

The complaint

Mr C complains about Bank of Scotland plc trading as Halifax.

He says that he has been the victim of a scam and would like Halifax to refund him the money he has lost as a result

What happened

Mr C made an investment totalling £20,000 with a company I will refer to as 'V'.

V had an extensive online presence at the time the payments were made, and were holding regular in-person events, webinars and had a comprehensive online platform. Mr C also knew other investors who were making a profit. He agreed to make payments via an individual called 'B' – who was a trader of V.

However, Mr C now feels that he has been the victim of a scam and would like Halifax to refund him the money he has lost.

Mr C made a complaint to Halifax, but it didn't uphold his complaint. It said that V was a failed investment, not a scam, and so Mr C wasn't entitled to a refund. It also noted that there was an ongoing investigation into V being conducted by the Financial Conduct Authority (FCA) but that even if V turned out to be a scam, it wouldn't refund him as Mr C was not honest about the reason for making his payments.

Our Investigator looked into things and concluded that there was enough information available to say that V was very likely to be operating as a scam – and that they did not think it was required for Halifax to wait for the FCA to conclude its investigation into the matter.

They therefore assessed the complaint under the Lending Standards Board's Contingent Reimbursement Model ("CRM") Code. While they noted that Mr C wasn't truthful about the reasons for some of his payments, they said that this wasn't an exemption to reimbursement, and that as they felt Mr C had a reasonably basis for belief in V, that Halifax should refund him 100% of his investment.

Halifax didn't agree, it re-iterated that the FCA had not yet concluded its investigation, and that Mr C had also prevented it from providing a relevant warning.

As no informal agreement was reached, the complaint has been passed to me to make 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.

Is it appropriate to determine this complaint now?

I have considered whether it would be appropriate to delay my decision in the interests of fairness, as I understand that the FCA investigation is still ongoing.

There may be circumstances and cases where it's appropriate to wait for the outcome of external investigations. But that isn't necessarily so in every case, as it may be possible to reach conclusions on the main issues on the basis of evidence already available. And it may be that the investigations or proceedings aren't looking at quite the same issues or doing so in the most helpful way.

In order to determine Mr C's complaint, I have to ask myself whether, on the balance of probabilities, the available evidence indicates that it's more likely than not that he was the victim of a scam rather than a failed investment. But I wouldn't proceed to that determination if I consider fairness to the parties demands that I delay doing so.

I'm aware that Mr C first raised his claim with Halifax in March 2024 and I need to bear in mind that this service exists for the purpose of resolving complaints quickly and with minimum formality. With that in mind, I don't think delaying giving Mr C an answer for an unspecified length of time would be appropriate unless truly justified. And, as a general rule, I'd not be inclined to think it fair to the parties to a complaint to put off my decision unless, bearing in mind the evidence already available to me, a postponement is likely to help significantly when it comes to deciding the issues.

I'm aware the above processes might result in some recoveries for V's investors; in order to avoid the risk of double recovery, I think Halifax would be entitled to take, if it wishes, an assignment of the rights to all future distributions to Mr C under those processes in respect of this investment before paying anything I might award to them on this complaint.

For the reasons I discuss further below, I don't think it's necessary to wait for the outcome of the FCA's investigation for me fairly to reach a decision on whether Halifax should reimburse Mr C under the provisions of the CRM Code.

Has Mr C been the victim of an APP scam, as defined in the CRM Code?

It isn't in dispute that Mr C authorised the payments. Because of this the starting position – in line with the Payment Services Regulations 2017 – is that he's liable for the transaction. But Mr C 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 this definition out 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.

The CRM Code is also explicit that it doesn't apply to private civil disputes. The wording in the code is as follows:

"This Code does not apply to:

b) private civil disputes, such as where a Customer has paid a legitimate supplier for goods, services, or digital content but has not received them, they are defective in some way, or the Customer is otherwise dissatisfied with the supplier.”

