

The complaint

Mr and Mrs D complain that Bank of Scotland plc trading as Halifax won't refund money they say they lost to a scam.

In making this complaint Mr and Mrs D are represented by a third-party, but for the ease of reading I'll refer to Mr and Mrs D throughout this decision.

What happened

Mr and Mrs D invested in an unregulated property scheme (that I'll call W). They made two payments - £10,000 and £50, by way of faster payments, from their Halifax account to W in July 2018.

Mr and Mrs D complained to Halifax in November 2022. They argued that Halifax had breached its duty of care by failing to question the payment and, had it done so, they wouldn't have gone ahead, and the loss would have been prevented.

Halifax looked into the matter but didn't uphold the complaint. It said that, when Mr and Mrs D made the payments, W was a genuine company but had later gone into administration. And it didn't agree to refund the money Mr and Mrs D had lost.

Mr and Mrs D didn't agree and referred the complaint to this service. One of our investigators looked into it. But our Investigator didn't uphold the complaint. She thought that the payments didn't stand out as being particularly unusual or concerning - when compared to Mr and Mrs D's normal account usage, so Halifax would have had no cause to question them.

Mr and Mrs D disagreed. They reiterated that Halifax should have intervened when they instructed the payment as they think all high value payments should be flagged irrespective of the general account usage.

As no agreement could be reached, the case was 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.

Having done so, while I'm sorry to hear Mr and Mrs D have lost a considerable amount of money, I'm not upholding this complaint for largely the same reasons as our investigator explained. I realise this will come as a disappointment to Mr and Mrs D, but I don't find that Halifax has acted unfairly or unreasonably. I'll explain why.

The starting position in law is that Mr and Mrs D are responsible for transactions they carry out themselves. There's no dispute about that here. Rather, Mr and Mrs D say Halifax should have intervened with the larger payment before allowing it to be processed.

Taking into account regulators' rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, Halifax should, fairly and reasonably, have been on the lookout for out of character and unusual transactions, as well as other indications that its customer might be at risk of financial harm from fraud.

But it would clearly be an onerous requirement for Halifax to question every payment and I consider it to be appropriate for a customer's previous account activity, among other factors, to be taken into account when deciding whether a payment does, or does not, present heightened risk.

Having reviewed Mr and Mrs D's account statements, I can see that they made a number of payments which were significantly higher in value in the year before the larger payment in dispute was made. And the payment didn't reduce the balance of their account significantly (when compared to other significant payments made) and didn't form part of a concerning pattern of payments – both of which might be indicators of fraud.

Overall, I don't find that Halifax ought to have been concerned about the payments and, therefore, it follows that I don't find it made a mistake by failing to intervene.

I've thought about whether Halifax had the opportunity to recover the funds for Mr and Mrs D. But I think it's unlikely any attempts to recover the money would have been successful given the time that has elapsed since the payment was made and when they raised his complaint with Halifax - particularly as W went into liquidation in the interim period. So, I'm not persuaded that Halifax did anything wrong when it didn't attempt to recover the funds.

In summary, I have a great deal of sympathy with Mr and Mrs D, they have lost a considerable amount of money. But it would only be fair for me to direct Halifax to refund their loss if I thought it was responsible – and I don't find this to be the case. As such, I cannot fairly and reasonably hold Halifax liable in these circumstances. It follows that I will not be asking Halifax to take any further action in respect of this complaint.

My final decision

For the reasons I've explained, I don't uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D and Mrs D to accept or reject my decision before 31 October 2023.

Sandra Greene
Ombudsman