DRN-5747327

The complaint

Mr D complains Bank of Scotland plc trading as Halifax won't refund the money he believes he lost to a scam.

What happened

Mr D says he was researching ISA options and came across a broker who recommended an ISA with a whisky investment company, "W". He says he was also told that "L", an FCA-regulated firm, would be involved with the ISA.

Mr D used his Halifax account to send W £8,000 in February 2023 followed by £5,000 in April 2023, as well as sending W further payments from another account (which are the subject of a separate case) between November 2022 and June 2023. All of these payments were to purchase or pay into W ISAs for him and his partner.

Mr D received monthly payments from W. But he says W then stopped speaking to him, and Halifax prevented him from sending further payments to them. He complained to Halifax (via a representative) that it should refund him under the terms of the CRM code – under which firms are generally expected to refund victims of Authorised Push Payment (APP) fraud. When it didn't agree to refund him, he referred the matter on to our service.

Halifax told us it considered the matter a civil dispute between Mr D and W rather than a scam. On balance, our investigator agreed with Halifax that the payments didn't meet the CRM code's definition of an APP scam – and so didn't think it was liable to refund him.

Mr D has appealed the investigator's outcome. I've summarised the main points raised by his representative about why it thinks he was scammed:

- The directors of W have since been arrested, and there has been media coverage about W's operations – and, more widely, scams involving supposed whisky investments.
- The FCA has suspended L's authorisation. They were also under restrictions at the time of Mr D's payments – undermining their legitimacy. And W continued to solicit investments when they and L were on the verge of going into administration, which is indicative of fraud.
- W tried to persuade Mr D to pay a different account when Halifax blocked a payment, which it considers a suspicious attempt to bypass financial safeguards.
- The ISAs offered offering unrealistic returns and were misrepresented as a "safe" investment, whereas they were actually based on whisky cask bonds.

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.

Having done so, I've decided not to uphold it. I'll explain why.

Mr D authorised the payments he is now disputing. In broad terms, the starting position in law is that firms are expected to process their customers' authorised payment instructions without undue delay – meaning Mr D is presumed liable for his payments in the first instance. However, as he says he made the payments due to falling victim to a scam, there are some further considerations relevant to whether it would be fair to expect Halifax to refund him.

The key consideration here is the CRM code, which Halifax was signatory to at the time of these payments. This code requires firms to reimburse APP scam payments in most circumstances. But it doesn't cover private civil disputes – such as where the customer pays 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.

Halifax says Mr D's dispute with W is a private civil dispute rather than a scam. I therefore need to consider whether, on balance, the payments in question meet the CRM code's definition of an APP scam:

"Authorised Push Payment scam, that is, 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."

I consider it clear Mr D intended to pay W. I also consider it clear he was making the payments for what he believed were legitimate purposes, i.e. to invest. So, I've considered whether W's purpose for each payment was broadly aligned with Mr D's – and, if not, whether this was a result of a dishonest deception by W.

Based on the records provided, it appears the ISAs were set up on L's platform. W also paid monthly returns. This matches what you would expect for a genuine investment. While I understand the returns stopped after April 2024 (based on the statements I've seen showing credits from W), I'm aware W told some investors shortly after that they were in financial difficulty, and L then went into liquidation in July 2024. So, that leaves open the possibility the investments simply failed.

L were FCA regulated at the time of the payments. While there was a restriction on them regarding promotion of investments, I haven't seen much suggesting they were promoting the ISAs; it seems Mr D was introduced to them through another company.

Furthermore, failing to adhere to regulatory requirements and/or mismanagement wouldn't be sufficient to show no genuine investment was provided – or at least intended to be provided (as would be needed to meet the CRM code's definition of an APP scam). Our service has seen records of an account held by W which shows significant payments to known distilleries and whisky storage facilities. This supports that they were at least attempting to invest in whisky – which I think broadly matches what Mr D understood he would be investing in, given how the opportunity was presented and the nature of W's business.

I do understand why Mr D and his representative have concerns about W's conduct. But the overall picture is mixed. We've seen evidence across several cases suggesting W were completing at least some legitimate activity. And as mentioned above, this is also supported by their account records. I also don't think the fact the directors were arrested is sufficient to show Mr D was fraudulently deceived into making these particular payments. We don't know if the directors will be charged – or, if so, what specific instances/period the charges might relate to.

The representative has provided evidence of one of the directors claiming to offer further investment opportunities in March 2024. But nothing further was set up/paid between Mr D and W (or the director). So, I don't consider this sufficient to show there was fraudulent intent by W a year or so prior when soliciting these particular payments.

Ultimately, I have to consider what can be deduced about W's intentions at the point of each payment. As things currently stand, I've not seen enough to persuade me it's more likely W had no intention of honouring these investments at the time these payments were made – as opposed to them managing funds poorly, running into financial issues, and/or later engaging in fraudulent activity.

As Mr D's representative has mentioned, I appreciate there are some ongoing investigations into both W and L. If further material evidence comes to light to support that the ISAs were a scam, Mr D may be able to ask Halifax to reconsider his claim. But on the balance of what is currently available, I'm not persuaded this has been adequately demonstrated – meaning I don't think a refund is due under the CRM code.

Nor do I agree (as the representative has suggested) that Halifax should have prevented Mr D from making these payments at the time. Firms have a duty to act on their customers' authorised payment instructions. And I don't think Halifax had cause to suspect he was falling victim to a scam. I've not seen that there were any public scam concerns about W at the time. L's involvement in the set-up of the ISAs, as an FCA-regulated firm, also gave at least the appearance of legitimacy. So I can't see that the payment destination, nor any information that may have been obtained from reasonable enquiries with Mr D about what he was doing, would have caused Halifax to block these payments (or otherwise dissuaded Mr D from making them).

I appreciate this will be disappointing for Mr D, who's clearly lost out significantly here. But having carefully considered the circumstances, I'm not persuaded it would be fair to hold Halifax liable for this loss.

My final decision

For the reasons given above, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 17 December 2025.

Rachel Loughlin
Ombudsman