

The complaint

Mr T complains that Bank of Scotland trading as Halifax (“Halifax”) won’t refund the money he lost to an investment which he now believes was a scam.

What happened

The background to this complaint is well-known to both parties, so I won’t repeat it in detail here. In summary, Mr T attended an investment summit where he came across the opportunity to invest with a company I will refer to as B. At the summit Mr T met an investor who had made good returns, so between 18 September 2020 and 31 January 2022 Mr T made five international payments totalling £44,100 to a genuine trading platform (I will refer to as A). Mr T signed a limited power of attorney giving B authority to trade the funds on his behalf. Mr T also invested from his business account (subject of a separate complaint) Mr T says he never received any returns. B went into administration in October 2022. There is also an ongoing police investigation into B.

Mr T contacted Halifax asking it to refund the payments as he felt he had been the victim of a scam.

Halifax said the individual payments weren’t out of character so didn’t require intervention. It said, as the payments were international, they weren’t covered by the Contingent Reimbursement Model (CRM) Code.

Unhappy with Halifax’s response, Mr T brought his complaint to this service. Our investigator did not uphold the complaint. She concluded that there was insufficient evidence to conclude that the payments to A were made as a consequence of an authorised push payment (APP) scam.

Mr T did not agree. He said:

- Halifax did not reject his complaint on the basis that they were not satisfied the payments were made as a consequence of an authorised push payment (APP) scam. They only relied on the fact that the payments were not out of character.
- Mr T says Halifax accepted the payments were made as part of an APP scam and they had used the Contingent Reimbursement Model (CRM) Code to assess his complaint.
- Another consumer was refunded on this basis and there is nothing to differentiate Mr T’s case from this.
- The payments were not in line with his normal activity.
- The various facts tend strongly towards a scam.

As the complaint could not be resolved informally, it has been passed to me for a 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.

Having done so I have reached the same outcome as the investigator broadly for the same reasons.

When considering what is fair and reasonable, I'm also required to take into account: relevant law and regulations; regulatory rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time.

Where I can't know for certain what has or would have happened, I need to weigh up the evidence available and make my decision on the balance of probabilities – in other words what I think is more likely than not to have happened in the circumstances.

I understand Mr T has strong views about what has happened. I want to assure him that I've considered everything he's provided to support the complaint very carefully. I have read the detailed response to the view and all the evidence on the file.

However, my findings focus on what I consider to be the central issues. The purpose of my decision isn't to address every single point the parties have raised or to answer every question asked. My role is to consider the evidence presented by all parties and reach what I think is a fair and reasonable decision based on the available facts of the case.

Mr T has referred to other cases, but each case is judged on its own merits and what may appear (on the face of it) to be a similar set of circumstances, may often transpire not to be the case. These are not cases I am considering. Any outcomes on other cases or conclusions reached/approaches taken by the bank do not determine my approach or outcome on this particular case.

This case is not covered by the Contingent Reimbursement Model (CRM) Code as the payments were international. Whilst the bank may have considered this or similar complaints under that Code – the complaint is now with me, and it would not be appropriate for me to consider a complaint under a Code that does not apply.

Despite this complaint not being covered by the CRM Code, banks have various and long-standing obligations to be alert to fraud and scams and to act in their customers' best interests. These are based on there having been a fraud or scam. So, the first consideration in determining Halifax's obligations would be whether there is evidence to show Mr T has been scammed.

To determine if Mr T has been the victim of an APP scam, I have to consider if its intended purpose for the payments was legitimate, whether the intended purposes Mr T and the investment firm had were broadly aligned and, if not, whether this was the result of dishonest deception on the part of the firm. Misrepresentation isn't enough to meet this definition.

Based on the evidence available to me, it seems Mr T was intending for the funds to be invested into an investment fund. I don't believe I have all the paperwork Mr T received, but from what I understand the information Mr T would have received was professional and the platform itself was genuine. So, I see no reason why Mr T would not have thought this was a legitimate investment he was sending his money to.

I've next considered whether the firm's intended purpose for the payments aligned with what Mr T intended. Mr T thought he was putting his funds into an account which would be used to purchase foreign currency. Instead, the funds were held on account and used as collateral. So, whilst the funds were used differently to what investors were led to believe, the overall purpose of the trading platform accepting the funds was for investment purposes. The company Mr T made the payments to looks to have been a legitimate company involved in legitimate enterprise. During the period in question, the firm appears to have been conducting investments, and I've seen nothing to suggest that the funds being paid into Mr T's account were fictitious.

There were returns and withdrawals completed by some investors and there is no evidence to suggest this was not based upon legitimate trading activities. Additionally, A has also confirmed that B was successfully trading for a number of years using their platform. I think this also indicates that B did intend to use Mr T's funds for investment purposes. It seems, at least initially, that the trading strategy was working – albeit with credit being used rather than the direct trading account funds. It appears the high-risk trading strategy used then began to fail and the funds (which were held as collateral) were lost. Had the funds been used, rather than merely been held as collateral, it ultimately would have led to the same result of the funds being lost.

I've seen no evidence to suggest that B didn't trade Mr T's funds via A or that B misappropriated the funds deposited A. Whilst A closed B's account, ultimately, I believe the deposited funds were not removed from the account fraudulently.

Consequently, I'm satisfied the investment firm's intended purpose for the funds generally aligned with Mr T's and nothing I have seen indicates to me that there was an intention to defraud. Instead, I think it's more likely that this was a failed investment. Therefore, I don't think it meets the definition of an APP scam. And I think Halifax acted reasonably when it treated the case as a civil dispute.

For completeness, even if I was persuaded this was a scam from the outset, I do not think Halifax could have prevented Mr T's losses. I say this because, even if Halifax had intervened here, I do not think it would have made any difference. The investment at that time would have seemed a legitimate one. I'm not aware of any information Halifax could or should have known at the time from which it ought to have been concerned Mr T was being scammed.

Halifax could have given Mr T general fraud and scam advice in relation to investing. However, I do not think I can fairly say it would have been able to give Mr T any information that would have led it to doubt what it already knew about what it was doing, including if he had undertaken further reasonable research at the time.

The funds Mr T was sending were also going to an account Mr T opened himself on what looks to be a legitimate trading platform. So, even if Mr T had been questioned in more detail about the investment, I do not think it would have highlighted anything that would have caused concern or led Halifax to believe Mr T was at risk of financial harm from fraud or a scam.

I do appreciate how disappointing this is for Mr T. However, based upon the available evidence I don't think Halifax needs compensate Mr T the losses he has incurred.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 2 January 2026.

Kathryn Milne
Ombudsman