

The complaint

Mr L complains that Bank of Scotland plc trading as Halifax ('Halifax') hasn't reimbursed him in full after he fell victim to a scam.

What happened

In January 2023 Mr L transferred £15,000 in respect of an investment with a company I'll refer to as R. R later changed its name to V. Mr L paid one of the directors of R/V and communicated with someone I'll refer to as C in this decision.

Mr L says he had difficulty withdrawing his funds and believes he is the victim of a scam. He has asked Halifax to reimburse his loss.

Halifax told Mr L that it had been unable to recover his funds but refunded 50% of his loss because it didn't log his claim within its timescales. Halifax went on to say that it was unable to review Mr L's complaint any further as there was a Financial Conduct Authority (FCA) investigation into V and a freezing order from HMRC.

Mr L was unhappy with Halifax's response and appointed a professional representative to bring a complaint to this service.

Our investigation so far

The investigator who considered this complaint didn't recommend that Halifax do anything more. Whilst she said the CRM Code definition of an APP scam had been met, the investigator said Halifax could fairly rely on an exception to reimbursement in respect of Mr L's reasonable basis for believing the investment was genuine. This was because Mr L's testimony had changed a few times, the only evidence of Mr L's contact with C was after the payment had been made, there was insufficient evidence to show Mr L knew what he was investing in, and it was difficult to determine how much of the information provided about the lead up to the investment is accurate given the lack of evidence in support. Overall, the investigator felt it was unclear what Mr L knew about the investment before he decided to go ahead.

Mr L didn't agree with the investigator's findings and asked for a final decision. In summary, he said:

- When he initially discussed the investment with Halifax he was in a state of shock and made an honest mistake in saying he met C in a town centre.
- Even if there are some inconsistencies in what he has said, this was a sophisticated scam and how Mr L found out about it doesn't detract from this.
- In scam cases it's often not possible for victims to provide evidence. Mr L threw his old phone away so can't access information.
- Mr L said he didn't know what he was investing in when he was in shock, but this isn't correct – he was fully aware he was getting involved in a Forex investment and of the details.
- The documents provided were widely distributed to investors so it's more likely than not Mr L saw them. And the Q&A document was dated October 2022, before Mr L made his payment.

- As Mr L wasn't an expert he wouldn't know the rate of return was unrealistic, and it was explained in a way that sounded plausible.

Mr L's representative also quoted from the CRM Code and the Lending Standards Board's September 2022 review of adherence to it.

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 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 be good industry practice at the time.

Where there is a dispute about what happened, and the evidence is incomplete or contradictory, I've reached my decision on the balance of probabilities. In other words, on what I consider is most likely to have happened in light of the available evidence.

In broad terms, the starting position at law is that a bank such as Halifax is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations (in this case the 2017 regulations) and the terms and conditions of the customer's account.

Is it appropriate to determine this complaint now?

I have 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 – as explained above – is the balance of probabilities).

As for investigations by liquidators/administrators, these are normally made for the purpose of maximising recoveries for creditors. Sometimes they lead to civil proceedings against alleged wrongdoers, or against allegedly implicated third parties. But the claims may not be relevant to the issues on the complaint. And, even if they are potentially relevant, such claims are quite often compromised without a trial and on confidential terms, so the outcome is of little benefit to our service.

In order to determine Mr L'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 L was the victim 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 L first raised his claim with Halifax in September 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 L 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 aware the above processes might result in some recoveries for V'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 L under those processes in respect of this investment before paying anything I might award to them on this complaint.

For the reasons I discuss further below, I don't think it's necessary to wait for the conclusion of the FCA investigation for me fairly to reach a decision on whether Halifax should reimburse Mr L under the provisions of the CRM Code.

Are Mr L's payments covered by the CRM Code?

Halifax has signed up to the CRM Code, which requires firms to reimburse customers who have been the victims of Authorised Push Payment (APP) scams, in all but a limited number of circumstances. The CRM Code applies to authorised push payment (APP) scams which are defined as:

- (a) ...a transfer of funds executed across Faster Payments...where:
 - (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.

