

The complaint

Mr and Mrs H complain Bank of Scotland plc trading as Halifax didn't do enough to protect them at a time they were falling victim to a scam, and that it hasn't refunded them since that scam was reported.

What happened

The background to this complaint is well-known to all parties and so I'll only summarise key events here.

Mr and Mrs H were introduced to an investment opportunity involving a property development company in 2019. I'll refer to that company as Company A.

Mr and Mrs H decided to invest and paid £20,000 from their account with Halifax to Company A's account in April 2019 by way of a cheque. They believed the money would be used to fund Company A's property development projects, with returns on the investment to be paid further down the line.

But Company A went into administration in 2022 and without Mr and Mrs H having received what was promised. As details about Company A's collapse came to the fore, Mr and Mrs H became of the view they'd been the victims of a scam, and that Company A had never been offering a legitimate investment opportunity.

Mr and Mrs H raised their concerns with Halifax and asked that it reimburse their loss. It investigated but declined to do so. It said it believed Mr and Mrs H had paid a legitimate company for a legitimate purpose and that Company A was a failed business, rather than it being the case that Company A had set out to scam them.

Mr and Mrs H were unhappy with Halifax's response and so brought a complaint to our service. One of our investigator's considered it but didn't recommend it be upheld. They found Halifax had acted fairly and reasonably in concluding Mr and Mrs H had a civil dispute with Company A and that Halifax ought not bear responsibility for their loss. And they didn't think Halifax could have detected the scam at the time payment was made.

Mr and Mrs H were unhappy with our investigator's recommendations, still believing they'd been the victim of a scam which Halifax could have prevented. And so they asked that an ombudsman review the complaint.

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.

Mr and Mrs H have provided this service with some detailed submissions and have referred to numerous sources of evidence in presenting their complaint to us. In reviewing this complaint, I have considered all this evidence, and the arguments made. I am not, however, responding in an equal level of detail as Mr and Mrs H. This is not to be discourteous, or to say that what has been sent is irrelevant to the complaint. Instead, my intention is to focus on what I consider to be the points most relevant to the outcome of the complaint.

And so, evidence or information not mentioned or discussed by me specifically in this decision hasn't been ignored. I'm satisfied it's not necessary for me to comment on each individual point or argument made to reach a fair and reasonable outcome.

The rules under which this service operates allow for me to do this, and this approach is reflective of our requirement to resolve complaints as quickly and informally as possible, and as an alternative to the courts.

Having considered all the available information and evidence, I'm reaching the same outcome as our investigator and for broadly the same reasons.

The starting point at law is that a customer is responsible for any payments made from their account which are properly authorised. And when an authorised payment instruction is received, it's incumbent on the account provider to process it as quickly as possible and with minimal friction. This position is set out in the Payment Service Regulations (2017).

The CRM Code has been brought up over the course of this complaint. But it's not relevant here as the payment made by Mr and Mrs H isn't covered by the Code. That's because the Code doesn't apply to payments made by cheque. It's also the case that the payment pre-dates the introduction of the Code, and it isn't retrospective.

There are, however, taking account of relevant rules, codes, and best practice standards, times when a firm shouldn't take a customer's payment instruction at face-value and ought to establish the wider circumstances behind it. Where a firm fails to do so, and a customer goes on to suffer an otherwise avoidable loss to a scam, then it might be fair and reasonable for the firm to compensate the customer for that loss.

But such compensation would only be due if it could be evidenced that a) a scam had taken place (rather than, as Halifax has said, that the payment was the subject of a private civil dispute) and b) that the loss could have been prevented had the firm intervened.

I then need to consider whether Company A was a legitimate but failed investment company (thereby meaning Mr and Mrs H have a civil dispute with Company A), or whether there is sufficient evidence to show it was more likely than not operating a scam, and always intended to steal Mr and Mrs H's money, when they invested. Having done so, I'm not persuaded there is sufficient evidence to show Company A was operating a scam.

It's clear Mr and Mrs H sent their money to Company A with the intended purpose of it being used in the development of property, with the view to returns on investment being generated. And Mr and Mrs H were clearly persuaded Company A was a legitimate venture at the time.

It's entirely evident that Company A hasn't delivered what was promised and Mr and Mrs H have undoubtedly lost out financially as a result. But what I've not seen sufficient evidence of is that the loss was the result of Company A's intention to steal the money from the outset.

