DRN-5554193

The complaint

Mr and Mrs C hold a joint account with Bank of Scotland plc trading as Halifax ("Halifax"). On 23 December 2019, Mr C made a payment of £10,000 from this account in connection with an investment opportunity which he now considers to be a scam. He complains that Halifax won't refund the money he lost to an authorised push payment ("APP") scam.

Although the transaction in dispute was sent from a joint account Mr and Mrs C hold with Halifax, it was made by Mr C. For ease, I've only referred to him throughout my decision.

Third parties

Several third parties feature in the events I shall describe. I don't need to identify them by their names, and I shall refer to them as follows:

B – a licensed and regulated producer of cannabis for medicinal use in the overseas jurisdiction.

P – a lighting technology company incorporated in the UK in September 2017. Currently in liquidation. P acquired a 20% stake in B and told investors it sought funding to provide proprietary plasma lighting to B for the cultivation of cannabis on a site in the overseas jurisdiction that P had leased ("the project"). My reference to P also includes linked companies that were incorporated in the UK to take on different roles in the project.

C1 – a company set up by P in the overseas jurisdiction to manage the leased site.

X – the main director of P. Made bankrupt for the first time in July 2017. Discharged 12 months later. Made bankrupt for a second time in September 2023.

K – a lighting technology company that X was a director of between 2009 and 2016. It went into administration in February 2020.

H – a third-party UK-based pharmaceutical company licensed to cultivate medical-grade cannabis in the UK.

P1 – incorporated in August 2021 by the directors of P, P1 was set up to supply P's proprietary lighting equipment to H.

What happened

Mr C says in 2019 his accountant, who had already invested in it, introduced him to P as a potential investment. The proposed investment was to loan funds to P for the project in return for acquisition of shares in P. P would repay the loan after a minimum term of 12 months. Future dividends would be paid subject to required revenues being realised by the project and repayment of investor loans.

Mr C reviewed the documentation he was sent. He also met with one of the directors of P – X – and was shown around the lighting manufacturing facility in the UK. From his

discussions with X, and his own accountant, Mr C understood that a £10,000 investment could be worth £100,000 in five years' time.

After reviewing the investment literature, the lease agreements, and verifying that B had the required license to produce cannabis in the overseas jurisdiction, Mr C decided to invest £10,000 and in December 2019 he made a payment to P's account from his joint account with Halifax.

From the information that has been provided to our service, I understand that Mr C discussed the investment opportunity with other individuals – some of whom refer to him as their financial adviser and friend – and they also decided to invest.

Although the initial sum of money he'd invested wasn't returned after the end of the 12-month period – financial constraints and Covid-19 were cited – Mr C was persuaded to invest further amounts. Between December 2020 and August 2021, he invested £660,000 from his account held with another bank. Those investments are not the subject of this complaint.

In September 2021, Mr C was appointed one of the directors of the newly incorporated P1 which was set up to provide direct funding, and to supply P's lighting, to a UK-based third-party company H. Existing shareholders of P were given an opportunity to buy shares in P1 at a discounted rate.

Mr C says that in late 2022, when X continued making excuses for not returning investors' money – including the impact of Covid-19 and costs incurred in litigation involving some shareholders – and instead offered more shares, he became suspicious and contacted the police. He was advised to report the matter to Halifax which he did promptly. Mr C also told Halifax that before deciding to invest, he carried out as much due diligence on P as he had for any other company that he'd previously invested in. He said he didn't check the Financial Conduct Authority's register as he knew this wasn't a regulated investment. Mr C also told Halifax that he considered his accountant to be a cautious investor and therefore unlikely to invest in a scheme without first having carried out substantial due diligence. That fact, along with his own research, persuaded him that P was genuine.