In order to decide whether the circumstances under which Mr L made his payment meets the definition of an APP scam, I need to consider the purpose of the payment and whether Mr L thought this purpose was legitimate. I then need to consider the purpose R/V had in mind at the time of the payment and whether this was broadly in line with what Mr L understood the purpose to be. And, if I decide there was a significant difference in these purposes, whether I'm satisfied that was as a result of dishonest deception.

Mr L made the payment to V as part of an investment. I haven't seen anything that suggests Mr L didn't think this was a legitimate purpose.

So, I've gone on to consider what purpose R/V had in mind and whether it was in line with what Mr L thought.

In reaching an answer on what purpose V had in mind, I've considered the wider circumstances surrounding R/V, V's directors and any linked businesses.

The key information to this case is:

- R/V claimed to be regulated by the CSSF and had regulation pending from the FCA. However, both the CSSF and FCA have said this isn't true. Even after the FCA's intervention in April 2023, V still made claims to investors that it was regulated with the CSSF, which also wasn't true.
- The rates of returns that R/V promised were unsubstantiated. There is no evidence available that supports R/V trading successfully or generating the profits that it claimed it was making.
- The beneficiary bank has provided evidence that R/V lied at least twice when applying for accounts.
- Investors were told that their funds would be immediately moved to a trading account and used for Forex trading. Of the money that was sent to J (a director of R/V) and

another party, less than half appears to have been potentially used for the intended purpose. Also, these funds weren't separated from the personal funds of J.

- Of the funds paid to V, less than 12% was returned to investors. Some investors did receive funds, but funds were also sent to J and other personal accounts and used for what appeared to be non-trading purposes.
- There were no payments from R/V to VF (the broker firm) – which is what Mr L was told would happen. Instead around £2m in funds were sent to a cryptocurrency exchange and around £900k was sent to investors as returns. A receiving bank has shown that none of the funds received into R/V's accounts were used for the intended purpose of being sent to VF for trading in Forex.

Based on this, I'm satisfied that it's more likely than not Mr L's funds weren't used for their intended purpose and that R/V obtained the funds through dishonest deception. So, I'm satisfied that Mr L's payments meet the definition of an APP scam and are covered by the CRM Code.

Application of the CRM Code

The CRM Code says that Mr L is entitled to a full refund unless Halifax can establish that an exception to reimbursement applies.

Halifax hasn't said that an exception applies but has said it can't consider Mr L's complaint further given the ongoing investigations. But, for completeness, I have considered whether Halifax could fairly rely on an exception to reimbursement.

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

- The customer made payments without having a reasonable basis for believing that the payee was the person the customer was expecting to pay; the payment was for genuine goods or service; and/or the person or business with whom they transacted was legitimate.
- The customer ignored effective warnings, by failing to take appropriate action in response to such an effective warning.

There are further exceptions outlined in the CRM Code, but they don't apply to this case.

Did Mr L have a reasonable basis for believing the investment was genuine?

To determine whether Mr L had a reasonable basis for believing the investment was genuine I need to consider a host of factors including how the investment was introduced, what he understood the investment to be, what research he completed and what led him to believe it was legitimate.

As the information Mr L has provided isn't consistent, I am setting it out in date order.

Mr L first contacted Halifax on 12 September 2023, when he asked for the payment he made to V to be "pulled back". At this time, he said someone else had made the payment on his behalf, he didn't do anything, and it should never have happened. When asked if the payment related to cryptocurrency, Mr L said it didn't, but he didn't know what it was and didn't know much about it, or what was going on. He referred to a group chat about V involving around 11,000 people.

Mr L then spoke to a Halifax fraud agent in October 2023. At this time, Mr L wanted to read prepared notes, but the agent tried to work through the detail in chronological order. Initially Mr L said V had been recommended to him by a friend and that he met an individual I'll refer to as C, who marketed R/V through an investment circle. But shortly afterwards Mr L said that C introduced herself to him when she approached him in a town centre, and he was

then introduced to a group chat and completed research. When asked if he knew what the investment was Mr L said 'no' and that he 'didn't understand much'.

When Mr L brought a complaint to this service through his professional representative, he said that he first heard about V through a friend who had already invested, the investment was in Forex, and he completed a huge amount of research before investing, which he set out.