Company A was a limited company that had been operating since 2011, and it had been filing accounts broadly as expected up until 2019. It had taken on and completed three separate developments of the type it claimed to be involved with. There were also other projects in development, but which were sold off to other developers as the company fell into financial difficulties. I'm persuaded this evidences an intent to legitimately provide the services sold to investors as they are the actions of a legitimate property development enterprise.

It's been suggested that these activities may have been a screen to draw in victims, hiding the scam behind a veil of legitimacy. But I've not seen sufficient evidence to persuade me that is more likely than not the case.

I've mentioned the filing of accounts by Company A and that this continued until 2019. From there it failed to provide Companies House with the information it ought to have. Company A went on to collapse in 2022. But whilst this is clearly financial mismanagement, it doesn't show that Company A's intention was to scam investors or that it didn't intend to finance

development projects. The financing of the projects appears to have continued during the period in which Company A wasn't filing accounts.

It is the case that investigations outside of this service remain ongoing, including those being carried out by the liquidator. But I've no evidence from any such parties to show Company A was operating a scam. It might be that changes in time and new material evidence may become available. Should that be the case, Mr and Mrs H would be able to ask Halifax to reconsider the matter and may be able to refer a complaint back to this service should they be unhappy with its response.

But, as things stand, I'm not persuaded there's sufficient evidence to show a scam has taken place. And so the answer given by Halifax is fair and reasonable.

I've gone on to consider some of the further points raised alongside the issue as to whether Company A was operating a scam or not. These include whether Halifax ought to have stepped in to question the payment and given warnings at the time it was being made, and whether Mr and Mrs H's vulnerabilities ought to lead to a refund. I'll deal with those points in turn.

Broadly speaking, firms should look to identify payments that present a scam risk and then deploy a proportional response to that risk. That might involve pausing or stopping a genuine payment instruction so the circumstances behind it can be ascertained, with a warning about relevant scams then being delivered.

The payment involved here might be argued to be both high in value and out of character for Mr and Mrs H. And in turn there could be an argument for saying Halifax ought to have carried out a proportionate intervention and delivered a warning against investment scams.

But, even if I were to find there had been a failure to intervene on Halifax's part here, I still wouldn't be able to say that Mr and Mrs H should be compensated by Halifax. That's because I wouldn't expect a firm to reimburse losses suffered as a result of failed investment rather than a scam. It isn't for a firm like Halifax to advise as to the wisdom of investment decisions. Any reimbursement would still be dependent on the loss being the result of a scam, and here I'm not persuaded a scam has taken place.

Even if I were to accept that intervention from Halifax might have led to Mr and Mrs H choosing not to invest, my findings would still remain the same. That's because the losses haven't arisen as a result of a scam.

I've also considered what the outcome might have been even if it were accepted Company A was operating a scam. But this would still mean the complaint not being upheld. That's because I don't believe Halifax would have been able to detect or uncover a scam at the time. Mr and Mrs H were paying a well-established company which appeared to have been trading for several years and filing accounts. Mr and Mrs H would have been able to present Halifax with persuasive literature from Company A if pressed, along with contracts. And they'd have been able to confirm they'd discussed the investment with an IFA.

With all those points in mind, I'm not persuaded Halifax would have been concerned by what it was being told as to Mr and Mrs H's intentions to invest, and I don't think a scam would more likely than not have been avoided had it intervened.

The final point for me to comment on is around vulnerability. It is true that firms like Halifax ought to take account of potential vulnerabilities in customers and pay increased attention to the risks that affect such persons. But for me to consider a reimbursement with vulnerability in mind I'd still need to be satisfied losses had arisen as a result of a scam. That being so, the reasons that a consideration of vulnerability don't lead to a different outcome are an echo of what I've already set out above.

I am sorry that Mr and Mrs H have lost such a significant sum of money here. It's clear they've not received what was promised by Company A and it has let them down badly. But

I'm not persuaded Halifax should fairly and reasonably now be responsible for that loss or seeing Mr and Mrs H reimbursed.

My final decision

I don't uphold this complaint against Bank of Scotland plc trading as Halifax.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H and Mr H to accept or reject my decision before 27 August 2025.

Ben Murray
Ombudsman