Shortly after reporting the matter to the police and Halifax, Mr C decided to visit the overseas facility and discovered that the pictures P had been including in its newsletters were fake. And that the site had never been operational despite P claiming otherwise. He subsequently contacted several third parties – the construction firm P had employed at the overseas site, another cannabis producer that P had claimed to have acquired, as well as former directors of B – and discovered that P had made false statements in a newsletter that it sent to investors in November 2021 about the operation of the leased site and the acquisition of a second site.

Halifax considered Mr C's claim under the Lending Standards Board's Contingent Reimbursement Model Code ("the CRM Code") but ultimately rejected it and concluded that he had made a genuine, unregulated investment. Mr C's other bank, on the other hand, refunded the full amount lost from that bank under the provisions of the CRM Code.

In response to his complaint about its decision to decline the claim, Halifax said it was unable to review the claim under the CRM Code until the police were able to confirm that there was intent to scam on P's part. Unhappy with Halifax's response, Mr C complained and later referred his complaint to our service.

Our investigator considered all of the relevant information available to them and concluded, in summary, that:

- based on the information provided by the parties and relevant third parties, Mr C had fallen victim to a scam, such that the CRM Code did apply.
- Halifax failed to provide an effective warning to Mr C at the time of the payment and therefore didn't meet its obligations under the CRM Code.
- Mr C had a reasonable basis for believing that the payee and the investment were genuine.

The investigator therefore upheld the complaint and recommended that Halifax reimburse Mr C in full along with interest.

Mr C accepted the investigator's findings, but Halifax didn't. In summary, it said that:

- the bank believes the matter to be a civil dispute as the companies involved were genuine businesses. To be covered under the CRM Code there would need to be a clear intention to defraud from the outset, and the bank hasn't seen anything to date that would lead it to believe the companies were anything but genuine.
- the letters P sent to shareholders over the years explained why P was struggling financially. This sort of update is what is expected from a genuine company that had fallen on hard times.
- Mr C is a regulated financial adviser and a letter from P to its shareholders explains how he introduced potential investors to P and associated companies in return for a commission.
- given his involvement in P1, the bank questions if Mr C was aware of or involved in the failed investment, and if the legal principle that you should not be able to bring a claim based on your own misdeeds is relevant to this case. If Mr C wasn't involved in any misdeeds, did he have a reasonable basis for belief taking into consideration his experience and his close involvement with the company that has allegedly defrauded him?
- although the directors of P and associated companies were reported to the police, they haven't been charged and they refute the allegations made against them.
- as and when the police investigation concludes the bank can revisit R3(1)(C) of the CRM Code, which allows a firm to delay giving an outcome on a case if it is subject to investigation by a statutory body and the outcome might reasonably inform the firm's decision.
- the bank questions why our service has reached an outcome on this complaint given court action is ongoing.

I issued a provisional decision in March 2024 and explained why, based on the evidence and information available to me at the time, I didn't think Mr C's claim had been unfairly assessed by Halifax.

Mr C disagreed with my provisional findings and made further submissions in support of his complaint. In summary, he said:

- P's liquidator, who's also the trustee in bankruptcy for X for the second time, has told him that from as early as March 2018 investors' money was mainly spent on X's and his family's lifestyle. March 2018 was four months prior to the X's automatic discharge from his first bankruptcy.
- the liquidator has told him that following his £10,000 payment to P's account in December 2019, the immediate payments out of P's account were largely for X's personal benefit. And in the following weeks, there were substantial loan and investment repayments.

- the police have confirmed to Mr C that having reviewed the evidence available to them, there's no sign that the overseas site was ever operational or produced any cannabis.
- the pictures of the facility which were included in P's newsletter to shareholders in November 2021 were all taken from online websites – they weren't of the site.
- X gave him 100,000 shares and appointed him a director of P1 without him knowing about it at first. Mr C states his name was included in P1's literature to strengthen the company's credibility. In early 2022, he asked to be removed as the director of P1 when H didn't receive the agreed payment of £2.5 million from P1 in November 2021, and H's request that P1 stop raising money in its name were ignored.
- allegations that he introduced investors and received commission are untrue; he never gave advice or received commission from individuals who chose to also invest in P or P1. Mr C states the police and the liquidator, who have seen P's bank account statements and analysed company accounts, can confirm that he never received commission or salary for the brief time he was a director of P1.