The investigator who considered Mr L's complaint asked questions and requested evidence in the form of documentation provided, chats and emails. Mr L said he was introduced to V by C, who was FCA regulated, and he had met her through an investment circle. In terms of evidence, Mr L provided a very limited number of messages with C. One (undated) related to a new process for new account sign-ups and the others were after Mr L made his payment. Mr L said he no longer had any other evidence of his communications with V but provided an email with details of a meeting in February 2023, a blank managed account authorisation form, an investment deck, and a document relating to an interview with V's directors in October 2022 with links to video and audible clips.

After the investigator issued her view, Mr L's representative explained that when he first spoke to Halifax, he was shocked and confused and made an honest mistake when he said he met C in a town centre and in his responses to what he knew about the investment.

It's clear that Mr L's testimony hasn't been consistent, which makes it difficult for me to rely on his latest account, which includes a lot of detail about his investment with L and the extensive research he says he completed. I appreciate that Mr L's representative says that he was in a state of distress when he discussed what had happened and his understanding of the investment with Halifax, but I'm mindful that Mr L told Halifax he was first aware of a scam in April 2023. So I don't think his conversations with Halifax were in the heat of the moment as they were five/six months later.

Mr L has said he was in a group chat with multiple other victims of the same scam, and he appeared to be reading information from it when he spoke to Halifax in October 2023. The submissions his representative has made on his behalf are also very similar to those provided in other complaints involving V. At the same time, Mr L has been unable to provide any evidence of his interactions with V before he made his payment (other than a Q&A sheet that he may or may not have been provided with). Whilst he has provided some documentation, Mr L hasn't provided any evidence it was sent to him or when. In the circumstances, I can't fairly say that it's more likely than not that the information Mr L has provided to this service reflects his experience with V or that he took all the steps his representative says he did before he made the payment.

I appreciate Mr L just wants his money back, but I need to be fair to both parties. The available evidence doesn't lead me to conclude it's more likely than not Mr L had a reasonable basis for believing V offered a legitimate investment. The rate of return he was offered was unrealistic and I haven't seen evidence which satisfies me Mr L took steps to understand how they were achievable.

Should Halifax have provided effective warnings or intervened?

The CRM Code also sets out standards that firms are required to meet. Where these are not met, the firm may still be liable to reimburse a victim in part, even where it has been able to establish that an exception to full reimbursement can be fairly applied (as is the case here). Those requirements include the provision of what the Code defines as an "Effective Warning" when a firm identifies an APP scam risk in relation to a payment.

In this case, Mr L was asked to provide the reason for the payment for his investment with V. Mr L chose the 'Move my Money' option rather than the investment option, so Halifax provided a warning tailored to the payment reason he chose. If Mr L had chosen the investment option, Halifax could have provided a much more appropriate warning, but Mr L

impeded its ability to do so. I appreciate Mr L was likely told to choose an incorrect reason and this is borne out by a message provided by C in respect of new account sign-ups which said, "Yes you know as well as I do if they select investment the chances of their bank letting it go are slim to none". In the circumstances, I can't fairly say that Halifax hasn't met its responsibilities under the CRM Code.

In any event, Halifax has chosen to reimburse 50% of Mr L's loss. This is on the basis that it didn't initially raise a scam claim within its timescales. This is the amount I would ask Halifax to reimburse if I felt it hadn't met its standards under the CRM Code. In reimbursing Mr L 50% of his loss, I think Halifax has been more than reasonable and I am not recommending that it do anything more.

If I consider Halifax's wider obligations to look out for unusual and out of character transactions, I still need to consider whether a deduction should be made to reflect Mr L's own actions. Given what I have said about Mr L's reasonable basis for belief, I think this would be fair.

I've thought about whether Halifax could have done more to recover Mr L's funds. I note the transaction was made in January 2023, but the scam wasn't reported to Halifax until around nine months later. Given that scammers usually move money out of the account rapidly, I consider it highly unlikely that any funds remained by the time Mr L contacted Halifax. Halifax attempted recovery in October 2023 without success.

Overall, whilst I'm sorry to hear about Mr L's loss and the impact it had had on him, I can't fairly require Halifax to do anything more.

My final decision

For the reasons stated, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 4 August 2025.

Jay Hadfield
Ombudsman