I've therefore considered whether the payment Mr C made to V falls under the scope of an APP scam as set out above. Having done so, I think that it does. I'll explain why in more detail.

Our service is now aware of a number of issues related to V, which suggest to us it is more likely they were carrying out a scam, which I've set out below.

- We are now aware that V's claims of being at least in the process of being regulated with relevant bodies such as the FCA in the UK and the CSSF in Luxembourg are false.
- There is no evidence to substantiate V's claims around the profits they say they were able to generate via Forex trading.
- Less than half of the funds sent to the two founders was potentially used for the intended purpose of Forex trading. Whereas Mr C sent funds to V with the understanding they would immediately be moved to a trading account to be used in Forex trading
- V's account provider has shown that when V applied for accounts it lied at least twice, this was about partnering with a trading exchange and that it was regulated.
- We have also seen evidence that none of the funds sent to V's business accounts was used for the intended purpose of trading in Forex.

With this in mind, I don't think that V was using investor funds, such as Mr C's, for the purpose they were intended for. And I think this difference in purpose is down to dishonest deception on V's part. It follows that I think this complaint meets the definition of an APP scam as set out in the CRM Code above.

Is Mr C entitled to reimbursement under the CRM Code?

Generally, there are two exceptions to reimbursement under the CRM Code (there are other exceptions, but these do not apply here)

- Mr C ignored an 'Effective Warning'
- Mr C made the payments to V without a reasonable basis for belief that they were for genuine goods/services; and/or V was legitimate.

Halifax didn't provide Mr C with an effective warning about what he was doing – although I am aware that it spoke with him when he made three of the payments.

I accept that Mr C said that he was paying a friend back money he had been lent – and this wasn't the correct reason for his payments – but I don't think that this was an attempt to mislead Halifax. Mr C was told by B that it didn't really matter what he said to Halifax about the payment, but that sometimes banks did checks on payments that could delay things, however he could say what he wanted about the payment. So, I don't think that Mr C would have thought that anything was necessarily amiss with what he was doing. And Halifax hasn't said that it told Mr C that it was important he didn't conceal the nature of the payment.

I also think that had Mr C told Halifax what he was doing, Mr C would have been able to explain what he was investing in, and that he was happy with his payments, and that he knew of others investing in V that were making a profit. And while I am aware that the FCA did publish a warning about V being unregulated part way through Mr C making his

payments, I wouldn't have expected Halifax to have been aware of this at the time and told Mr C about it, or that Mr C should have been aware of this either, given that V had explained to him that it was in the process of becoming so.

Instead, I think that Halifax would have been satisfied with his answers, and while it may have provided him with a warning, I cannot safely conclude that it would have been an 'effective warning' as set out in the Code. And considering Halifax told Mr C in its final response letter that it didn't think that V intended to scam him – I can't see that it would have had concerns V was a scam at the time of the payments either. So I do not think it would be fair to say Mr C prevented Halifax from being able to provide an effective warning and I do not think the exception to full reimbursement should be applied.

I have then gone on to consider whether Mr C had a reasonable basis for believing that V was genuine – and taking everything into account, I think that he did.

Mr C already knew other individuals who had invested in V and had been able to see the profits they were making – and had received documentation from V that appeared to be legitimate and professional. And as I have said above V had an extensive online presence, hosted multiple online meetings and in-person events. Many people also received personal recommendations from family and friends that were happy with their own investments too.

I am also aware that Mr C's initial payment appeared on V's platform – so there would be no reason for him to think that his other payments would not also appear on the platform in due course. And I don't see any reason he would have doubted how his funds were being used.

So, I don't think that would have caused Mr C doubts about the legitimacy of V when he decided to invest.

Putting things right

Bank of Scotland plc trading as Halifax should refund Mr C under the CRM Code 100% of his losses. It should also pay Mr C 8% simple interest from the date of our Investigators view (less any lawfully deductible tax).

My final decision

I uphold this complaint. Bank of Scotland plc trading as Halifax should put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 26 June 2025.

Claire Pugh
Ombudsman