Our service contacted the police force investigating the matter as well as the liquidator overseeing P's and associated companies' liquidation. Although attempts to obtain further information from the police were unsuccessful, the liquidator shared their preliminary findings from investigations to date. We've also had confirmation from the liquidator that their findings can be disclosed in my decision as far as they are relevant to the complaint.

In summary, the liquidator's preliminary conclusions were that:

- a review of the company records and other information available to them, the investments into P, and companies within the group, would not have resulted in the returns promised to investors due to misappropriation and misapplication of funds.
- a substantial level of the amount invested in P was diverted towards director benefits, lifestyle transactions, and repayments of historic investors.
- the company records and financial records do provide some evidence of legitimate business spending, but no evidence of any technology has been provided. No technology or intellectual property has been located.

I issued a further provisional decision in April 2025 and explained that after carefully considering the submissions provided by Mr C and P's liquidator and re-reviewing the information and evidence I had previously considered, I was persuaded that there was a significant difference between what Mr C thought and what P had in mind regarding the purpose of the payment. I was also satisfied that the purpose was substantially different because of dishonest deception on P's part. And so, I intended upholding the complaint.

Mr C accepted my provisional decision, but Halifax said it was unable to concur with my revised findings and provided additional points for my consideration. In summary, the bank said:

- UK Finance (a trade association) has been co-ordinating with the banks and its guidance remains that complaints about P and associated companies remain on hold while the police investigation is ongoing.
- Halifax contacted the police in April 2025 and was advised that the case is progressing expeditiously. Also, it is possible that the preliminary findings of the liquidator may change when they issue their final report. Therefore, it's premature to conclude that this is a scam.
- Mr C is an FCA approved financial advisor and although he's informed our service that allegations that he introduced investors and received commission are untrue, it would be surprising if a financial advisor would not receive remuneration for

recommending an investment. Halifax states it has several customers who have complained about P, and they mention how Mr C introduced them to the investment. The bank has shared a recording of a call it had with another customer, who claims they were befriended by Mr C while on an overseas holiday and he promoted the investment opportunity. Halifax says this shows that Mr C was actively introducing investors and suggests that he may have anticipated personal gain from clients he introduced.

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.

I thank Halifax for its comments in response to my provisional decision of April 2025. I've carefully considered its appeal. But it hasn't persuaded me to change the outcome previously reached. I'll explain why, addressing Halifax's appeal where appropriate.

When considering what is 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 relevant time.

In broad terms, the starting position in law is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations 2017 (PSRs) 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 provider to reimburse the customer even though they authorised the payment.

The CRM Code

The CRM Code was a voluntary code for reimbursement of APP scams which required signatory firms to reimburse customers who had been the victims of APP scams in all but a limited number of circumstances. Halifax was a signatory to the CRM Code at the time the payment in dispute was made.

In order for me to conclude whether the CRM Code applies in this case, I must first consider whether the payment in question, on the balance of probabilities, meets the CRM Code's definition of an APP scam.

An "APP scam" is defined in the Definitions and Scope section of the CRM Code, at section DS1(2)(a), as:

> *"a transfer of funds executed across Faster Payments, CHAPS or an internal book transfer, authorised by a Customer in accordance with regulation 67 of the PSRs, 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."*

DS2(2) of the CRM Code says:

> *This Code does not apply to:*

…

(b) private civil disputes, such as where the Customer has paid a legitimate supplier for goods, services, or digital content but has not received them, they are defective in some way, or the customer is otherwise dissatisfied with the supplier;"

The CRM Code doesn't provide a definition for "fraudulent" purposes. Therefore, it ought to get its natural meaning in the context in which it is being used. Having thought carefully about that, I'm satisfied that the CRM Code is intended for customers to be reimbursed where they have been dishonestly deceived as to the purpose for which their payment was being obtained.

