

The complaint

Mr and Mrs L complain that Bank of Scotland plc trading as Halifax ("Halifax") won't refund them the money they lost to what they believe was a scam.

Mr and Mrs L bring their complaint with the assistance of professional representation, but for readability, in what follows I will refer solely to Mr and Mrs L.

What happened

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

In 2018, Mr and Mrs L invested in an unregulated property scheme (that I'll refer to as W). They were persuaded to invest £50,000 into property bonds, with the investment being paid through a single bank transfer, from their Halifax account, which they made in a Halifax branch on 8 January 2018.

Mr and Mrs L became aware and concerned that they may have been the victims of a scam following a police investigation. W has since entered liquidation and Mr and Mrs L have highlighted significant concerns that it may have been operating fraudulently.

Mr and Mrs L raised the matter with Halifax and it looked into their complaint. Halifax issued its final response on 5 January 2023, not upholding the complaint. In summary, it considered this to be a civil dispute between Mr and Mrs L and the company they had invested with. It added that, due to the time that has passed, it no longer had a detailed version of events from the branch, but it says as the payment was of a high value it would have been checked by the branch. Alongside this it said that, even if it had found the payment suspicious and warned Mr and Mrs L, it doesn't think it would have deterred them from going ahead, given that there was no reason to suspect W was acting fraudulently.

Unhappy with Halifax's response Mr and Mrs L brought their complaint to this service. Our Investigator looked into things but didn't think that their complaint should be upheld. In summary, our Investigator's view was that he didn't think Halifax should reasonably have been expected to prevent Mr and Mrs L from making the payment. He considered that Mr and Mrs L would still have wanted to go ahead with the payment at the time, as the company they were paying and the documents they received would have appeared to have come from a genuine company. Overall, he didn't think Halifax would have suspected there was a fraud risk.

Mr and Mrs L didn't agree with our Investigator's view. In summary, they maintained that had Halifax intervened, as they thought it ought to have done, it could have uncovered concerns about the transaction. With this, they think on the balance of probabilities they wouldn't have proceeded with the payment.

As an agreement hasn't been reached the complaint has been 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.

I'm very aware that I've summarised this complaint briefly, in less detail than has been provided, and in my own words. No discourtesy is intended by this. Instead, I've focussed on what I think is the heart of the matter here. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual point or argument to be able to reach what I think is the right outcome. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts.

In their submissions to us, Mr and Mrs L have referred to The Lending Standards Board Contingent Reimbursement Model Code (CRM Code). But that doesn't apply in this case. That is because it came into operation in May 2019 – after the payment in question.

I'm mindful that there is a dispute between the parties in this case as to whether this is a scam. I've thought about this. But, in the circumstances of this case, my findings would not differ, even if I considered this was a scam. So I'm satisfied that to reach a fair and reasonable outcome on this case, it isn't necessary for me to make a finding as to whether I think this is a scam. I'll explain why.

I'm sorry to hear of what's happened to Mr and Mrs L, and I can understand entirely why they feel so strongly that this money should be returned to them. But having thought very carefully about Halifax's actions, I think it did act fairly and reasonably in allowing the payment to leave their account.

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' 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 in law is that Mr and Mrs L are responsible for transactions they've carried out themselves. Mr and Mrs L don't dispute that at the time, they intended to make the payment, albeit with the belief the payment was towards a legitimate investment. But that isn't the end of things, Halifax along with other payment services providers, should be monitoring accounts and be on the lookout for unusual transactions or other signs of fraud.

Due to the time that has passed Halifax has said it doesn't have any detailed information regarding the events when the payment was made in branch. But it added that, due to the high value of the payment, it would have been checked in branch. Mr and Mrs L say the branch didn't question the transaction. In cases when it's not clear what happened or where the evidence is incomplete or inconclusive, as is the case here, I base my decision on the balance of probabilities. In other words, what I consider is more likely than not to have happened in light of the available evidence.

Having thought about this, in the individual circumstances of this case, even if I were to accept that Halifax's intervention didn't go as far as it could have done, and that it ought to have questioned Mr and Mrs L more about the payment, before allowing it to be progressed, I'm not persuaded it would have made a difference.

I say that as had Halifax questioned Mr and Mrs L about the payment, I think that they would have told it the truth – that they were making an investment with W, which appeared –

through its registration with Companies House – to be a legitimate business. At the time Mr and Mrs L made the payment, it was actively trading, and it would have needed a considerable amount of investigation to unearth the information about W that later came to light.

Mr and Mrs L have provided copies of the investment literature I understand they received at the time. This appears professional and not obviously anything other than legitimate. It gave an explanation of the risks involved and recommended investors should seek independent financial advice prior to making an investment decision. On the face of it, I don't think there was enough here for Halifax to have reasonably suspected W was other than it seemed.

I'm also not aware of any published regulatory warning about company W at the time the payment was made. So it seems at the time of the event there would have been no public information that Halifax ought to have been aware of and reacted to. Or indeed that Mr and Mrs L would have come across had Halifax suggested they first complete more checks. On balance, I don't think that Halifax reasonably ought to have had concerns at the time. And I'm satisfied that Halifax hasn't missed an opportunity to prevent the payment before it was sent.

Unfortunately, given the time that has elapsed since the payment was originally made I don't think there was any prospect of Halifax being able to recover any of the money Mr and Mrs L had paid. I'm satisfied that recovery from the beneficiary bank was not a viable option.

It's very unfortunate Mr and Mrs L have lost this money in this way, and I understand the whole experience has been deeply upsetting and I do have a great deal of sympathy for them. But in the circumstances, having carefully considered everything Mr and Mrs L and Halifax have submitted, I don't find Halifax could have reasonably prevented Mr and Mrs L's loss here. Neither do I find it materially at fault otherwise.

My final decision

My final decision is that I don't 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 and Mrs L to accept or reject my decision before 16 January 2024.

Stephen Wise
Ombudsman