

The complaint

Mrs J complains that Bank of Scotland plc, trading as Halifax ('Halifax'), didn't refund her money, that she believed was lost through an Authorised Push Payment ('APP') investment scam.

Mrs J has brought the complaint with the assistance of a professional representative. However, for ease of reading within this decision, I will refer to Mrs J in the main.

What happened

The background to this complaint is well known to all parties and has been laid out in detail by our Investigator in their view, so I won't repeat it all in detail here. But in summary, I understand it to be as follows.

In 2019 Mrs J was looking to invest and was contacted by a company which I'll call 'E'. My understanding is that E claimed to be involved in the production of medicinal cannabis and was expecting high returns, due to the expected legalisation of cannabis in the UK.

The investment with E was part of the HMRC Enterprise Investment Scheme ('EIS') and so had associated tax benefits. Mrs J liaised with a 'business development manager' from E and was shown brochures and E's business development programs. Mrs J, happy with what she had seen and been told, and after carrying out some research into E and its director, decided to invest.

Mrs J, from another banking provider, made payments to E, and these were for shares in E – with Mrs J advising she received a share certificate each time. My understanding is that the shares would be listed on the London Stock Exchange within five years – and were expected to generate significant capital gain for E's shareholders.

Mrs J says she would meet an employee of E who provided support with her investment every few months, and this occurred over three years. Mrs J advised they would go through the EIS forms, which were subsequently sent to HMRC and she received forms and acknowledgement correspondence back from HMRC.

Mrs J says she was subsequently told to invest in bonds and says she was provided with the details of an accountancy firm E was using, which I'll call 'R'. And so later payments were paid to R.

Below is a list of the payments Mrs J made from her Halifax account:

	Date	Beneficiary	Payment method	Amount
1	16 November 2021	R	Transfer	£10,000
2	9 March 2022	R	Transfer	£50,000
3	18 May 2022	R	Transfer	£15,000
			TOTAL	£75,000

A Police investigation into a number of companies, which included E, began in March 2023. Mrs J therefore considered she had been the victim of a scam orchestrated by E and through her professional representative, subsequently reported the matter to Halifax in August 2024.

Mrs J considered the payments made weren't typical of her usual account activity and it ought to have indicated to Halifax that she was at risk of financial harm from fraud. She therefore considered Halifax ought to have intervened and had it done then this would have prevented her loss.

Halifax didn't seemingly log the complaint – despite having a conversation with Mrs J in September 2024. And the matter was subsequently referred to our service. Upon our service liaising with Halifax and informing it of Mrs J's concerns, it logged the complaint and provided its final response letter and submissions.

In its final response letter and submissions to this service, Halifax advised it needed to wait for the outcome of the Police investigation into the companies involved in the investment. It explained that it remains unclear when the investigation will finish or, what the outcome will be, and at the moment, it did not consider there was enough evidence to show what had happened was a scam or that E had an intention to defraud Mrs J from the onset. And it explained that the Lending Standards Board – Contingent Reimbursement Model ('CRM') Code, which was in force at the time Mrs J made the payments and to which it was a signatory, allowed it to pause a complaint until the outcome of the investigation was known.

It also considered while the payments were completed in branch, there was no information to suggest the company had an intent to scam or were acting fraudulently so there would have been no reason for it to prevent Mrs J from making the payments. And that at the time of the payments, both E and R were registered on Companies House, and it explained there would have been no information available to it, at that time, to indicate Mrs J was at risk of financial harm. Therefore, it did not agree that any bank error occurred when the payments were made.

It explained it was not currently in a position to review Mrs J's complaint under the CRM Code given the company Mrs J was dealing with are on the UK Finance Ringfenced list and there is an ongoing investigation by the City of London Police Economic Crime Department, and it had therefore paused this element of Mrs J complaint under section R3(1)(c) of the CRM Code. It advised it is constantly monitoring the situation and expects to be in a position to investigate Mrs J's complaint once the Police have concluded their investigation.

One of our Investigators looked into it. Having done so, our Investigator was not satisfied that there's sufficient evidence to determine that the company Mrs J paid was operating a scam and noted that Halifax were therefore waiting on the outcome of the Police investigation. The Investigator added that if any material evidence came to light which demonstrated that the companies Mrs J paid were operating a scam, and those payments met the CRM Code's definition of an APP scam, then she could ask Halifax to reconsider her claim.

Our Investigator also didn't think Halifax would have identified any cause for concern about any of the payments Mrs J was making at that time as; Mrs J had received official documentation; she had ongoing contact for a number of years and had received updates; E was a registered company and there wasn't any negative information or reviews about E at the time.