Section DS2(2) makes it clear that "private civil disputes" between the paying bank's customer and a legitimate supplier aren't included, even if the relevant goods or services were never received or were defective. This shows that a dispute which could only be pursued in the civil courts as a private claim isn't an APP Scam. To take the matter beyond a mere private civil dispute between the parties, there must have been a crime committed against the payer in fraudulently obtaining their payment for purposes other than the legitimate purpose for which the payment was made.

That doesn't mean that a person claiming reimbursement under the CRM Code needs to meet the criminal standard of proof ("beyond reasonable doubt"). Indeed, I understand that the CRM Code's publisher, the Lending Standards Board, has provided guidance that the criminal standard isn't required. In line with the general approach taken by our service when deciding complaints that are referred to us, I only need to be persuaded on a balance of probabilities, the same standard of proof that is required in civil cases.

However, at the heart of the CRM Code is the requirement for the customer to have been the victim of fraud. And so, I would need to see evidence that convinces me, it's more likely than not, that a criminal fraud has occurred, and therefore that Mr C has lost his money to an APP scam.

If I conclude, on the balance of probabilities, that the payment in question meets the definition of an APP scam, as defined above, then Mr C would be entitled to reimbursement unless Halifax is able to show that any of the CRM Code's exceptions at section R2(1) apply.

Can Halifax delay making a decision under the CRM Code?

At the time of reviewing Mr C's scam claim, Halifax concluded that he had made a genuine, unregulated investment. In response to his complaint about its decision to decline the claim, the bank said it was unable to review the claim under the CRM Code until the police were able to confirm that there was intent to scam on P's part.

Following the complaint being referred to our service, Halifax said that at the time of issuing its final response to Mr C the bank determined the payment wasn't covered under the CRM Code as it deemed it to be a genuine but failed investment. In its appeal to the investigator's assessment that Mr C's complaint should be upheld, Halifax said it believed the matter to be a civil dispute. In later correspondence, the bank said it would revisit making a decision under the CRM Code as and when the police investigation concludes.

The CRM Code says firms should make a decision as to whether or not to reimburse a customer without undue delay. There are however some circumstances where I need to consider whether a reimbursement decision under the provisions of the CRM Code can be stayed. If the case is subject to investigation by a statutory body and the outcome might

reasonably inform the firm's decision, the CRM Code allows a firm, at section R3(1)(c), to wait for the outcome of that investigation before making a reimbursement decision.

Based on its most recent response, it appears that Halifax considers R3(1)(c) applies in this case.

In deciding whether R3(1)(c) is applicable in this case, there are a number of key factors I need to carefully consider:

- Where a firm already issued a reimbursement decision – for example by telling the consumer they will not be reimbursed because they are not the victim of an APP scam – then R3(1)(c) has no further application. The LSB confirmed in its DCO letter 71 to firms dated 6 November 2024 that *"a firm should not seek to apply this provision where it believes that the case is a civil dispute and therefore outside of the scope of the CRM Code".*

- The Financial Ombudsman Service does not have the power to restart R3(1)(c) – so where a firm has made a reimbursement decision a consumer is entitled, under the DISP rules, for our service to decide their complaint.

What this means is that the R3(1)(c) provision only applies before the firm has made its decision under the CRM Code.

Halifax can't seek to delay a decision it's already made. It's clear from the bank's file submission that it responded to Mr C's claim for reimbursement by refusing it on the basis that he had not been defrauded by P but had made a genuine investment which had failed. As a result, R3(1)(c) was no longer an option by the time Mr C made a complaint.

So, although Halifax says its awaiting further guidance from UK Finance, as it has already made its decision under the CRM Code the bank can't now rely on this provision.

