DRN-5286636

The complaint

Mr and Mrs C complain that Bank of Scotland plc, trading as Halifax, won't refund the money they lost when they were the victims of what they feel was a scam.

What happened

Sometime around August 2022, a family member told Mr and Mrs C about an opportunity they'd heard about to invest with a trading company. Mr C and the family member then attended a seminar about the investment and met the directors of the trading company. Mr and Mrs C were also given promotional material about the investment, and understood their funds would be used for trading in foreign exchange.

And as Mr and Mrs C thought the company was genuine and appeared to be a good investment, they then made a number of payments from their Halifax account to the directors of the company invest with it. I've set out the payments made from their Halifax account below:

Date	Details	Amount
31 August 2022	To 1st payee	£10,000
9 September 2022	To 2nd payee	£10,000
20 September 2022	To 2nd payee	£10,000
30 September 2022	To 1st payee	£10,000
5 October 2022	To 1st payee	£10,000
8 November 2022	To 1st payee	£10,000
8 December 2022	To 1st payee	£5,000

In April 2023, Mr and Mrs C asked to withdraw their investment and the profit they were told they had made. But they were first told there were delays in processing withdrawals at that time, and then found out the FCA had issued a warning about the trading company. So they reported the payments they had made to Halifax as a scam and asked it to refund the money they had lost.

Halifax investigated but said it felt this was a genuine investment which had sadly been unsuccessful, rather than a scam. So it didn't agree to refund the money Mr and Mrs C had lost. Mr and Mrs C weren't satisfied with Halifax's response, so referred a complaint to our service.

One of our investigators looked at the complaint. They thought the available evidence suggested the trading company was a scam. And they didn't think Halifax had established that Mr and Mrs C weren't entitled to a refund. So they recommended it refund the money Mr and Mrs C had lost, in full. Halifax 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 customers are only covered by the code where they have been the victim of a scam – as defined in the code.

Can Halifax delay making a decision under the CRM code?

Halifax has argued that the payments Mr and Mrs C made are the subject of an ongoing investigation and it is inappropriate to come to a conclusion about whether they have been the victims of a scam before the conclusion of that investigation. But I disagree.

The CRM code says firms should make a decision as to whether or not to reimburse a customer without undue delay but that, if a case is subject to investigation by a statutory body and the outcome might reasonably inform the firm's decision, it may wait for the outcome of the investigation before making a decision.

But this provision only applies before the firm has made its decision under the code – it can't seek to delay a decision it's already made. And Halifax only raised this argument after it had already reached a decision on Mr and Mrs C's claim in its final response letter to them of 31 January 2024, when it said this appeared to be a dispute between them and the trading company. So I don't think Halifax can now rely on this provision here.

Is it appropriate to determine this complaint now?

I've also 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 and/or related court cases. 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. I'm conscious, for example, that any criminal proceedings that may ultimately take place might concern charges that don't have much bearing on the issues in this complaint; and, even if the prosecution were relevant, any outcome other than a conviction might be little help in resolving this complaint because the Crown would have to satisfy a higher standard of proof (beyond reasonable doubt) than I'm required to apply (which is the balance of probabilities).

In order to determine Mr and Mrs 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 Mr and Mrs C were the victims 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 and Mrs C first raised their claim with Halifax in late 2023 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 and Mrs 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 also aware the above processes might result in some recoveries for the trading company'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 and Mrs C under those processes in respect of this investment before paying anything I might award to them on this complaint.

For reasons I'll explain in more detail below, I don't think it's necessary to wait for the outcome of the FCA investigation for me fairly to reach a decision on whether Halifax should reimburse Mr and Mrs C under the provisions of the CRM Code. I'm satisfied there is already convincing evidence to demonstrate on the balance of probabilities that those who invested with the trading company were dishonestly deceived about the purpose of the payments they were making and that Mr and Mrs C were the victims of a scam. So it is appropriate for me to consider this complaint.

Have Mr and Mrs C been the victims of a scam, as defined in the CRM 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 and Mrs C have been the victims of a scam as defined in the CRM code I need to consider whether the purpose they intended for the payments was legitimate, whether the purposes they and the trading 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 they've told us, I'm satisfied Mr and Mrs C made the payments here with the intention of investing with the trading company. I think they thought their funds would be used to trade in foreign currency, and that they would receive returns on their investment. And I haven't seen anything to suggest that Mr and Mrs C didn't think this was legitimate.

But I think the evidence I've seen suggests the trading company didn't intend to act in line with the purpose for the payments it had agreed with Mr and Mrs C.

The trading company needed to be regulated by the UK financial regulator, the FCA, to operate an investment of this type within the UK. Mr and Mrs C have said they were told the trading company was regulated by the financial regulator in Luxembourg, the CSSF, and was in the process of becoming regulated by the FCA. And from what I've seen of the marketing material potential investors were shown, the trading company said on a number of occasions that it either was, or was in the process of becoming, regulated by the CSSF. But the CSSF has confirmed it was not in contact with the trading company, and the company was not supervised by it. So this strongly suggests the trading company was dishonestly misleading investors about the regulatory status of the company.

