

The complaint

Mr C complains that Bank of Scotland plc trading as Halifax won't refund money he lost when he says he was the victim of an investment scam.

Mr C's complaint is brought through professional representatives. But for ease I'll mostly refer to Mr C throughout this decision.

What happened

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

Mr C says he was persuaded to invest with a company which I'll refer to as N. He says that he was induced to invest by a third party which I'll refer to as X. In August 2020, Mr C made two payments of £5,000 each to N. The payments were for the purchase of Placing Shares in N at a price of 7p per share.

Mr C believes the investment wasn't genuine and that he is the victim of a scam. He raised a claim and complaint with Halifax. This was on the basis that Halifax ought to be refunding him under the Contingent Reimbursement Model (CRM) Code, which was in force at the time Mr C made the payments and that Halifax was a signatory of.

Halifax issued a final response to Mr C. It declined reimbursing him, advising that it was unable to complete a full investigation as it had not received a response to information it had requested from him.

Mr C referred his complaint to this service. Our investigator who considered the complaint didn't recommend that it be upheld. He said the evidence available was consistent with N being a legitimate company which Mr C's investment was being made to fund. And while N failed, he considered the purpose that Mr C had made the payment, and the purpose N had, was broadly in line. So, he didn't consider there was sufficient evidence to conclude that the definition of an Authorised Push Payment (APP) scam had been met. Therefore, he couldn't ask Halifax to refund him under the CRM Code.

Mr C didn't agree. He said that the conclusion didn't sufficiently consider the deceptive circumstances surrounding the investment and how it was promoted. He said that he'd been induced to make these payments by X under materially false pretences and misrepresentations about the nature, structure, and security of the investment.

Our investigator informed Mr C that his payments were made directly to N and not any other party. Any complaint about how X might have sold the investment to him is one he would need to take up with them. But based on the information available, he wasn't satisfied the CRM Code would apply. He also explained that he'd only have expected Halifax to have intervened if the payments were out of character. And he wasn't satisfied that a proportionate intervention would have prevented him from proceeding with the payments. As an agreement couldn't be reached, the case has since been passed to me to decide.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

In deciding what's fair and reasonable, I'm required to take into account relevant law and regulations; regulatory rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

In broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. But there are circumstances when it might be fair and reasonable for a firm to reimburse a customer even when they have authorised a payment.

Under the CRM Code, the starting principle was that a firm should reimburse a customer who was the victim of an APP scam, except in limited circumstances. But the CRM Code only applied if the definition of an APP scam, as set out in it, is met.

I have therefore considered whether Mr C's claim falls within the scope of the CRM Code, which defines an APP scam as:

"...a transfer of funds executed across Faster Payments...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."*

The Code also says it doesn't apply to private civil disputes, such as where a customer has paid a legitimate supplier for goods or services but has not received them, they are defective in some way, or the customer is otherwise dissatisfied with the supplier. So, it doesn't cover a genuine investment or a genuine business that subsequently failed. Or a situation involving something that may be considered a "bad bargain".

It is for Mr C to demonstrate that he is the victim of an APP scam. To decide whether Mr C is the victim of an APP scam as defined in the CRM Code I have considered:

- The purpose of the payment and whether Mr M thought this purpose was legitimate.
- The purpose the recipient – N, had in mind at the time of the payments, and whether this broadly aligned with what Mr C understood to have been the purpose of the payment.
- Whether there was a significant difference in these purposes, and if so, whether it could be said this was as a result of dishonest deception.

Mr C thought he was purchasing shares in N - a mining company based abroad, at a discounted rate. I haven't seen anything to suggest that he didn't consider this to be a legitimate purpose. In reaching an answer on what purpose N had in mind, I've considered the wider circumstances surrounding N and any linked businesses.

I've carefully reviewed the evidence and information presented by Mr C and his representatives. I must make clear that evidence has been provided which shows Mr C had

a historic investment with N dating back to 2018 and which was made through a different advisor – which is the subject of a separate complaint at this service. Evidence has also been provided in relation to a further investment opportunity in N, relating to the purchase of a loan note with a 12% return which would be paid bi-annually. But this postdates Mr C's payments complained of here.

From the evidence presented by Mr C relating to the disputed transactions here, Mr C's payments were for the purchase of shares in N at 7p a share. Mr C subsequently received a share certificate as a result. Prior to this agreed purchase, Mr C received an email from X informing him that shares in N were available at a discounted price of 7p a share. The information presented to Mr C informs him that the company aims to list on to a mainboard exchange such as the London Stock Exchange or the AIM within the next 6-12 months. X also confirmed it had attached the Independent Report conducted by an FCA Authorised and Regulated Firm which suggested a potential future share value of 21p share – which it said *'would be a significant uplift on shares purchased at today's rate'*. This opportunity itself was presented as being available to those who were already bondholders in N – which evidently Mr C was. From the evidence presented, I'm not persuaded the information given to Mr C prior to his payments amounted to a misrepresentation. But even if I was, a misrepresentation isn't sufficient to evidence that N was operating fraudulently or that they intended to defraud investors. Nor does what's been presented evidence that Mr C's funds weren't used for the intended purpose. Rather it supports exactly what Mr C was making a payment for – a purchase of shares in N at a cost of 7p per share. Thereafter however, N entered into liquidation.

N had been in business from 2015. Having reviewed the liquidators reports which are available in the public domain on Companies House, I can see that N had genuine subsidiary companies based abroad and that were sold during the liquidation process. These underlying businesses were carrying out mining activities. On the whole, it seems N was a genuine company that failed, and there has been no evidence put forward by way of any external investigation by a statutory body to suggest this was a scam or Ponzi scheme or that it obtained customer funds fraudulently.

Having considered all the evidence provided to me and available in this case, I'm not persuaded there is sufficient evidence to conclude that the purpose N had in mind when it took payment from Mr C was different to his. As such I'm not satisfied the payments Mr C made meet the definition of an APP scam and therefore aren't covered by the CRM Code.

I've also considered whether there's any other reason I could ask Halifax to refund Mr C. As our investigator explained, he'd only have expected Halifax to have intervened if the payments were out of character. Indeed, firms like Halifax are aware, taking longstanding regulatory expectations and requirements into account, and what I consider to be good industry practice at the time, that it should have been on the look-out for the possibility of fraud and made additional checks before processing payments in some circumstances.

Mr C's representatives argued the payments were unusual in size. Based on Mr C's previous account activity I'm not satisfied Halifax ought to have been concerned regarding these payments. Mr C regularly made payments of this value and higher. And like our investigator, even if Halifax had intervened when the payments were made, I'm not satisfied this would have prevented Mr C's losses. I say this having considered Mr C's existing investment in N. Furthermore, there wasn't any information available at that time which suggested that the investment offered by N wasn't genuine.

In light of what I've set out above, I'm not satisfied that I can fairly hold Halifax liable for Mr C's loss.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 16 March 2026.

Mark O'Connor
Ombudsman