Is it appropriate to determine Mr C's complaint now?

Nevertheless, I do think it's right that I should consider whether it would be appropriate to delay my decision in the interests of fairness, as I understand that the police investigation is still on-going although its progress is unknown. I also understand that the liquidator's enquiries are continuing.

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 based on evidence already available. And it may be that 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 of 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).

I appreciate that Halifax has recently been informed by the police that the case is proceeding expeditiously. But, for the reasons given above, I remain satisfied that I don't need to await the outcome of that investigation to make a fair and reasonable determination of this complaint. I think it's also important that I mention, if only for the sake of completeness, that the police have been giving similar updates to complainants for some time now.

As for investigations by liquidators, 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.

Halifax states the liquidator's preliminary findings may change when they issue their final report. But the preliminary report makes a finding of fact that, in my opinion, is unlikely to change to such an extent that it would be wholly inappropriate to rely on the information at this present time.

In order to determine Mr C'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 C 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 C first raised his claim with Halifax at the end of 2022, and I need to bear in mind that this service is required to determine complaints quickly and with minimum formality. With that in mind, I don't think delaying giving Mr C an answer for an unspecified length of time would be appropriate unless the delay is truly required for the sake of fairness to both parties. So, unless a postponement is likely to help significantly when it comes to deciding the issues, bearing in mind the evidence already available to me, I'd not be inclined to think it fair to put off the resolution of the complaint.

I'm also aware that P is under liquidation. This might result in some recoveries for P's creditors, or even theoretically its shareholders. It's unlikely that victims of this scheme (as unsecured creditors) would get anything substantive if there are secured creditors, given recoveries would initially be for any secured creditors. That said, 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 C under the liquidation process in respect of this £10,000 investment before paying anything I might award to him on this complaint.

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

Has Mr C been the victim of an APP scam, as defined in the CRM Code?

As referenced above, Halifax was a signatory to the voluntary CRM Code which provides additional protection to scam victims. Under the Code, the starting principle is that a firm should reimburse a customer who is the victim of an APP scam (except in limited circumstances).

The CRM Code only applies if the definition of an APP scam is met, as set out above. As I've also set out above, the CRM Code doesn't apply to private civil disputes, such as where a customer has paid a legitimate supplier for goods or services but hasn't received them, they are defective in some way, or the customer is otherwise dissatisfied with the supplier. So, it wouldn't apply to a payment made for a genuine investment that subsequently failed.

As there's no dispute that Mr C's funds were transferred to the intended recipient, I don't consider section DS1(2)(a)(i) of the definition to be relevant to this dispute. Therefore, in order for there to have been an APP scam, Mr C must have transferred funds to P for what he believed were legitimate purposes, but which were in fact fraudulent, as set out in section DS1(2)(a)(ii).

I've therefore considered whether or not Mr C's intended purpose for the payment was legitimate, whether or not the intended purposes of Mr C and P were substantially aligned and, if not, whether or not this was the result of dishonest deception on the part of P.

Mr C lent a sum of money to P in December 2019 which he believed would be used for funding the project. He understood his loan would be repaid after a fixed period. He also understood that he had acquired shares in P and would receive dividends in the short term if certain conditions were met. Mr C has said he reviewed the investment material and satisfied himself about B's credentials in relation to growing cannabis. And after visiting the facility in the UK, he also contacted the supplier of the lighting equipment to check the costs, and everything checked out.

Halifax has said that given Mr C was a director of P1 it questions if he was aware of, or involved in, the failed investment and if he should be able to bring a claim. But P1 wasn't incorporated until August 2021 which is nearly 1.5 years after Mr C's payment. Also, Mr C was a director of P1 for only five months. As I've mentioned earlier in this decision, Mr C has explained that X only appointed him as a director to gain credibility for P1. And he asked to be removed when there was a dispute over non-payment of funds to an external company. I find Mr C's evidence of his involvement with P1 credible.

