

The complaint

Mr and Mrs R complain that Bank of Scotland plc, trading as Halifax, won't refund the money they lost when they fell victim to an investment scam.

What happened

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here.

In 2018, when discussing investments, a friend of Mr and Mrs R, who was making good returns, recommended they look at investing with Company A, which traded in Foreign Exchange (Forex), Futures, Commodities and Contracts for Difference (CFDs).

Mr and Mrs R were put in touch with X, the owner of Company A, who they believed was an experienced currency trader recognised as a trusted figure in the community.

After meeting and receiving information from X, X offered to act as an agent trading on their behalf for an annual fee. X said they could expect to earn a return of 5% gross, if they started with an investment amount of £20,000.

After carrying out checks including with Companies House Mr and Mrs R decided to invest £10,000 in April 2019.

They subsequently provided identity documents and signed a contract of agreement. After receiving monthly statements from Company A, which showed positive returns, they thought their investment was going well and decided to increase it.

They invested £100,000, which was most of their life savings, when making the following six payments:

1. £10,000 on 1 April 2019 by faster payment to Company A
2. £25,000 on 8 May 2019 by faster payment to Company A
3. £25,000 on 9 May 2019 by faster payment to Company A
4. £25,000 on 16 May 2019 by faster payment to Company A
5. £5,000 on 17 May 2019 by faster payment to Company A
6. £10,000 on 3 September 2019 by faster payment to Company A

Mr and Mrs R received the following three credits, totalling £44,575, back from Company A:

1. £25,000 on 8 August 2019
2. £575 on 17 December 2019
3. £19,000 on 17 December 2019

However, communications from Company A went quiet and, after carrying out checks, they discovered that Company A was under investigation by HMRC and the Financial Conduct Authority (FCA).

Mr and Mrs R reported a scam to Halifax on 26 January 2024 and complained as they felt Halifax should've done more to protect them. They asked Halifax to refund the money they'd lost in the scam.

In May 2024, Halifax concluded it was a scam and agreed to a partial refund, under the CRM code, of £10,000 (with 8% simple interest) for payment 6. Also, they provided a £50 payment as their claim was incorrectly declined when they first reported the scam.

Mr and Mrs R were dissatisfied with this and brought their complaint to our service to recover their loss.

Although our investigator considered that Halifax should've completed an intervention before going ahead with the first payment to Company A for £10,000 on 1 April 2019, she wasn't persuaded that this would've prevented their loss.

As Mr and Mrs R remain dissatisfied their complaint has been referred to me to look at.

I issued a provisional on 7 May 2025 and this is what I said:

I've considered the relevant information about this complaint.

Our investigator didn't uphold this complaint, but I think Bank of Scotland plc, trading as Halifax, should've done more here and this provisional decision sets this out.

The deadline for both parties to provide any further comments or evidence for me to consider is 21 May 2025. Unless the information changes my mind, my final decision is likely to be along the following lines.

If Bank of Scotland plc trading as Halifax accepts my provisional decision, it should let me know. If Mr R and Mrs R also accepts, I may arrange for the complaint to be closed as resolved at this stage without a final decision.

What I've provisionally 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'd first like to say:

- I'm very sorry that Mr and Mrs R have been the victims of such a cruel scam and lost a significant amount of money here.*
- Although I don't underestimate the severe impact this has had on Mr and Mrs R I must approach this matter objectively.*
- I've carefully considered all the points Mr and Mrs R and Halifax have made, and I've focused on what I think are the important points to reach a final decision.*
- I note that following a referral by HMRC, the FCA are still investigating Company A.*
- Due to the outstanding FCA investigation into Company A, Halifax weren't initially satisfied this was a scam. Similarly, this is the position of another bank who are considering Miss R's additional financial loss (a separate case with our service). However, following information Halifax received from Company A's bank, they now accept a scam occurred here.*
- I'm satisfied that the Contingent Reimbursement Model (CRM) code applies*

here but only for payment 6 (£10,000 on 3 September 2019 by faster payment to Company A). This is because all the other payments made by Halifax occurred prior to the CRM commencement date of 28 May 2019 and this is a voluntary scheme which unfortunately can't be applied retrospectively. So, I don't think Halifax have made an error in how they've applied the CRM code.

