

The complaint

Mr L is unhappy that Bank of Scotland Plc trading as Halifax ('Halifax') won't reimburse him after he was the victim of a scam.

What happened

In 2022, Mr L met a person, who I will call 'Mr D' on a messaging service containing members of a group which trained people in property investment. Mr D would answer people's queries about property investment and Mr L ended up discussing the subject with him directly.

Mr D introduced Mr L to the idea of investing in cryptocurrency; he said this could give a far better yield than property investment. Mr D said he had invested over £5 million and had been trading for months without a loss. He said that he could trade on Mr L's behalf from his account and that Mr L could make 5% net a day or take 20% with compounded interest, minus brokerage fees. Mr L decided to invest and sent Mr D two payments of £5,000 in August 2022. Mr D added Mr L to a new messaging group where he was given updates on the trades.

A few months later the group administrator reported issues with the trading platform they were using. Mr L says Mr D eventually claimed that all the money had been lost and he promised to pay Mr L back. Mr L says he has received interest payments from time to time from Mr D over the years. Halifax confirmed Mr D had sent 4 payments totalling £1,000. Mr D kept promising to repay Mr L in larger instalments but the deadlines for doing so were passed without any further payment. Mr L eventually reported the matter to Halifax as a scam but they declined to reimburse him under the relevant scam rules.

Our Investigator looked through the information and concluded that the matter was a civil dispute. Mr L disagreed with the Investigator and has asked for a final decision. The matter has come to me to decide.

I issued a provisional decision setting out why I was intending to uphold the complaint. In my provisional decision I said:

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 having been good industry practice at the time.

In broad terms, the starting position at law is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations (in this case, the 2017 regulations) and the terms and conditions of the customer's account. However, that isn't the end of the story.

At the time of the payment, Halifax was a signatory to the Lending Standards Board's Contingent Reimbursement Model Code ('the CRM Code'). The CRM Code did provide

reimbursement to some victims of Authorised Push Payment ('APP') scams, but it did not always apply.

The CRM Code specifically says it doesn't apply to "(b) private civil disputes, such as where a 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;"

Halifax initially thought the matter was a scam, but our Investigator thought that it was a civil dispute. As Mr L disagrees with this, I will consider this issue first.

Is what happened a scam or a civil dispute?

The relevant section of the CRM Code defines an APP scam as:

The Customer transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent.

So for me to find that Mr L had been the victim of a scam, rather than a civil dispute, I would need to be satisfied that:

- (a) *There was a misalignment between Mr L's purpose for making the payment and Mr D's purpose for procuring the payment; and*
- (b) *The difference between the two purposes must be due to dishonest deception on the part of Mr D*

One of the key considerations here is thinking about what Mr D's intentions were from the start of the process – did he intend to dishonestly deceive Mr L?

I appreciate there are challenges in establishing what another person's intentions were and that I cannot know for sure. So I must consider all the available evidence and weigh this up in order to decide on balance what I think Mr D's intentions are likely to have been.

I also want to make it clear that the threshold for me saying fraud has occurred is a high one, (though not as high as in criminal proceedings). My role is to decide if I think fraud is more likely than not to have happened. It isn't enough for fraud to be one of a number of plausible theories for what happened, it has to have been more likely than not to have occurred.

Having considered all the evidence available, I agree with Mr L that the matter was most likely a scam. I say this because:

- *Looking at Mr D's account information, I don't think the account activity is consistent with what I would expect to see from someone who was intending to invest on behalf of others. The payments to cryptocurrency are minimal compared to the funds received, so I am not persuaded that Mr D was intending to use the money he received to invest for Mr L. Whilst it's difficult to know exactly what Mr D used Mr L's money for as it was sent out in a large faster payment, it doesn't look like it went towards investing in cryptocurrency.*
- *Whilst I acknowledge that Mr D claimed to be the victim of a scam himself, the evidence from the receiving bank information doesn't tally with what I would expect to see from someone who has been the victim of a scam. Similarly, his claim of being a victim doesn't seem to be consistent with what he actually did with Mr L's money. It may be the case that Mr D was scammed, but it doesn't change that he appears to have scammed Mr L in the process.*

- *I can understand how the Investigator reached their conclusion that this was a civil dispute; it is unusual that Mr D didn't conceal his identity to Mr L, he is a long standing customer with his bank and he has also attempted to pay back some of the funds. But I find Mr D's conduct in procuring the investment funds to be questionable and likely to involve deception:*

- *Looking at the messages between Mr D and Mr L, I'm struck by how confident and assertive Mr D was about the investment opportunity when discussing it with Mr L. Mr D spoke of his personal skill in trading, the amount of money he had made and how he knew when to manipulate the market. He said he would teach Mr L how to do it himself in time. Mr D doesn't sound to me like a typical victim of cryptocurrency investment scams in this regard. Usually, these victims have very little knowledge of markets and cryptocurrency investing and they certainly aren't asking others to invest with them. I think Mr D's attitude and behaviour here suggests that he was a scammer rather than a victim.*
- *I also note that he told Mr L that he had successfully withdrawn \$25,000 from his investment account in just three minutes and still had over \$100,000 left in his account for trading. Whilst scammers often give their victim some returns in order to persuade them that the scam is legitimate, it's very rare for a victim to be able to withdraw such a significant amount of money as this would be a significant risk for the scammer.*
- *I find the claims Mr D made concerning how much money Mr L could make to be unrealistic and highly suspicious. If Mr D really was an investment expert like he had claimed, I think he should've known that the guarantees he provided couldn't have been true.*

So, for the reasons above I think the matter was, on balance, likely to be a scam. Having reached this conclusion, I have gone on to consider if I think Halifax correctly assessed Mr L's claim under the CRM Code.