In its appeal, Halifax has said that Mr C holds a position in several companies. It has questioned whether the investment Mr C made from his personal account was in his own name. I'm not entirely sure about the relevance of the question. There has been no suggestion, either in the claim and later complaint submitted to Halifax or since the matter was referred to our service, that the investment was made on behalf of a company Mr C was or is associated with.

I can also see that Halifax remains concerned about Mr C's involvement with P more generally and is surprised that he wouldn't have received remuneration for recommending it to other investors. I don't discount the fact that other investors have mentioned they were introduced to P by Mr C. But he's already told our service that none of the other investors he had any discussions with are his client, and he's never received commission or given advice.

I should mention that while reviewing the casefile again before finalising my decisions, I can see that the liquidator did confirm to our service directly that as part of their on-going review they hadn't identified any commission payment or other payments to Mr C. So, as Halifax hasn't provided any evidence showing that Mr C received a payment of some kind in return for discussions that he may have had with other customers who also chose to invest in P, I remain satisfied with what Mr C has said on the matter.

All in all, I'm satisfied that at the time of making his payment to P, Mr C fully believed that it was for a legitimate purpose.

I've then considered whether there is convincing evidence to demonstrate that P's purpose of the payment was fraudulent. That is, whether P's purpose must have been to misappropriate Mr C's funds or otherwise deprive him of his money, rather than to use it for the purpose believed by Mr C.

I've carefully reviewed the liquidator's findings. The following observations they've made are of particular relevance to this complaint:

- following P's incorporation in September 2017, while an undischarged bankrupt, X acted as a de facto director of P and promoted the company as a successor to K. X was appointed a director of P in June 2018, prior to his discharge from bankruptcy.

As an undischarged bankrupt, X was prevented from being involved in the formation or management of any company.

- Between September 2017 and July 2018, when X was an undischarged bankrupt, nearly 34% of the investor's money was drawn out by X via another company he was a director of, or to his personal account, or otherwise applied towards lifestyle spend.
- Between March 2018 and July 2019, X made rental payments every month in respect of the property he and his family were living in. And between September 2018 and September 2019, nearly 32% of investments into P were applied towards purchasing that property.
- Between January 2020 and April 2020, repayments to investors were made which were drawn from new investor funds. The pattern of using new investor funds to repay historic investors continued subsequently.

Given the substantial size of these payments, the fact that they both preceded and followed Mr C's investments, and X's misconduct as a bankrupt, I consider this is powerful evidence that P's true role was to dishonestly raise money from investors in order to fund X's lifestyle and make repayments to earlier investors.

I've noted that in an email to Mr C – which he's provided to our service – one of the former directors of B states that B had significant funding problems with P, from as early as November 2019. The email goes on to say that by that point, B had used all its capital and had committed $2.5 million. It no longer controlled the land and had difficulties raising additional funds. Although P promised to lend it $1 million, that funding never arrived. The site was left in a state of disrepair, and B in ruins. B's former director concludes the email by saying he believes that P was set up as an investment fraud, given the initial contract signed by both parties for the project was never funded.

A review of bank statements of P's account from the relevant time supports B's claim that the promised sum wasn't sent. From what I've seen, I can only identify around £83,000 being sent to B during the relevant period.

This leads me to conclude that P had no intention – by the time of Mr C's payment – to fulfil its obligations to B in relation to the project, and therefore it also had no intention to use Mr C's funds as it had led him to believe it would. Instead, based on what the liquidator has noted, it appears that Mr C's funds were used largely for X's personal benefit and repayments to earlier investors.

Mr C has provided an email he received from the general manager of the company that P, through C1, engaged with in 2018 to carry out construction at the leased site. The email states that the said company experienced multiple delays in receiving payments, and in early 2021 it was asked to stop all work immediately and leave the site. At the time, construction hadn't finished, and the site didn't have electricity or water. The general manager also states that to his knowledge, the site has never had any grow lights installed, nor grown cannabis.