- I'm also satisfied that Halifax took the steps it should've, once it was aware that the payments were the result of fraud. They contacted the receiving bank as soon as it was aware of the fraud but unfortunately the money had been moved by the time the fraud had been reported.*

It isn't in dispute here that, having been persuaded by X, Mr and Mrs R authorised Halifax to make six faster payments totalling £100,000 from their account with them. So, although they clearly didn't intend the money to go to a scammer, the starting position in law is that Halifax were obliged to follow their payment instruction and Mr and Mrs R aren't automatically entitled to a refund.

Under the Payment Services Regulations 2017 (PSR) and in accordance with general banking terms and conditions, banks should execute an authorised payment instruction without undue delay. The starting position is that liability for an authorised payment rests with the payer, even where they are duped into making that payment.

In accordance with the law, regulations and good industry practice, a bank should be on the look-out for and protect its customers against the risk of fraud and scams so far as is reasonably possible. If it fails to act on information which ought reasonably to alert a prudent banker to potential fraud or financial crime, it might be liable for losses incurred by its customer as a result.

However, banks do have to strike a balance between the extent to which they intervene in payments to try and prevent fraud and/or financial harm, against the risk of unnecessarily inconveniencing or delaying legitimate transactions.

Whilst the scam took place in 2019, I consider Halifax should at that time fairly and reasonably:

- Have been monitoring accounts and any payments made or received to counter various risks such as anti-money laundering and preventing fraud and scams.*
- Have systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer.*
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or make additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.*

Having considered Mr and Mrs R's account activity and seen the following comments from Halifax, I can see that they agree they failed to put a proportionate intervention in place:

- 'When looking at all payments the spending was unusual for the customer. Payment 1 would be considered as a one-off high value payment but from payment 2 we would've liked to have seen an intervention.'*
- Payments two to five were made at 'high volume and velocity'.*

Considering Mr and Mrs R 's infrequent use of faster payments in the previous nine months, which were mainly to the government for amounts much less than £10,000, I think a human intervention was warranted at payment one rather than payment two.

After establishing that Halifax should've put an intervention call in place, I went on to carefully consider what is likely to have happened on a call, if it had occurred, and whether this would more likely than not have prevented Mr and Mrs R making any of the payments to Company A.

I think it highly likely that a Halifax representative would've asked open and probing questions. Also, I see no reason why Mr and Mrs R wouldn't have answered honestly, as they thought it was legitimate investment and there is no evidence of any coaching from the scammer.

Once a representative discovered the transfer was for an investment, I would've expected an intervention call to include the following type of questions:

- How did you hear about the investment?*
- How were you contacted about it?*
- Who is the investment with?*
- Who is the broker?*
- Is the company regulated by the FCA and listed on their website?*

Regarding the last question, Mr and Mrs R would've said no.

Although a company can legitimately provide financial services without FCA approval, I would've expected a Halifax representative to have known that Company A's services required regulatory approval and to factor that into their intervention call and warnings.

Also, I think it likely that Mr and Mrs R would've mentioned their Companies House check. And a representative would've seen that it was a newly registered company with no filings. So, this wouldn't have provided a great deal of assurance. In addition, I think a representative would've queried the financial management arrangement.

At this time the credits, which far exceeded the 5% expected return, hadn't materialised. So, I don't think the return would've stood out as suspicious.

However, regarding investments in Forex, Futures, Commodities and CFDs, I think the mention of these would've further heightened the risk of an investment scam to a Halifax representative and led them to undertake an additional FCA search.

