

The complaint

Mr C complains that Bank of Scotland plc, trading as Halifax, won't refund the money he lost when he was the victim of what he feels was a scam.

What happened

In early 2019, Mr C was told about an opportunity to invest in a property development company by a broker he had used for a previous investment. He was told he would be providing a loan to the company, and that his investment would be used to fund the company's projects and he would receive interest in return. And, having decided to invest, Mr C made a number of payments from his Halifax account to the property development company.

I've set out the payments Mr C made below:

Date	Amount
1 February 2019	£20,000
3 October 2019	£25,000

Unfortunately, Mr C didn't receive the interest payments he was told he would, and the property development company has now gone into administration. Mr C then reported the payments he had made to Halifax as a scam and asked it to refund the money he had lost.

Halifax investigated but said it felt the property investment company was a genuine company which had sadly failed, rather than a scam. So it didn't agree to refund the payments Mr C had made. Mr C wasn't satisfied with Halifax's response, so referred a complaint to our service.

One of our investigators looked at the complaint. They said they didn't think Halifax would have had concerns if it had intervened when Mr C made the first payment, and that the circumstances here didn't meet the definition of a scam from the CRM code. So they didn't think Halifax should have to refund the money Mr C had lost. Mr C disagreed with our investigator, so the complaint has been passed to me.

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 broad terms, the starting position at law is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. However, where the customer made the payment as a consequence of the actions of a fraudster, it may sometimes be fair and reasonable for the bank to reimburse the customer even though they authorised the payment.

Halifax is a signatory of the Lending Standards Boards Contingent Reimbursement Model (the CRM code). This requires firms to reimburse customers who have been the victim of certain types of scams, in all but a limited number of circumstances. But the code only came into effect in May 2019, and it doesn't apply retrospectively, so the first payment Mr C made here was made before the CRM code came into effect.

The payment made in February 2019

As this first payment was made before the CRM code came into effect, the code can't apply to this payment.

Although the CRM code can't apply to this payment, the regulatory landscape, along with good industry practice, sets out other requirements for banks to protect their customers from fraud and financial harm. So, in line with this, I think at this time Halifax should fairly and reasonably:

- Have been monitoring accounts and any payments made or received to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams.
- Have had 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). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer.
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

But, even if Halifax had carried out the checks I would've expected it to have done, I don't think it would've uncovered significant concerns and I don't think this payment Mr C was trying to make to the property development company would have been stopped.

In these circumstances and given the size of the payment Mr C was making, I think it would be reasonable to expect Halifax's checks to include questions about the purpose of the payment and then relevant follow-up questions about the investment Mr C thought he was making and what checks he had done to confirm it was genuine.

But Mr C thought it was investing in a loan offered by the property development company where he would provide capital and the company would pay him interest each year. And as this is a fairly standard format of investment, I don't think this will have seemed particularly suspicious to Halifax or that the returns Mr C was told he would be paid would have seemed too good to be true.

Mr C had been introduced to the property development company by a broker he had used for a previous investment. And while Mr C now also has concerns about this previous investment, this wasn't known at the time. So I don't think the way the investment came about would have caused Halifax any concern.

At the time, the property development company – or the connected group of companies – had been listed on the governments register of limited companies and filed accounts for several years. And I wouldn't necessarily expect this of a company intending to operate a scam, so I think this would have reassured both Mr C and Halifax that the company was genuine.

I've also seen copies of promotional literature the property development company issued in relation to the loans, and I think this looked relatively professional and legitimate. So, if Halifax had asked to see any of this paperwork associated with the investment, I don't think this would have raised any concerns either.

And so if Halifax had carried out the checks I would've expected when Mr C tried to make this payment, I think it would have been satisfied with the information it was given and I don't think anything it was told or shown would've caused it significant concern. Based on the information I would have expected it to uncover at the time, I think this would have looked like a genuine investment to Halifax. And so I wouldn't have expected it to stop Mr C making the payment.