Should Mr L be reimbursed under the CRM Code?

Under the CRM Code, a firm may choose not to reimburse a customer if it can establish that:

- *The customer ignored an effective warning in relation to the payment being made; or*
- *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 payment 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*

Halifax argued that both reasons apply, so I will consider both.

Has Halifax fairly established that it can decline reimbursement under the code?

Having considered the evidence, I'm not persuaded that Mr L had a reasonable basis for believing the investment opportunity was genuine. I say this because:

- *Fundamentally, the opportunity was too good to be true; the rate of return was very high and Mr D gave Mr L examples that just didn't appear plausible. I also think Mr L should've been cautious about Mr D approaching him with this supposedly lucrative investment – if Mr D was so wealthy from investing, then why did Mr D say it was his “side hustle” and why was he asking others to invest with him?*
- *Mr L didn't do any research into the opportunity or Mr D despite only having had limited contact with Mr D before. I appreciate that Mr D may have appeared knowledgeable about property investment from their previous interactions on the messaging group, but those questions centered on property investment, so they weren't an indication of Mr D's knowledge in other areas of investment. Realistically, Mr L didn't know if Mr D was competent at managing such a speculative investment before paying him.*
- *I think Mr L should've also been cautious about the informal nature of the deal between him and Mr D. Mr D had said that he would trade from his personal account, but there wasn't any formal documentation to set out the professional relationship between them and the investment, or how the profit sharing would work. I think this was an issue that Mr L should've been cautious about.*

So for the reasons above, I don't think Mr L had a reasonable basis for believing the investment opportunity was genuine, and so I think that Halifax were entitled to rely on this to hold Mr L at least partially liable for his loss under the CRM Code.

Did Halifax meet the standards for firms?

I've considered whether Halifax met the standards for firms under the CRM Code, to determine whether it should also bear any liability for Mr L's loss.

The CRM Code says that where firms identify APP scam risks in a payment journey, they should provide effective warnings to their customers. This should include appropriate actions for the consumer to take to protect themselves from APP scams. I'm satisfied that the first £5,000 payment made presented an APP scam risk here. And I've seen nothing to suggest that Mr L would have ignored an effective warning, had it been provided. I've therefore considered whether Halifax met its standards by providing an effective warning in these circumstances.

Halifax have raised that when Mr L made his initial payment, they asked him to select his payment purpose from a range of options. Mr L selected investment and was shown the following warning:

“[Name], make sure this investment is real

- *Deals that look too good can be scams.*
- *Do lots of research – good deals don't find you.*
- *See what your family and friends think.*
- *Use the FCA to check an adviser or company*
- *Find out how to stay safe from scams on our Fraud Hub.”*

I don't think this is a bad warning by any means. However, the CRM Code sets out minimum criteria that a warning must meet if it is to be properly considered effective. I'm not convinced all of those criteria have been met here. Whilst the warning is simple and clear, it doesn't bring to life the main features of the scam which could help a customer identify if they are falling victim to one. It also offers more scam advice in another link that would take the customer away from the payment screen they were on, so the advice isn't readily available

there before payment is attempted.

For these reasons, I don't think the warning was sufficiently impactful to be considered effective, so Halifax cannot rely on this reason to deny reimbursement to Mr L and it should also be liable.

Where it would be proportionate to the risk identified, I'd expect the bank to do more than simply provide a written warning. In certain circumstances, I'd expect the payment to be stopped so that the bank can contact the customer to establish the wider circumstances. In my view, a warning was proportionate for the first payment. Though Mr L was paying a new payee and the value of the payment was high enough to be considered a risk, I can see that Mr L did sometimes make large payments from this account, so it wasn't that unusual. I also note there was a positive Confirmation of Payee check which would indicate Mr L knew who he was paying, lessening the scam risk.

But I think Halifax should have done more when the second payment was attempted as it was so out of character and unusual for Mr L's account usage that it warranted staff intervention. I say this because it was the second high value payment made to the same payee within a week or so which was very unusual for the account. Whilst Mr L did make high value payments from his account, I can see they usually were either going to his own accounts elsewhere or to established payees/businesses. Here, the payment was going to the personal account of a recently added payee for the purposes of investment, which I think should've been a cause for concern.

