

The complaint

Mr A 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

At some point prior to 2019, Mr A says he heard an advert on the radio about an opportunity to invest in a company which leased cars. He says the advert appealed to him so he looked into it further, including checking online reviews. He was told his investment would be used to fund vehicles which would then be leased out, and that he would receive fixed interest payments each month. And having decided to invest, he made a number of payments to account details he was given for the car leasing company from various accounts he held – including his Halifax account.

I've set out the payment Mr A made from his Halifax account below:

Date	Amount
24 September 2019	£14,000

Mr A received the monthly interest payments he was told he would until January 2021, but the payments then stopped and Mr A found out the company had gone into administration. He then reported the payment he had made to Halifax as a scam and asked it to refund the money he had lost.

Halifax investigated but said the payment had gone to a legitimate company who had provided the expected returns until it had gone into administration. So it didn't think this was a scam and didn't agree to refund the payment Mr A had made. Mr A wasn't satisfied with Halifax's response, so referred a complaint to our service. Since the case has been with our service, Halifax has now also said the car leasing company, and other associated companies, are the subject of an ongoing investigation which should be allowed to finish before an outcome is reached on the complaint.

One of our investigators looked at the complaint. They didn't think it was fair to delay the outcome of the complaint. They also said they thought the circumstances here met the definition of a scam and they were satisfied Mr A had no reason to suspect the investment wasn't legitimate. So they recommended Halifax refund his losses 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 payment Mr A made is the subject of an ongoing complex investigation and it would be fair to wait for the outcome of this investigation before making a decision on whether to reimburse him. 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 after the case was referred to our service and it had already reached a decision on Mr A's claim in its final response letter to him of 31 July 2023 – when it said he made a payment to a legitimate company and this didn't fall under the remit of the CRM code. So I don't think Halifax can now rely on this provision here.

And, in any event, the Serious Fraud Office (SFO) had been carrying out an investigation into the car leasing company and several connected companies. But that investigation concluded on 19 January 2024 when the SFO published the outcome of the investigation, which included the charging of former company directors with fraud, on its website.

The Lending Standards Board has also said that the code does not require a criminal test to have been met before a reimbursement decision can be reached. Nor does it require a firm to prove the intent of the third party before a decision can be reached.

So as the SFO has reached an outcome on its investigation, and I don't think it's fair or necessary to wait until the outcome of the related court case – which isn't scheduled for some time, I don't think it's fair for Halifax to delay making a decision on whether to reimburse Mr A any further.

I'm aware that the Financial Services Compensation Scheme (FSCS) is accepting customer claims submitted to it against the car leasing company's parent company. More information about the FSCS's position on claims submitted against the parent company can be found on the FSCS's website.

The FSCS is also aware that we have issued recent decisions upholding complaints against banks related to the car leasing scheme. Whether the FSCS pays any compensation to anyone who submits a claim to it is a matter for FSCS to determine, and under their rules. It might be that the parent company has conducted activities that have contributed to the same loss Mr A is now complaining to us about in connection with the activities of Halifax.

As I'm minded to uphold this complaint for the reasons given below, Mr A should know that as he will be recovering compensation from Halifax, he cannot claim again for the same loss by making a claim at the FSCS (however, if the overall loss is greater than the amount he recovers from Halifax, he may be able to recover that further compensation by making a

claim to the FSCS, but that will be a matter for the FSCS to consider and under their rules.) Further, if Mr A has already made a claim at the FSCS in connection with this matter, and in the event the FSCS pays compensation, Mr A is required to repay any further compensation he receives from his complaint against Halifax, up to the amount received in compensation from the FSCS.

Our service and the FSCS operate independently, however in these circumstances, it's important that we and the FSCS are working together and sharing information to ensure that fair compensation is awarded. More information about how we share information with other public bodies can be found in our privacy notice on our website.

Whilst the FSCS may be taking on these cases against the parent company as a failed unregulated investment, it doesn't automatically follow that this was not a scam. This is not something that the FSCS would make a finding on before considering those claims.

I also don't think it's necessary that the FSCS process be allowed to run before any complaints are determined. While our service has sometimes dismissed cases as better suited to another scheme, that is usually only where the complaints brought to us are against the same business the FSCS is accepting claims about – which isn't the case here. This complaint is against Halifax for non-payment of a claim under the CRM code, whereas the FSCS is accepting claims against the car leasing company's parent company.

The FSCS is also the fund of last resort, and so should be the final place someone goes to for redress. Therefore, we would not necessarily expect customers to go to the FSCS before going to their bank. And our service has an obligation to investigate complaints brought to us.

Has Mr A been the victim 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 A has been the victim of a scam as defined in the CRM code I need to consider whether the purpose he intended for the payment was legitimate, whether the purposes he and the car leasing 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 A made the payment here with the intention of investing with the car leasing company. He thought his funds would be used to purchase a vehicle which would then be leased out, and that he would receive returns on his investment. And I haven't seen anything to suggest that Mr A didn't think this was legitimate.