In March and April 2023 respectively, both the CSSF and the FCA issued warnings about the trading company. The CSSF warned that the company was pretending to be registered and supervised by the CSSF, but that it was neither registered or supervised by it. And the FCA warned that all companies must be authorised by it if they offer, promote or sell financial products in the UK but that the trading company was not authorised and was targeting people in the UK.

In a number of its emails to Mr and Mrs C, and its marketing materials, the trading company also claimed to be partnered with an FCA regulated broker it held a trading account with. But this broker has confirmed that it doesn't have any relationship with the trading company, or with either of the individuals involved in running the company. So as the trading company told investors their funds were immediately transferred to trading accounts with this broker, this strongly suggests it was dishonestly deceiving investors about the payments they were making. Funds investors sent to the trading company weren't used for the specific purpose of trading in foreign exchange via the regulated broker – which is what investors thought was happening with their funds.

While some funds sent to the trading company were sent to another foreign exchange trading platform, those funds weren't held and traded on a platform that was regulated in the UK by the FCA – as investors were told their fund would be. The funds sent to this other trading platform also didn't benefit from FSCS protection – as investors were also led to believe. And it is impossible to say whether any trading the company carried out on this other platform was done on behalf of investors, or was solely for the benefit of the trading company itself.

Investors in the trading company were also told all the funds they sent to the company would be immediately moved to the FCA regulated broker and available for trading. And I've seen copies of deposit confirmation emails Mr and Mrs C received which confirmed this. But, from what I've seen of the accounts the funds were sent to, no funds were sent to the FCA regulated broker the trading company mentioned and only around 60% of the funds were sent to the other trading platform. This means a significant proportion of the funds the trading company received weren't used for trading in foreign exchange – contrary to what investors were told.

The funds that weren't used for trading in foreign exchange appear to have been used for a number of other purposes, including transfers to other accounts held by individuals involved in running the trading company and their family members, credit card repayments, luxury vehicle purchases, flights, hotels, and gambling. And these purposes don't appear to be connected to the trading investors were told their funds would be used for.

Of the funds that were sent to the other trading platform, the trading company only appears to have withdrawn around a third of the amount that was then paid to investors as returns. This raises significant questions about how the remaining returns that were paid to investors were funded, and I think strongly suggests deposits from later investors were being used to pay returns and withdrawals of earlier investors.

Some of the funds received into the trading company's accounts from investors were also sent to a cryptocurrency exchange – which is not in line with what investors were told their funds would be used for.

So I think the available evidence shows the trading company wasn't acting in line with the features of the investment it had led Mr and Mrs C to believe they were making. And so the purpose the company intended for the payments they made wasn't aligned with the purpose Mr and Mrs C intended for the payments.

Given the incorrect information given out by the trading company, particularly about its regulatory status and its relationship with the broker, I also think the discrepancy in the alignment of the payment purposes between it and Mr and Mrs C was the result of dishonest deception on the part of the company.

Returning to the question of whether in fairness I should delay reaching a decision pending developments from external investigations, I have explained why I should only postpone a decision if I take the view that fairness to the parties demands that I should do so. In view of the evidence already available to me, however, I don't consider it likely that postponing my decision would help significantly in deciding the issues. As I've explained above, there is significant evidence about the actual activity carried out by the trading company already available. And while the FCA's investigation is still ongoing, there is no certainty as to when it would be concluded and what, if any, prosecutions may be brought in future, nor what, if any, new light it would shed on the evidence and issues I've discussed.

And so I think the circumstances here meet the definition of a scam from the CRM code.

Are Mr and Mrs C entitled to a refund under the CRM code?

As I explained above, Halifax is a signatory of the Lending Standards Boards Contingent Reimbursement Model (the CRM code). This code requires firms to reimburse customers who have been the victim of authorised push payment scams, like the one I've explained I'm satisfied Mr and Mrs C fell victim to, in all but a limited number of circumstances. And it is for the firm to establish that one of those exceptions to reimbursement applies.

Under the CRM code, a firm may choose not to reimburse a customer if it can establish that:

- The customer ignored an effective warning in relation to the payment being made
- The customer made the payment without a reasonable basis for believing that:
  - the payee was the person the customer was expecting to pay;
  - the payment was for genuine goods or services; and/or
  - the person or business with whom they transacted was legitimate

There are further exceptions within the CRM code, but these don't apply here.

Did Mr and Mrs C ignore an effective warning in relation to the payments?

The CRM code says that an effective warning should enable a customer to understand what actions they need to take to address a risk and the consequences of not doing so. And it says that, as a minimum, an effective warning should be understandable, clear, impactful, timely and specific.