The email from B's former director to Mr C corroborates that evidence, stating that lighting was never provided, nor cannabis grown on the site.

The information provided by the third parties which I've mentioned above is completely at odds with the letter P sent to shareholders in November 2021 which included 'sensitive' images of the 'up and running' facility, one of which purported to show the cannabis flower cultivation grow room. Mr C alleges that these images were taken from third-party websites, and he's provided links in support of this. I've reviewed these website links and I find that they do support this allegation. While P's newsletter was written after Mr C made his

investment, I do consider it relevant to the extent that it provides evidence of P's willingness to deceive investors about the use of their funding.

Further (again subsequent) evidence of X's dishonest business practices has been provided to me. I understand that in 2021, P agreed to make a payment of £2.5 million to H for the deal it had entered into – through P1 – to supply P's proprietary lighting in return for a percentage of H's revenue. When the funds didn't arrive, X claimed to have sent it and provided a screen shot of the payment confirmation to evidence this. I've seen a copy of the payment confirmation screen. I've also reviewed the bank statement of the account that money was alleged to have been sent from. Having done so, I can't see the payment in question leaving the account.

Moreover, the account balance on the day in question stood at around £80,000. So, it's unclear how P could have made a payment of £2.5 million to H. I've seen an email from the police to Mr C where they have confirmed that none of the accounts held by P, connected companies, or X, had a balance that could have cleared that payment. I consider that this evidence supports a conclusion that X and P were more than capable of the level of dishonesty required for an APP scam such as the one Mr C alleges he fell victim to.

The police have also said that they can see very little of the funds received from investors being invested back into the company; most of it was spent on X and his family's lifestyle.

Overall, after having carefully considered the information from the liquidator and Mr C, and given the findings I've made above, I'm persuaded that P's purpose was not aligned with what Mr C believed when he made the payment in December 2019. Mr C made the payment believing its purpose was to fund the cannabis cultivation project, whereas, in truth, P had the dishonest intention of diverting a substantial part of the money to support X's lifestyle, repay earlier investors, and, as and when necessary, deceiving investors that P was establishing and conducting viable business operations.

So, I think the circumstances here meet the definition of an APP scam as set out under the CRM Code.

Returning to the question of whether in fairness I should delay reaching a decision pending developments in the liquidation or police enquiries, I've explained why I should only postpone a decision if I take the view that fairness to the parties demands that I should do so.

In view of the evidence already available to me, however, I don't consider it likely that postponing my decision would help significantly in deciding the issues. The liquidators have already expressed their views. And as regards the police's investigations, there's no certainty as to what, if any, prosecutions may be brought in future, nor what, if any, new light they would shed on evidence and issues I've discussed.

Is Mr C entitled to a refund under the CRM code?

Under the CRM Code, the starting principle is that a firm should reimburse a customer who has been the victim of an APP scam, like Mr C. The circumstances in which a firm may choose not to reimburse are limited and it is for the firm to establish those exceptions apply. R2(1) of the Code sets out those exceptions and stipulates that the assessment of whether they can be established should involve consideration of whether they would have had a material effect on preventing the APP scam that took place.

Section R2(1) of the CRM Code states that a firm may choose not to reimburse a customer if it can be established that the customer ignored effective warnings given by a firm. It also

states that a firm may choose not to reimburse a customer if it can establish that, in all the circumstances at the time of the payment, in particular the characteristics of the customer and the complexity and sophistication of the APP scam, the customer made the payments without a reasonable basis for believing that:

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

There are further exceptions within the CRM Code, but they're not relevant to the facts in this case.