I think further enquiries from Halifax would've made a difference to the scam going ahead because:

- *It's likely Mr L would've been open about the details of the investment, including that it was being paid to Mr D, where he had met him, that there was no paperwork and, crucially, that he was expecting to receive returns that were so generous there was no realistic prospect that it was anything other than a scam.*
- *I think these details would've caused alarm for Halifax and I think they would have been able to engage with Mr L in a productive conversation about their concerns. I think this would've broken the spell of the scam and he wouldn't have continued with the payment.*

Overall, I think that Halifax has fairly established that it doesn't have to reimburse Mr L in full based on the CRM Code. But Halifax also didn't meet the standards for firms, so under the CRM Code, they should share liability with Mr L.

I have also considered Halifax's liability outside of the CRM Code. Good industry practice requires that firms be on the lookout for account activity or payments that are unusual or out of character to the extent that they might indicate a fraud risk. On spotting such a payment, the firm should make enquiries with the customer to satisfy itself that the customer wasn't at risk of financial harm due to fraud.

As discussed above, Halifax should have intervened on the second payment and if they had done so, they would likely have prevented the scam going ahead. If Halifax had taken the steps I would have expected it to, it would've been able to prevent the loss from occurring. For the purpose of calculating compensatory interest, Mr L should be considered to be out of pocket from the point the payment left his account rather than the date his claim was declined.

Recovery of funds

I've thought about if Halifax acted fairly and reasonably in attempting recovery of the funds when the scam was reported to them. I can see that Mr L's funds were removed within one or two days of entering the account, so, given the scam was reported much later, I don't think there is anything Halifax could've done which would've recovered any of the funds.

Putting things right

In calculating fair redress I've taken into account that Mr L has received some reimbursement from Mr D.

I think this money should be deducted from the amount lost by apportioning it proportionately across all of the payments Mr L made to the scam. This ensures that these credits are fairly distributed.

To work this out, Halifax should take into account all of the payments Mr L made to the scam. In this case, the repayments received equals £1,000 and the total amount paid to the scam equals £10,000. Halifax should divide the 'profits/returns' by the total amount paid to the scam. This gives the percentage of the loss that was received in repayments. Deducting that same percentage from the value of each payment gives the amount that should be reimbursed for each payment.

Here the repayment amounted to 10% of the total paid to the scam. It follows that the outstanding loss from each payment should be reduced by the same percentage. That means Halifax should deduct 10% of each payment.

After deducting 50% as I said liability should be shared between both parties and after taking the steps set out above, I calculate the Mr L's outstanding loss from these payments to be £4,500.

So Halifax should:

- *Reimburse Mr L the outstanding loss (which I calculate to be £4,500)*
- *Pay 8% simple interest from the date the payments were made until the date that the reimbursement is paid.*

Responses to my provisional decision

I asked both parties to provide anything further before I reached a final decision. Mr L has agreed with the provisional decision but Halifax has disagreed for the following reasons:

- *Mr L's first payment was not unusual or one they considered to be high risk of being associated with an APP scam, which is why they didn't intervene to talk to him about the payment.*
- *It would not be fair or reasonable to assume when someone makes a second payment to the same payee it carries an inherent fraud risk and should be subject to intervention. They have pointed out that Mr L had previously made more than one payment to the same recipient so this was part of his normal account activity. They said their responsibility was to apply a proportionate, risk-based approach rather than impose blanket restrictions that could negatively impact legitimate customer activity.*

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 agree that Halifax should apply a proportionate risk-based approach when monitoring accounts rather than a blanket restriction. But it seems we disagree on the level of risk posed by the payments and what would be a proportionate response.

It's certainly true that Mr L had made a number of large payments from his account prior to making the scam payments, but, as discussed in the provisional decision above, I note that most of these payments are to established payees, such as Mr L's relatives, Mr L's own business or to other companies. Mr L's initial payment was still relatively high value and was going to a new payee, so there were enough risk factors there to warrant a written online warning, which is what happened. The warning could not be considered 'effective' under CRM Code standards, so Halifax must share liability with Mr L for the loss he incurred.

I appreciate that Halifax don't think the second £5,000 payment posed enough of a scam risk either, and I do think the matter is finely balanced as Mr L did sometimes make multiple high value payments to the same payee. But in this instance, there had been £10,000 in aggregate sent in one week to a new payee, which poses a different, increased, risk compared to Mr L paying his own business, or paying a legitimate business such as a nationwide bathroom supplier. I think Halifax should've escalated their intervention when the second £5,000 payment was attempted and spoke to Mr L. If they had done this, as explained in my provisional decision, the scam would have been exposed.

Overall, I've given great thought to Halifax's points, but in this set of circumstances, for the reasons explained in my provisional decision (which is outlined and forms part of this final decision) and my subsequent points above, I haven't changed my decision.

Putting things right

So Halifax should:

- Reimburse Mr L the outstanding loss (which I calculate to be £4,500)
- pay 8% simple interest per year on the partial reimbursement of the first £5,000 payment from the date the claim was declined until the date that the reimbursement is paid. This reflects Halifax's liability for this payment under the CRM Code.
- pay 8% simple interest per year on 50% on the partial reimbursement of the second £5,000 from the date the payment was made until the date that the reimbursement is paid. This reflects Halifax's liability for this payment under other APP scam considerations.

My final decision

I uphold this complaint against Bank of Scotland Plc trading as Halifax.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 23 March 2026.

Paula Lipkowska
Ombudsman