But I think the evidence I've seen suggests the car leasing company didn't intend to act in line with the purpose for the payment it had agreed with Mr A.

Mr A appears to have been led to believe his capital would be used to fund specific vehicles, which would be secured in his favour until the leases were repaid. The promotional material I've seen for the company refers to the investment as 'asset-backed' and frequently refers to

the investor's car or the car they have funded. And Mr A was given a vehicle funding form, which states he has funded two units and the make of the specific vehicles will be confirmed later.

But there's no record at Companies House of any charge in Mr A's favour over any vehicle with the company following his investment. And the Financial Conduct Authority (FCA)'s supervisory notice to one of the connected companies said that, while the companies had around 1,200 customers and had entered around 1,200 leases, they had only registered 69 vehicles at Companies House – which suggests the vast majority of the vehicles funded weren't secured in the way I think Mr A was led to believe his would be.

The FCA also checked a sample of the vehicles the companies held against the DVLA database, and found a significantly larger proportion of these were second-hand than the companies' stated business model suggests or would support – as it relied on securing significant discounts on new vehicles, which wouldn't be available on second-hand vehicles.

It also found a number of leases started significantly before the vehicles were put on the road, and some vehicles not found on the database at all. And the FCA said it considered the companies' valuation of the vehicles it held was unrealistic and that the group's liabilities significantly exceeded its assets.

A report by the administrators of one of the connected companies also said that the total number of loan agreements was 3,609, relating to 834 investors, but that the number of vehicles held by the group at the appointment of the administrators was 596 – or less than one car for every six loan agreements.

So I think the evidence shows the car leasing company wasn't acting in line with the business model and features of the investment it had led Mr A to believe he was making. And so the purpose the company intended for the payment Mr A made wasn't aligned with the purpose Mr A intended for the payment.

The SFO has also said that the former company directors are accused of providing those who invested with false information and encouraging people to pay in whilst knowing that investments were not in reality backed up by the cars they had been promised. So I think the discrepancy in the alignment of the payment purposes between Mr A and the company was the result of dishonest deception on the part of the company.

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

Is Mr A 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 A 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:
 - o the payee was the person the customer was expecting to pay;
 - o the payment was for genuine goods or services; and/or
 - o the person or business with whom they transacted was legitimate

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

From what I've seen, the communication Mr A had with the car leasing company and the documents he received about the investment all appear to have been relatively professional and looked legitimate. The way Mr A was told the investment would work doesn't appear to be suspicious and the returns he was told he would receive don't appear to be too good to be true. And it appears the company had been operating for several years, one of the connected companies was authorised and regulated by the FCA, and a number of previous investors – including Mr A himself – had received the returns they were told they would. So I don't think there was anything about the investment that should have caused Mr A significant concern, or that Halifax has established that he made the payment without a reasonable basis for belief that the investment was legitimate.

Halifax also hasn't suggested that Mr A ignored an effective warning when he made the payment to the car leasing company. So I don't think Halifax has established that Mr A ignored an effective warning in relation to the payment either.

And so I don't think Halifax has established that any of the exceptions to reimbursement under the CRM code apply here, and so it should refund the money Mr A lost in full.

Redress

As Mr A received a number of monthly interest payments back from the car leasing company in relation to this payment, I think it would be fair for these payments to be deducted from the amount Halifax has to refund him. From what I've seen, Mr A's payment to the car leasing company from his Halifax account was £14,000, and he received 18 interest payments back in relation to this investment, totalling £4,812.48. So his remaining loss to be refunded is £9,187.52.

I also don't think any action I would've expected Halifax to take would have prevented Mr A making this payment, as I don't think any of the information I would've reasonably expected it to have uncovered at the time of the payment would've uncovered the scam or caused it significant concern. And I don't think it was unreasonable for Halifax to initially decline Mr A's claim under the CRM code, as it wasn't clear from the evidence available at the time that this was a scam.

But the CRM code allows firms 15 days to make a decision after the outcome of an investigation is known. So I think Halifax should have responded to Mr A's claim and refunded his losses under the CRM code within 15 days of the SFO publishing the outcome of its investigation. And so I think Halifax should now pay 8% interest on the refund, from 15 days after the SFO published its outcome on 19 January 2024, until the date of settlement.

My understanding from the administrator's statement about the car leasing company and connected companies is that the company owed over £40 million to investors that it was unable to pay – and that this far outweighs its assets. So it is far from certain that complainants will receive anything back at all. But it is possible Mr A may recover some further funds in the future so in order to avoid the risk of double recovery, if it wishes, Halifax is entitled to take an assignment of the rights to all future distributions under the administrative process before paying the award.

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 A the payment he made as a result of this scam, less the interest payments he received back – for a total of £9,187.52
- Pay Mr A 8% interest on that refund, from 15 days after 19 January 2024 until the date of settlement

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 21 March 2025.

Alan Millward
Ombudsman