The Investigator acknowledged there was a delay in the complaint being logged and responded to, but considered even if things had gone as expected – Halifax wouldn't have been able to give Mrs J a different answer given the matter was already being investigated by the Police at the time the matter was reported. So she didn't consider any compensation was due in the circumstances.

Mrs J, through her professional representative, didn't agree with our Investigator's view. In summary, Mrs J considered our service, and Halifax, should recognise criminal investigations only commence on the basis criminality has been established. Mrs J also remained of the opinion more could have been done by Halifax to prevent the loss. Mrs J also argued that Halifax ought to have checked the receiving bank account, asking who it belonged to and how it was being used alongside how many transactions were entering and leaving the account.

As agreement hasn't been reached 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.

First, for clarity, this decision focuses on the payments Mrs J made from her Halifax account. Mrs J also made payments from another banking provider, and that complaint is being looked at separately.

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.

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 – which is whether it is fair for Halifax to await the outcome of the Police investigation before providing its decision to Mrs J, and whether it reasonably could have prevented Mrs J's loss. 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.

It isn't in dispute that Mrs J authorised the payments in question. Because of this the starting position – in line with the Payment Services Regulations 2017 – is that she's liable for the transactions. But she says that she has been the victim of an APP scam.

Halifax had signed up to the voluntary CRM Code, which was in force at the time Mrs J made her payments. The CRM Code provided additional protection to scam victims. Under the CRM Code, the starting principle is that a firm should reimburse a customer who is the victim of an APP scam (except in limited circumstances).

However, Halifax has effectively sought to rely on provision R3(1)(c) of the CRM Code that allows it to wait for the outcome of an investigation by a statutory body before making a decision. That provision states:

“If a case is subject to investigation by a statutory body and the outcome might reasonably inform the Firm’s decision, the Firm may wait for the outcome of the investigation before making a decision”.

So, I will first consider if it is fair for Halifax to rely on this provision in the circumstances. Ultimately, Halifax has one of three options available to it; it can either accept a scam has occurred and consider whether it should reimburse Mrs J under the CRM Code, it can decide that no scam has occurred and therefore not reimburse Mrs J, or it can decide to await the outcome of an investigation.

As set out above, Halifax has decided to await the outcome of an investigation by the Police, and the CRM Code has provisions that allows it to do so where the outcome of that investigation might reasonably inform its decision.

From what I have seen so far, I am not satisfied the evidence available to me indicates a scam has occurred in the circumstances. From the evidence Mrs J has sent in, which includes letters regarding the shares and bonds, the documentation appears to be professional. And I can see that Mrs J’s shareholding allocations were listed on E’s Companies House filings. I’m also mindful Mrs J has said she liaised with an employee of E every few months over three years going through the EIS forms. Mrs J has also said she received dividend payments which were paid by E.

I’m also aware that a number of customers did receive tax rebates from HMRC following their investments, as well as returns, which isn’t indicative of a company running a fraud. It is possible there have been some questionable sales tactics, but I’ve not seen sufficient evidence to persuade me that there was an intent to defraud, such that this was a scam rather than a high-risk investment.

Ultimately, what I’ve seen doesn’t indicate that the company Mrs J paid was orchestrating a scam investment in order to induce payments from investors with no intention to use the funds as intended.

I do appreciate there is an ongoing police investigation which includes E being investigated and I recognise that this may appear to be proof that Mrs J has been the victim of fraud – as it infers that the Police have taken the matter seriously enough to pursue this course of action. However, the purpose of an investigation is to gather evidence. And that will likely go toward investigating what the intent was at the time; the result of which may or may not lead to a prosecution. But, in and of itself, an investigation doesn’t automatically mean that a fraud has occurred.

I am also mindful that the Police update of May 2024 highlighted that it was ‘an exceedingly complex investigation’ and that “...over 100 banks accounts have been requested from banking institutions, resulting in around 50,000 transactions being forensically reviewed and analysed. The digital review of around 2 terabytes of information remains on going, with further lines of enquiry being identified from this data review.” When I take this into account, and consider the Police were already investigating at the time Mrs J reported the matter to Halifax, I don’t think it was unfair for Halifax to rely on the provision within the CRM Code to delay in giving its decision to Mrs J. The evidence isn’t sufficiently clear to indicate a scam had taken place – and there was a complex Police investigation already underway.

As I say, I'm mindful that there is the possibility that Mrs J has been the victim of fraud here. But from the information available to me, I cannot reasonably eliminate the possibility she has instead lost money to a failed investment. Halifax has indicated it would provide its outcome on conclusion of the Police investigation. It is possible that further evidence may become known at a later date, which may indicate that E were operating a scam. Should such evidence come to light, then Mrs J can liaise with Halifax again, and refer the matter to this service, should she not be happy with the outcome.