I noted that if an FCA search had taken place, in an intervention call, Mr and Mrs R would've been made aware that CFD's and Forex were high risk investments. And for Forex they would've been made aware of the following (posted 2017) FCA wording:

- 'People are being increasingly targeted by unauthorised forex trading and brokerage firms offering the chance to trade in foreign exchange.*
- They promise very high returns and guaranteed profits.*
- How forex (FX) trading and brokerage scams work - Most people report they have initially received some returns from the firm that give the impression that their trading has been a success.*
- They are then encouraged to invest more money at which stage the returns stop, their account is suspended, and there's no further contact with the firm.'*
- **You should only deal with financial services firms that are authorised by***

us'.

For the reasons mentioned above, I think it more likely than not that the call would've ended with the Halifax representative presenting the FCA information and heightened risk of a scam. Also, pointing out the risks of listening to recommendations from friends. And not using an FCA approved firm.

I then deliberated over whether Mr and Mrs R would've still gone ahead.

Although they had done some due diligence and there were some influencing factors, from reading the file notes about Mr and Mrs R's inexperience in investments and the cautious way in which they proceeded with Company A (Companies House checks and meetings with X), I'm not persuaded that they would've disregarded the FCA information and dismissed a warning about a heightened risk of a scam.

Although I can't be certain, I think it's fair and reasonable to conclude Mr and Mrs R would've taken on board the new information and warnings from a professional banker, particularly at the mention of a potential scam.

That being the case, I'm persuaded a proper intervention and warning from Halifax would have prevented Mr and Mrs R's loss. It's then fair and reasonable to say Halifax ought now compensate them for that loss.

Contributory negligence

There's a general principle that consumers must take responsibility for their decisions. With this in mind, I have duly considered whether Mr and Mrs R should bear some responsibility by way of contributory negligence.

I'm satisfied that there was no contributory negligence on this occasion. I think Mr and Mrs R were taken in by a plausible and sophisticated scam. And, considering how they were introduced to the investment opportunity, the checks they subsequently carried out and the genuine looking documentation they were provided with, I think they had a reasonable basis for belief that the investment was genuine.

Furthermore, I noted that the CRM Code states that a customer can be denied reimbursement for an APP scam if they made the payment without a reasonable basis for believing it was legitimate. And in this case Halifax didn't deny Mr and Mrs R a CRM payment.

So, having considered all the above, my provisional decision is to uphold this complaint against Halifax.

Putting things right

I've found that Halifax ought to have stepped in to question the payment and that, had it done so, I think it more likely than not that the scam would have been prevented.

As Mr and Mrs R received credits as part of the scam to the value of £44,575 plus a £10,000 CRM payment from Halifax, I've calculated their loss here as £45,425.

So, I require Halifax to refund £45,425 to Mr and Mrs R plus interest at 8% per annum.

I'm satisfied that Mr and Mrs R have been deprived of the use of this money and that it would have been used elsewhere, rather than have simply remained in their account.

My provisional decision

My provisional decision is to uphold this complaint against Bank of Scotland plc, trading as Halifax, and I require them to pay Mr and Mrs R:

- *A refund of £45,425*
- *Plus, simple interest at 8% per annum from the date of the payments to the date of settlement*

This is subject to any comments that either Halifax or Mr and Mrs R may wish to make.

These must be received by 21 May 2025.

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.

Further to my provisional decision Mr R didn't have any further comments and accepted my provisional decision, but Halifax disagreed over what would've likely happened if they had put an intervention in place. They considered that they hadn't made an error in allowing the payments to be made and the expectation I was placing on a single intervention was unfair and unrealistic.

Halifax's points included the following:

