

## **The complaint**

Mr D complains that Bank of Scotland plc, trading as 'Halifax', hasn't refunded the money he lost to a fraudulent investment scheme.

## **What happened**

The circumstances of the complaint are well-known to both parties. So, I don't intend on setting these out in detail here. However, I'll provide a brief summary of what's happened.

In October 2023, Mr D saw an advert for an investment opportunity (which I'll refer to as 'R') on a well-known social media platform. He says R was being endorsed by an American celebrity. Mr D assumed R's advert would've been vetted by the social media platform and that the celebrity would've also carried out checks to make sure R was legitimate before endorsing it.

Mr D says he did undertake some research on R and found only positive reviews. So, Mr D believed R was a genuine investment opportunity and decided to fill out an enquiry form, after which he was contacted by a third-party representing R, whom I'll refer to as 'A'.

Mr D was told that he could benefit from a three-month trial period, where he wouldn't have to sign up with R or pay any fees, but during that time he could benefit from some free advice in buying stocks and selling these for a profit. To purchase stocks, Mr D was advised to open an account with a trading platform, which I'll refer to as 'I', that was authorised and regulated by the Financial Conduct Authority ('FCA').

Mr D initially deposited £110 into his trading account with I on 12 October 2023, which he was able to withdraw on 19 October 2023. Then, between 8 November 2023 and 27 December 2023, Mr D made eight further payments to I, totalling £56,925. Throughout that time A advised Mr D to purchase stocks in overseas companies.

The initial stocks Mr D purchased were subsequently sold for a profit. However, on 27 December 2023, A advised Mr D that the prices of his stocks holdings had fallen and as result, there had been a substantial reduction in the value of Mr D's investments. Mr D sold his remaining stock for less than he bought it for resulting in a considerable loss. He then withdrew the remaining funds to his account with Halifax, leaving Mr D with a loss of £47,188.24.

Mr D believes that A encouraged him to purchase stocks, to artificially inflate the value, allowing R to sell its own holding of the same stock at a significant profit (causing the stock value to plummet) – a fraudulent practice known as a 'Pump and Dump' scheme. So, Mr D contacted Halifax and asked it to reimburse his loss.

Halifax refused to reimburse Mr D. It said Mr D had sent funds to his own trading account with I. The funds had been used, by Mr D, to buy stocks in real companies. So, Mr D had received what he paid for and hadn't suffered a loss when the funds left his Halifax account. As a result, Halifax didn't think it was responsible for reimbursing Mr D's loss.

Unhappy with Halifax's response, Mr D referred a complaint to this service. Our Investigator considered the complaint but didn't uphold it. In summary, they didn't think Halifax reasonably could've prevented Mr D's loss. They thought Halifax ought to have questioned Mr D about some of the payments he made, but they didn't think that would've stopped him sending the funds. Our Investigator also didn't think Halifax could've done anything to recover Mr D's loss once it was aware of the situation.

Mr D didn't accept our Investigator's opinion. He said Halifax failed to identify the payments to I were unusual and out of character and if it had intervened to question him about the payments, it's likely he wouldn't have gone ahead with the payments. He also thought Halifax ought to have reimbursed him under the principles of a voluntary reimbursement code it was a signatory of.

As an agreement couldn't be reached, the complaint has been passed to me to decide.

### **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 D has made some detailed submissions in support of his complaint. I've read and considered everything he's sent in, but I don't intend to respond in similar detail. I'm very aware that I've summarised this complaint briefly, in less detail than has been provided, and in my own words. No discourtesy is intended by this. Instead, I've focussed on what I think is the heart of the matter here. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual point or argument to be able to reach what I think is the right outcome. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts.

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

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 (in this case, the 2017 regulations) and the terms and conditions of the customer's account.

It's not in dispute that Mr D made the disputed payments to I. So, the payments were authorised and under the Payment Services Regulations, the starting position here is that Mr D is responsible for the payments (and the subsequent loss). However, that's not the end of the story.

At the time Mr D made the disputed payments, Halifax was signed up to the Lending Standards Board's Contingent Reimbursement Model ('CRM') Code. The CRM Code provided additional protection from APP scams.

However, the CRM Code didn't apply to every APP which ultimately resulted in a loss for the customer. For Mr D's claim to be considered under the principles of the CRM Code, I'd need to be persuaded that it applies in his circumstances.

