credit balance, does not evidence that G set out to defraud Mr W from the outset. Without knowing more about what Mr W was specifically investing in and where his profits were meant to come from, the balance sheet on Companies House does not evidence an investment scam. And G's continued engagement with Companies House and the fact they updated their records regularly indicates it's more likely they were a legitimate company.

Mr W's representatives have said the director of G was also the director of an unregulated pension scheme which has come under scrutiny. However, it should be noted that when Mr W entered into the agreement with G and made the investment, there were two other directors present, who remained on the board for a further 2-3 years. So, I don't think the presence of a director who had been involved in another company that had questions raised against it is evidence that G as a company set out to defraud Mr W from the outset.

On balance, I haven't seen enough for me to be satisfied that G's purpose for the payment materially differed from Mr W's and that any potential difference was as a result of dishonest deception. Instead, I think it's more likely this was a failed investment. So, I don't think it meets the definition of an APP scam. And I think Halifax acted reasonably when it treated the case as a civil dispute.

It is possible that further evidence may come to light at a later date, which may indicate G was operating a scam. Should such evidence come to light, then Mr W can complain to Halifax again, and refer the matter to this office, should he not be happy with the outcome.

### **My final decision**

I do not uphold Mr W's complaint against Bank of Scotland plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 7 March 2025.

Rebecca Norris  
**Ombudsman**