- Our investigator didn't think this would've made a difference.
- *'You believe this would've caused Mr and Mrs R to research the company and identify they were a scam, therefore stopping the loss in the first place'.*
- They don't believe Mr and Mrs R would've listened to an intervention and warning or that it would've resonated with them and stopped them from proceeding because:
 - They completed extensive research.
 - They had testimonies from family and friends who they trusted and had invested and received returns.
 - They checked the company online and on Companies House.
 - There was nothing to indicate this was a scam.
- They questioned the weight I was placing on a *'professional banker.'*
- Regarding the questions that would've likely been asked on an intervention call and subsequent comments from a fraud and scam representative Halifax's comments included the following:
 - *'We don't think it can be fairly said we would have been able to give Mr and Mrs R any information that would have led them to doubt what they already knew about what they were doing, including if they had undertaken further reasonable research at the time'.*
 - *'We are not persuaded they would have found any negative information, from that point in time'. 'When Mr and Mrs R raised their claim in 2024, based on the available information, we believed it was likely a failed investment. It was only after we contacted the receiving bank, we determined an intention to defraud. This means it would have been highly unlikely for a colleague making a call in 2019 to have had concerns about any responses Mr and Mrs R would have provided to any warnings we may have given'.*
 - *'Whilst the FCA issued a warning in 2017 about unauthorised forex trading, this explains how social media and online platforms were used to entice*

investors. Taking into consideration the circumstances Mr and Mrs R were introduced to their investment; we question if they would have felt this warning was relevant to them'.

- *'We haven't found any information in the public domain, available at the time of the investment, which would indicate this was likely to become a scam. If we had stopped the payment, we could have provided general fraud and scam advice about investing'.*

Halifax also questioned the fairness of paying 8% simple interest when Mr and Mrs R were looking for a 5% return on their investment.

I carefully considered all of Halifax's submission and revisited my provisional decision and the information on file.

I appreciate it is difficult to be certain about what exactly would've happened on an intervention call that, for the reasons explained, I think Halifax should've put in place.

However, bearing in mind Halifax's responsibilities and that the call would've been handled by an experienced representative, for the reasons mentioned in my above provisional decision, I think it more likely than not that the FCA and their 2017 warning ought fairly and reasonably to have come up on an intervention call. And importantly Mr and Mrs R would've been told about the FCA warning which included *'You should only deal with financial services firms that are authorised by us'*. Also, that there was a heightened risk in investments in Forex, Futures, Commodities and CFDs.

Although Halifax highlight that Mr and Mrs R's due diligence meant any warning or intervention wouldn't have worked, I can't see that Mr and Mrs R were aware of this important information from the regulator of financial services, that I think would've more likely than not been mentioned. Also, I remain persuaded from Mr and Mrs R's call recordings, submissions and actions that they were both inexperienced investors and very cautious.

I think Mr and Mrs R would've gained an understanding of the FCA's remit to protect consumers, listened and taken note of the FCA information / warning and become aware that there was a heightened risk of going ahead. So, I'm not persuaded by Halifax's argument that nothing they said would've made a difference here. And rather than saying this would've caused Mr and Mrs R to then do more research, which I accept wouldn't have necessarily detected a scam at this time, I think this FCA heightened risk information would've deterred Mr and Mrs R from proceeding and stopped them from losing their funds.

So, having considered Halifax's comments and looked at everything again, my view remains the same, that Halifax should've intervened and, if they had, Mr and Mrs R wouldn't have lost their money. I therefore think it's fair and reasonable to say Halifax ought now to compensate them for that loss.

Regarding an interest payment, Halifax don't disagree this should be paid where an award is warranted but question why this is higher than the investment percentage Mr and Mrs R would otherwise have made.

Our service uses 8% simple interest and not compound interest when calculating compensation for financial losses because it is considered a fair rate to reflect the cost of being deprived of money. And where it isn't possible to know whether a consumer had plans for the dividends. In addition, it aligns with the court service. So, although I understand Halifax's question, I think 8% is fair and reasonable in this case. Also, I noted Halifax added this interest percentage when providing Mr and Mrs R with the refund for £10,000.

Putting things right

So, to put things right I require Bank of Scotland plc, trading as Halifax, to:

- Pay Mr and Mrs R £45,425

- Plus, simple interest at 8% per annum from the date of the payments to the date of settlement

My final decision

My final decision is to uphold this complaint against Bank of Scotland plc, trading as Halifax, and I require them to:

- Pay Mr and Mrs R £45,425
- Plus, simple interest at 8% per annum from the date of the payments to the date of settlement

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R and Mr R to accept or reject my decision before 24 July 2025.

Paul Douglas
Ombudsman