DRN-5522618

The complaint

Mr T complains that Bank of Scotland plc, trading as Halifax ('Halifax'), won't refund the money he lost as a result of what he believes was an 'Authorised Push Payment' ('APP') property investment scam.

Mr T brings his complaint with the assistance of a professional representative. For ease of reading within this final decision, I will refer solely to Mr T in the main.

What happened

The background to this complaint is well known to both parties, so I won't repeat it all in detail here. But in summary, I understand it to be as follows.

Mr T says that he was persuaded to invest with a company – which I'll refer to as 'Company H' in my decision. Company H was a private rental development company which offered loan notes to investors to raise money for its projects. It was the parent company of a group of companies. Mr T says the sale and rent of Company H's assets would later generate company income which would be used to pay investors returns.

Mr T invested with Company H on two occasions. Once in October 2018 for £10,000, and then again in December 2019 for a further £10,000. On each occasion the method of payment was via faster payment.

Company H has since gone into administration. Mr T believes the investment wasn't genuine and that he is the victim of a scam. He complained to Halifax in May 2024 advising Company H was operating a fraudulent investment scheme, and that Halifax failed in its duty of care to prevent his loss. So, he thought Halifax should reimburse him.

Halifax didn't consider it was liable for Mr T's loss. It advised that Company H was an investment that failed and there is no record of any legal or police action against it. Halifax also considered there is no evidence Company H was fraudulently set up with the sole intention to defraud investors.

Unhappy, Mr T brought his complaint to this service. Through his representative, he provided detailed evidence that he considered supported his contention that he was the victim of a scam by Company H and that he should be reimbursed.

The Investigator who considered this complaint didn't recommend that it be upheld. She said there was insufficient evidence to conclude that Company H didn't intend to provide the agreed investment or make the returns it set out – meaning she didn't consider there was sufficient evidence to conclude that the definition of an APP scam had been met. So, for the second payment Mr T had made, she didn't consider she could fairly and reasonably ask Halifax to reimburse Mr T under the provisions of the Lending Standards Board Contingent Reimbursement Model ('CRM') Code.

And for both payments (including the first payment that was made prior to the implementation of the CRM Code) she considered that even if Halifax had intervened and questioned Mr T about the payments he was making, as there was no adverse information about Company H, it would have been satisfied they were genuine payments and that Mr T wasn't at risk of financial harm. So, the Investigator didn't consider Halifax were liable for Mr T's loss.

Mr T disagrees and maintains that his complaint should be upheld under the CRM Code. He also says that Halifax failed to comply with PAS 17271:2017 (the PAS Code) and the FCA Principles. And he has explained why he thinks Company H was operating a scam and a Ponzi scheme. In particular, Mr T has referred to high commissions of around 25% paid to introducers and to high interest rates of 10-15%.

As Mr T didn't accept the Investigator's opinion, the complaint has been passed to me for a final 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.

In deciding what's fair and reasonable, I'm 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 time.

Where evidence is unclear or in dispute, I reach my findings on the balance of probabilities – in other words on what I consider most likely to have happened based on the evidence available and the surrounding circumstances.

In broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account.

However, in some situations, taking into account the law, regulations, guidance, standards, codes, and industry practice I have referred to above, (including the PAS Code), businesses such as Barclays shouldn't have taken their customer's authorisation instruction at 'face value' – or should have looked at the wider circumstances surrounding the transaction before making the payment.

Where the consumer 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 consumer even though they authorised the payment.

Of particular relevance to the question of what is fair and reasonable in this case is the CRM Code, which Halifax had signed up to and was in place at the time Mr T made the second payment to Company H. As his representative argues he was scammed by Company H, I've considered whether the CRM Code applies and if he is due any reimbursement as a result.

The CRM Code doesn't apply to all APP payments which ultimately result in a loss for the customer. It only covers situations where the payment meets its definition of an APP scam. The relevant definition for this case would be that Mr T transferred funds to another person for what he believed was a legitimate purpose, but which was in fact fraudulent.

I've considered the evidence available, but I can't fairly conclude that Mr T has been the victim of a scam in line with this required definition. This means the CRM Code doesn't apply to the second payment Mr T made and so Halifax isn't required to reimburse him under it.

Our Investigator covered in detail why they considered the payment purpose Mr T had in mind, and the purpose in which the recipient had, matched. I'm in agreement with them that this was the case, I'll explain why.

It's accepted Mr T's purpose for making the payments was to invest in Company H and for the funds to be used towards property development. And that he was persuaded at the time, through the paperwork, this was a legitimate venture. I accept that Company H failed to deliver what was expected from the investment, but I haven't seen any clear evidence this was always what it intended; or that at the time of the payment, it planned to use Mr T's funds in a different way to what was agreed. I haven't seen persuasive evidence that Company H's intention was to defraud Mr T when it took his funds.

Company H completed three different development projects. Company H also worked on other developments which it then sold to developers when it experienced financial difficulties. The completion of three development projects is strongly indicative of a legitimate business carrying out the activities I would expect of it.

Points raised by Mr T are largely based on assumptions and indicate poor business and financial management but don't go far enough to bring his claim within the scope of the CRM Code. Whilst Company H may have, for example, misrepresented certain information, failed to cooperate with administrators, not filed accounts and paid high commissions to introducers, there is currently no evidence to say this was done with the intention of scamming investors. A lot of adverse inferences have been drawn here.

I've not seen anything from the administrators of the company to suggest the company was operating a scam or that the transactions carried out by the company and connected companies were done with any intention other than putting investors' funds towards development projects. Whilst transactions have been investigated, there is currently no evidence that funds weren't used for the intended purpose.

Ultimately, the information we currently hold suggests that Company H was a failed investment venture, not a scam. The information provided doesn't evidence Company H had fraudulent intent when it took Mr T's funds, as required under the definitions within the CRM Code.

If material new evidence comes to light at a later date, Mr T can ask Halifax to reconsider his fraud claim in relation to the payment he made in December 2019.

The first payment Mr T made was prior to the implementation of the CRM Code, so for that payment and also the second payment, I've gone on to think about whether Halifax should be held responsible for Mr T's loss for any other reason.

As explained earlier, Halifax is expected to process payments and withdrawals that its customer authorises it to make, but it should have also been on the look-out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). And, in some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, or provided additional warnings, before processing a payment.

With the payments Mr T made, I'm not persuaded that Halifax would have had any concerns about the payments. Company H was a legitimate company operating at the time the payments were made. Detailed documentation was provided and there was nothing in the public domain at the time to suggest Halifax should have been concerned that Mr T might be at potential risk from fraud. Many of the points / concerns about some aspects of Company H that have been raised, have come to light after detailed analysis years after Mr T made the payments.

I'm sorry to disappoint Mr T, as I know he has lost a significant amount of money. But I'm not satisfied that I can fairly ask Halifax to reimburse him under the provisions of the CRM Code for the payment he made in December 2019, based on the evidence that is currently available. And I'm not satisfied, for both payments Mr T made, that Halifax would have been on notice that Mr T was potentially at risk of financial harm from fraud at the time he made the payments – so therefore it couldn't have prevented his loss either. Overall, I don't consider his loss is the result of any failings by Halifax.

My final decision

For the reasons given above, 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 31 October 2025.

Matthew Horner
Ombudsman