The CRM Code can only apply where the victim's payment meets the CRM Code definition of an APP scam. Under DS1(2)(a) of the CRM Code, an APP scam is defined as:

*“(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.”*

There's been no suggestion made that Mr D wasn't intending to pay his own trading account with I, which was the ultimate destination of the payments he made from his Halifax account. So, Mr D wasn't “*deceived into transferring the funds to a different person*”. This means DS1(2)(a)(i) doesn't apply in these circumstances.

As mentioned above, Mr D sent funds from his Halifax account to his own trading account with I. The funds successfully credited his trading account with I and those funds were made available for Mr D to buy real stocks, which he did. So, the payments from Mr D's Halifax account weren't sent to “*another person*”. As a result, DS1(2)(a)(ii) doesn't apply in these circumstances either.

I appreciate that Mr D believes very strongly that the CRM Code does apply to the payments he made from his Halifax account. However, as Mr D successfully paid his own trading account with I, which he had full and sole control over, I'm satisfied that his circumstances aren't covered by the CRM Code. As a result, I've not considered whether Mr D should be reimbursed under its principles.

Mr D's payments from Halifax were sent to I (a legitimate payee) and deposited into his trading account for the legitimate purpose of buying stocks. So, it's questionable whether Mr D has been the victim of an APP scam outside of the CRM Code. However, it seems more likely than not that Mr D was induced into buying stocks, under false pretences, for the benefit of a third party and that he was dishonestly deceived into making those transactions – i.e., he's been the victim of fraud.

Good industry practice required Halifax to be on the lookout for account activity or payments that were unusual or out of character to the extent that they might indicate a fraud risk. On spotting such a payment, I'd expect it to take steps to warn the customer about the risks of proceeding. So, I've considered whether Halifax reasonably ought to have been concerned by Mr D's payments to the extent that it ought to have questioned him about the payments and, importantly, whether reasonable intervention would've prevented Mr D from going ahead with the payments.

Mr D made payments of £100 and £10 to I on 12 October 2023. Those funds were subsequently withdrawn from I and deposited back into Mr D's Halifax account on 19 October 2023. He also made a £500 payment to I on 8 November 2023. In my opinion, those payments were consistent with Mr D's typical account activity. As a result, they weren't so remarkable that Halifax reasonably ought to have been concerned that Mr D was at risk of financial harm due to fraud when the first three payments were made.

Payment four, also on 8 November 2023, was for £7,500 and it was the second payment to an existing payee within a period of less than half an hour. In the 12 months prior to this payment, Mr D had made two payments to an existing beneficiary which were larger in value than this payment. Mr D's payment of £7,500 was also going to firm that was authorised and regulated by the FCA and to an account in Mr D's own name. As a result, I'm not persuaded Halifax reasonably ought to have suspected Mr D was at risk of fraud, so I don't think it needed to question him about that payment.

Halifax did provide Mr D with a generic warning, recommending he check the payment details with someone he trusted before proceeding. Whilst it wasn't a very detailed warning, I don't think Halifax needed to provide a warning in the circumstances and so I think that was a proportionate response for Halifax to take.

Mr D made a payment to I on 21 November 2023 for £1,675. He was paying an existing beneficiary, and the amount wasn't so remarkable or out of character that Halifax ought to have been concerned that it demonstrated a fraud risk, so I don't think Halifax needed to do anything in those circumstances.

On 30 November 2023, Mr D made a £14,000 payment. It was for a large amount, and it was almost twice the amount he'd sent to I (or any other beneficiary) within the previous 12 months. As a result, despite the payment going to an existing payee, I think Halifax reasonably ought to have had concerns that the payment was out of character and in those circumstances, Halifax should've taken steps to ensure the payment wasn't being made for a fraudulent purpose.

Halifax did provide a generic warning about scams, which was the same warning it provided for the £7,500 payment on 8 November 2023. Given the payment was for £14,000 and out of character for Mr D, I'd have expected Halifax to have gone further than this and it should've sought to confirm the payment was being made for a genuine purpose through human intervention.

I can't say for certain what would've happened if Halifax had intervened (because it didn't question the payment). So, I must consider whether the available evidence shows that it was more likely than not that Mr D would've acted differently if Halifax had questioned him.

If Halifax had spoken to Mr D prior to him making the payment, I have little doubt that he would've been honest with his answers. As such, I think he would've explained that he was paying his own trading account with I, which was a legitimate FCA regulated firm for the purpose of buying stocks, which he'd done successfully several times already.