Halifax hasn't provided evidence of any warnings Mr and Mrs C were shown when they made these payments, or argued that Mr and Mrs C ignored an effective warning in relation to any of the payments they made here.

And so I don't think Halifax has established that Mr and Mrs C ignored an effective warning in relation to any of these payments.

Did Mr and Mrs C make the payments without a reasonable basis for belief?

I've also considered whether Mr and Mrs C acted reasonably when making these payments, or whether any warning signs ought to have reasonably made them aware that this wasn't a genuine investment.

Mr and Mrs C were first introduced to the trading company by someone a family member had met. They've said Mr C and the family member went to an investment seminar this person had told them about, where the trading company was discussed. They've also said there were a large number of people at this seminar, and that they were given brochures for the trading company and met the individuals involved in running it. And I think it's reasonable that being introduced to the trading company by someone a family member had met independently, attending such a large event and meeting the individuals involved in-person will have made the investment seem genuine to Mr and Mrs C.

This was also a relatively sophisticated scam, where Mr and Mrs C were given access to a portal which showed them details of their investments and the trades being carried out. They've also said they were in regular contact with people from the trading company and were given weekly updates about the profit they were making. And I've seen copies of some of the emails they received, as well as some of the marketing materials they were shown – which I think look relatively professional and legitimate. So I think it's reasonable that this kind of contact and communication will have reassured Mr and Mrs C that the trading company was genuine.

As their investment continued, Mr and Mrs C were able to make a withdrawal from their investment – which was successfully returned to their Halifax account. They've also said they knew of other people who had invested and not had any issues, and that their family member had been able to make a significant withdrawal from the investment they made with the company. And I think it's reasonable that these withdrawals will have reassured them that the trading company was legitimate.

Being asked to make payments to the personal accounts of the individuals involved in running the trading company is not what I would usually expect from a legitimate investment company. But Mr and Mrs C have said they were told the company was in the process of setting up business accounts, and paying in this way would allow them to start trading while this process was being completed – which I think will have reasonably given them some reassurance about the accounts they were sending the payments to. And as Mr and Mrs C were able to see the payments they had made appear on the portal they were given access to, I don't think it's unreasonable that being asked to pay in this way didn't cause them more concern.

I also appreciate that, with the benefit of hindsight, it's possible to identify a number of things about what was happening and what they were told that could have caused Mr and Mrs C some concern, such as the high returns they were told they could earn. But, based on what I've seen, I don't think it was unreasonable that, at the time, they either didn't pick up on these things or weren't caused enough concern by them to overcome the parts of the scam that felt genuine.

So I don't think it would be fair to say that Mr and Mrs C acted unreasonably when making the payments, or that Halifax has established that they made the payments without a reasonable basis for belief that the investment was genuine.

Summary

Overall, for the reasons I've set out above, I think it is fair for our service to assess Mr and Mrs C's complaint based on the evidence that is currently available. And having done, I think the payments Mr and Mrs C made here are covered by the CRM code and Halifax hasn't established that any of the exclusions to reimbursement apply. So I think Halifax should refund the money Mr and Mrs C lost as a result of this scam, in full.

Redress

As there is an ongoing investigation into the trading company by the FCA, it's possible Mr and Mrs C may recover some further funds in the future, through that process. In order to avoid the risk of double recovery, Halifax is entitled to take, if it wishes, an assignment of the rights to all future distributions under that process in respect of this £65,000 investment before paying the award.

If Halifax elects to take an assignment of rights before paying compensation, it must first provide a draft of the assignment to Mr and Mrs C for their consideration and agreement.

Mr and Mrs C were also able to make a withdrawal from the trading company of £202.38, which was received into their Halifax account on 8 November 2022. And I think it's fair for this amount to be deducted from the amount Halifax should refund them. So Mr and Mrs C's loss from this scam is £64,797.62.

As Mr and Mrs C have been deprived of access to their money for some time, I think it would also be fair for Halifax to pay them interest on this refund. But as much of the information and evidence I've relied on to come to this decision wasn't available to Halifax when it was first assessing Mr and Mrs C's claim, I don't think it would be fair to require Halifax to pay interest from the date it initially responded to their claim. Instead, I think it would be fair to require Halifax to pay interest from the date of our investigator's opinion of 28 November 2024 – as I think this is a fair approximation for when the information and evidence to fairly assess Mr and Mrs C's claim was available.

My final decision

For the reasons set out above, I uphold this complaint and require Bank of Scotland plc, trading as Halifax, to:

- Refund Mr and Mrs C the money they lost as a result of this scam – totalling £64,797.72

- Pay Mr and Mrs C 8% simple interest on this refund, from the date of our investigator's opinion of 28 November 2024 until the date of settlement

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs C to accept or reject my decision before 10 July 2025.

Alan Millward
Ombudsman