Halifax has said that due to the time that has passed since the payment was made, there's no audit log available. It says Mr C would have seen the following *Account At Risk* warning:

> *"Just a minute, be sure that you know who you're sending money to. Please check the account details with a trusted source. Fraudsters invent persuasive reasons to get you to make a payment. See all the latest scams fraudsters use on our fraud hub page. Failure to take precautions before you make your payment could mean we are not liable to get your money back in the event of fraud. What do you want to do?"*

The bank also states that the payment in question wouldn't have been seen as unusual and it would have therefore been less likely to have intervened and questioned Mr C.

Although Halifax has been unable to provide evidence to show it provided a warning at the time Mr C made the payment, for completeness, I've reviewed the warning the bank says he would have seen at the time. Having done so, I don't think the warning was sufficiently impactful or specific as required under the CRM Code. So, I can't fairly say Mr C ignored an effective warning.

Halifax has questioned whether Mr C had a reasonable basis for belief taking into consideration his experience – as an independent financial adviser – and his close involvement with the company he alleges has defrauded him.

I acknowledge that Mr C was led to believe his initial investment could grow substantially in five years and that the promise of high returns may in some situations be a red flag, particularly to a financial adviser. However, the investment literature made it clear that these returns weren't guaranteed. I consider this would have made the investment appear genuine and would likely have alleviated any concerns arising from the advertised high returns.

Moreover, this wasn't a regulated investment and Mr C says he knew that. I don't consider his professional experience in financial services means he should have realised that what he was told about a growing opportunity in investment in medicinal cannabis cultivation was suspicious. Mr C has said he reviewed the investment material and satisfied himself about the legitimacy of B which was licensed to produce cannabis in the overseas jurisdiction. And after visiting the facility in the UK, he also contacted the supplier of the lighting equipment to check the costs, and everything checked out.

The investment material I've reviewed appears professional, and there was nothing in the public domain at the time about P from which Mr C could have reasonably inferred that a scam was taking place. So, I don't think there was anything about the investment at the time of his payment that should have given Mr C cause for concern.

Overall, as I don't think Halifax has established that any of the exceptions to reimbursement under the CRM Code apply here, it should refund the money Mr C lost in full.

Putting things right

I've thought carefully about whether interest should be added to the refund Mr C is due from Halifax. I'm mindful that in my first provisional decision I said I didn't think Halifax had unfairly assessed Mr C's claim under the CRM Code. But having re-reviewed this complaint, including submissions from the liquidator which I consider the bank could have obtained if it wanted to when it was considering the claim, I consider that Halifax should have reimbursed Mr C when he made a claim under the Code.

Outside the provisions of the CRM Code, I consider it unlikely that any intervention by Halifax *at* the time of the payment would have positively impacted Mr C's decision-making. I don't think either party would have likely uncovered sufficient cause for concern about P such that Mr C would have chosen not to proceed. To be clear, I'm not making a finding that Halifax should have intervened at the time of the payment.

With that in mind, in order to put things right, Bank of Scotland plc trading as Halifax needs to:

- refund Mr and Mrs C the disputed payment of £10,000 made as a result of the scam; and
- pay simple interest at 8% per year on the amount refunded, calculated from the date the bank declined their claim to the date of settlement[1].

As P is now in liquidation, it's possible Mr and Mrs C may recover some further funds in the future. In order to avoid the risk of double recovery, Halifax is entitled to take, if it wishes, an assignment of the rights to all future distributions under the liquidation process in respect of this £10,000 investment before paying the award.

If the bank elects to take an assignment of rights before paying compensation, it must first provide a draft of the assignment to Mr and Mrs C for their consideration and agreement.

My final decision

For the reasons given, my final decision is that I uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs C to accept or reject my decision before 11 June 2025.

Gagandeep Singh
Ombudsman

[1] If Halifax considers that it's required by HM Revenue & Customs to deduct income tax from the interest award, it should tell Mr and Mrs C how much it's taken off. It should also provide a tax deduction certificate if they ask for one, so the tax can be reclaimed from HM Revenue & Customs if appropriate.