During this complaint, Mr C has sent us a significant amount of detailed information about the property development company, which he suggests shows there were irregularities with how the company was conducting its business. But this information has only come to light since the payments he made, and wouldn't have been available to either him or Halifax at the time. I also wouldn't have expected Halifax's checks to go into the level of detail necessary to uncover this kind of information, as the information it would've been given from the checks I would've expected it to do earlier wouldn't have uncovered any significant concerns. So I don't think this information Mr C has sent us means Halifax acted unreasonably in allowing the payment to go through.

And so I don't think anything I would reasonably have expected Halifax to have done in relation to this first payment would have prevented the loss Mr C suffered. I therefore don't think it would be fair to require it to refund this payment Mr C made.

The payment made in October 2019

The second payment Mr C made here, in October 2019, was made after the CRM code into effect, and after Halifax signed up to it. But customers are also only covered by the code where they have been the victim of a scam – as defined in the code.

The relevant definition of a scam from the CRM code is that the customer transferred funds to another person for what they believed were legitimate purposes but were in fact fraudulent.

The CRM code also says it doesn't apply to private civil disputes, such as where a customer has paid a legitimate supplier for goods or services but has not received them, they are defective in some way, or the customer is otherwise dissatisfied with the supplier.

So in order to determine whether Mr C has been the victim of a scam as defined in the CRM code I need to consider whether the purpose he intended for this payment was legitimate, whether the purposes he and the property development company intended were broadly aligned and then, if they weren't, whether this was the result of dishonest deception on the part of the company.

From what I've seen and what he's told us, I'm satisfied Mr C made this payment with the intention of investing with the property development company. I think he understood the funds would be used to fund projects the company was carrying out, and that he would receive returns on the investment. And I haven't seen anything to suggest that Mr C didn't think this was legitimate.

But I'm not satisfied the evidence I've seen shows that the property development company intended a different purpose for the payment, or that Mr C's and the property development company's purposes for the payment weren't broadly aligned.

From what I've seen, the property development company completed three different development projects – in three different cities across the UK. It also worked on a number of other developments, which it sold to developers when it experienced financial difficulties. And I wouldn't expect a company that intended to scam investors to complete these projects that would have involved a large amount of investment and management. So I think the completion of these projects strongly suggests the property development company was attempting to operate as a legitimate business.

I understand the property development company was paying very high commission to introducers, which made the rate of return offered on the investment very unlikely. But while this, and other irregularities or poor business practice may suggest the property development company wasn't acting as I would expect a professional business to do, I don't think it goes far enough to show that it intended to operate a scam.

I'm also aware some investors have highlighted a number of inaccuracies or irregularities with the accounts the company has filed, and that it has only filed accounts made up to 2018. But while this may suggest financial mismanagement on the part of the company, this is not the same as the intention to operate a scam and I don't think it shows that the company never intended to use investor's funds for development projects.

I've also not seen anything from the administrators of the company which suggests the company was operating a scam or that the transactions carried out by the company and other connected companies were done with any intention other than putting investor's funds towards development projects. And I haven't been provided with evidence of any investigation by an external organisation which concludes that the company was operating a scam.

So I'm not persuaded that the available evidence is sufficient to safely conclude that the purpose the property development company intended for this payment was different than the purpose Mr C intended. And so I think Halifax has acted reasonably in saying the circumstances here don't meet the definition of a scam from the CRM code, and in not agreeing to refund the money Mr C lost from this payment as a result.

It's possible that material new evidence may become available at a future date, which suggests that the property development company did take this second payment using dishonest deception. If that happens, Mr C can ask Halifax to reconsider his claim for this payment and, if not satisfied with its response, bring a new complaint to our service.

Summary

I appreciate that Mr C has lost a significant amount of money. But I'm not satisfied that I can fairly ask Halifax to refund him based on the evidence that is currently available.

My final decision

For the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 15 August 2025.

Alan Millward
Ombudsman