Overall and in summary, because nothing I have seen on file clearly indicates to me that Mrs J has been the victim of an APP scam, and considering the ongoing Police investigation, I don't think it's unreasonable for Halifax to have said it will wait for the conclusion of that investigation – and the provisions of the CRM Code allow it to do so.

I note that while Mrs J made payments to E initially (through another banking provider), she then went on to make payments for bonds in E. And Mrs J says she was instructed to make payments to R – which she says was an accountancy firm E was using. And the payments she made from her Halifax account were all made to R. I don't doubt that's what's happened, and I can see there is one piece of correspondence from E to Mrs J about the purchase of bonds (for £10,000) on 16 November 2021 and that it had received her funds. And I can also see that Mrs J had made a £10,000 payment from her Halifax account to R on the same date as that letter. So, it does appear that the payments Mrs J made to R were likely as a result of her investment dealings with E – and she paid the accountancy firm E was using.

From what I've seen, Mrs J's payments are covered by the provisions of the CRM Code – and Halifax has indicated it will consider its position following the conclusion of the Police investigation, which would include whether it thinks Mrs J is or isn't entitled to a refund.

Mrs J has made strong references that outside of the CRM Code, Halifax ought to have intervened and this would have prevented her loss. So, I've also gone on to consider whether there is any other reason why Halifax would be considered liable for Mrs J's loss.

All three payments were made in branch, so it is likely there was a conversation about the payments. Halifax doesn't have a record of any completed checklist or notes from any conversation. But I don't find that Halifax not having a record of what was discussed makes a difference on my findings here. I say that because the test, to my mind, is whether any intervention would have made a difference and prevented Mrs J from proceeding. Where there isn't any evidence available as to what that intervention looked like, I have to make an on balance finding as to what I consider is most likely to have happened or what is more likely than not to be the case.

Having done so, I'm not satisfied that I can fairly conclude that any conversations had would have led to Mrs J not going ahead with the payments and stopping all future payments to E, or R. As I have explained above, the information I have seen so far does not clearly indicate Mrs J has been the victim of a scam. There is debate to this day as to E's intentions. So, I think it's highly unlikely anything conclusive would've been available at the material time. I'm persuaded E would have appeared to have been a genuine business and so investing in it would not have necessarily raised any red flags for Halifax.

I'm also mindful that by the time Mrs J was making payments to R from her Halifax account – she had been liaising with E for around two and a half years and had made previous payments to it also – from her other banking provider. So, I can't fairly say any intervention would have made a difference here and prevented Mrs J from going ahead with the payments.

Both E and R (who aren't part of the Police investigation – and are an accountancy firm), were registered on Companies House, and I wouldn't expect, as has been suggested, that Halifax ought to have not processed Mrs J's payments until it had reached out to the beneficiary bank account and enquired how much money was entering and leaving the account. R are an accountancy firm that E were using at the time. Halifax needed to ensure Mrs J wasn't at risk of financial harm and here there wasn't anything at the time to suggest that what Mrs J was doing at the time was likely a result of a scam. And I have to be mindful that Halifax wouldn't have given any investment advice – but could have highlighted potential scams and what steps and checks could be undertaken by Mrs J to protect herself from those scams. As already mentioned, there wasn't anything at the time or in the public domain that would have suggested it was a scam. And the Police investigation is still ongoing – and it has yet been determined whether E were operating a fraudulent scam.

So, overall and based on the balance of probabilities on what I think is more likely than not to have happened, I disagree with the suggestion that Halifax would have reasonably been able to prevent Mrs J from making the payments. And as the payments made are covered by the provisions of the CRM Code, Halifax is fair to await the outcome of the Police investigation before making its decision as to whether Mrs J is due reimbursement.

Finally – while there was a delay in the logging of the complaint, I agree with our Investigator that compensation isn't warranted in the circumstances. Had the complaint been logged sooner, as it should have been, I'm mindful the outcome Halifax would have provided would have still been the same – in that it was awaiting the outcome of the Police investigation before it could provide an answer. And for the reasons I have given above, I find its answer to wait for the conclusion of the investigation to be fair in the circumstances.

I'm sorry to hear of what's happened to Mrs J and I have a great deal of sympathy for her. She has lost a significant amount of money, and I don't doubt she has been badly let down by the company she invested in. But my role here is to consider Halifax's actions. And based on the evidence available, I don't think Halifax has acted unreasonably in relying on the provision of the CRM Code that it has, given the Police investigation that was already being undertaken at the time Mrs J raised the matter with it. Once the Police investigation has concluded, and if there is information available from that investigation that supports Mrs J being the victim of a scam orchestrated by E, then she should liaise with Halifax regarding her claim.

My final decision

For the reasons given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs J to accept or reject my decision before 21 November 2025.

Matthew Horner
Ombudsman