Mr D wasn't paying a third party or intending to use his trading account with I as an intermediary to move the funds on to a third party, as is common with investment scams. He would've likely explained that he had previously successfully credited his trading account with I and purchased stocks in real companies. He'd also managed to withdraw funds from his trading account with I. Based on these circumstances, it would've been very difficult for Halifax to identify that there was anything suspicious about what Mr D was doing or that he was at risk of financial harm from fraud.

Even if Halifax had probed Mr D further and asked questions about what he'd done to research the investment, it's unlikely that this would've resulted in Mr D not going ahead with the payment.

I accept there were some common hallmarks of an investment scam, such as the investment being advertised on social media and being endorsed by a celebrity. Mr D was encouraged to increase his investment capital to maximise his profits and his communication with A was through instant messaging, rather than a more formal method. However, it's possible that a legitimate financial advisor might also exhibit these types of behaviour and so alone, these aren't enough to say Halifax ought to have been concerned by Mr D's payment.

Also, I think Mr D would've explained that he had carried out research into R before investing and found no negative information. Around a week earlier, he'd sold some of his stock for a profit and the returns were available in his trading account with I. He hadn't been asked to send any money to a third party as commission or fees to withdraw his profits. And as I've mentioned above, he'd made a successful withdrawal from his trading account with I in October 2023, without any resistance or having to pay any fees.

I don't think 'Pump and Dump' schemes were so well known at the time that Halifax could reasonably have been expected to have provided any warnings about this issue and any other investment scam warnings are unlikely to have resonated with Mr D at the time, because this wasn't a common method of fraud. So, in the circumstances, I don't think Halifax would've been concerned that Mr D was at risk of financial harm from fraud or that it could've persuaded Mr D not to go ahead with the payment.

The next two payments to Mr D's trading account with I were for £500 and £250. Those payments weren't so remarkable that Halifax reasonably ought to have been concerned so there was no need for it to intervene and question Mr D about those payments.

On 13 December 2023, Mr D sent £25,000 to his trading account with I. Although he was sending funds to an existing payee, I'd have expected Halifax to have asked questions about what he was doing. It would've been concerning that Mr D was using loan funds for an investment. However, I think a conversation, similar to what should've happened on 30 November 2023, is unlikely to have given Halifax any cause for concern for the same reasons I've explained above.

By the time Mr D decided to invest £25,000, he'd made a further profit based on the advice he'd received from A, meaning he'd made multiple successful stock purchases/sales and seen other recommended stock values increasing as per the advice he received from A. As a result, I don't think any proportionate questioning would've given Mr D enough doubt that he wouldn't have gone ahead with the payment.

The final payment, for £7,500 on 27 December 2023, wasn't used to buy any stocks via Mr D's trading account with I and the funds were successfully withdrawn to his Halifax account. As a result, there was no loss caused by that payment. In any event, I wouldn't have expected Halifax to have intervened and questioned Mr D about the payment at the time it was made as the payment was consistent with Mr D's recent transaction history.

Taking into consideration all the available evidence and arguments, I'm not persuaded any proportionate questioning throughout the investment would've created enough doubt for Mr D that he wouldn't have gone ahead with the payments, such was his belief that R was a genuine and profitable investment opportunity.

Mr D's payments all went to his own trading account with I and he was able to withdraw the remaining funds. As the other funds had been used by Mr D to buy stocks (the value of which had plummeted) there was nothing Halifax could've done to recover his outstanding loss once it became aware of the situation.

I have natural sympathy with Mr D, given the loss he's suffered and the impact this has had on his financial circumstances. I also appreciate he feels very strongly that Halifax should be required to refund him. However, I'm not satisfied Halifax could've stopped Mr D from going ahead with the disputed payments and there wasn't anything it could've done to retrieve his loss from I. As Halifax couldn't reasonably have prevented or recovered Mr D's loss, I'm not persuaded it can be fairly held responsible for reimbursing him in the circumstances. I'm also not persuaded Halifax is required to reimburse him under the principles of the CRM Code.

Mr D credited his trading account with I multiple times within a short space of time, with large amounts of money, which he used to purchase stocks. I is authorised and regulated by the FCA and as a result it had certain obligations to meet throughout its dealings with Mr D. It's for Mr D to decide whether or not to make a complaint to I and it's unclear whether – should a complaint be made – that it would succeed.

### **My final decision**

For the reasons explained above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 31 December 2025.

Liam Davies  
**Ombudsman**