

**The complaint**

The estate of Ms W complains that Bank of Scotland plc trading as Halifax (Halifax) won't refund money paid into an investment.

**What happened**

*What the estate of Ms W say:*

The late Ms W sadly died in January 2020. When looking into her affairs, the executors of her estate found she had made a number of payments to an investment fund which later failed.

The scheme in question was an overseas property investment scheme, which claimed to enable investors to invest in overseas property which was said to be undergoing refurbishment into luxury apartments. The investments were said to be in loan notes. Ms W was promised guaranteed returns of between 10% and 15% over five years.

The estate of Ms W say that Ms W was encouraged to make investments into the scheme through a series of home visits. The payments were made by cheque. She did receive some income and the payments and receipts are shown below:

**(continued)**

*Payments:*

Date	Payment	Amount
20 November 2013	Cheque	£10,000

2 December 2014	Cheque	£10,000
2 February 2015	Cheque	£10,000
11 February 2016	Cheque	£10,000
1 February 2017	Cheque	£10,000
1 February 2017	Cheque	£10,000
12 November 2018	Cheque	£10,000
<b>Total payments made</b>		<b>£70,000</b>

*Income received (from Ms W's bank statements):*

<b>Date</b>	<b>Method</b>	<b>Amount</b>
November 2014	Faster payment inwards	£11,200
May 2015	Faster payment inwards	£600
July 2015	Faster payment inwards	£600
December 2015	Faster payment inwards	£600
January 2016	Faster payment inwards	£650
February 2016	Faster payment inwards	£10,600
December 2016	Faster payment inwards	£650
June 2017	Faster payment inwards	£700
December 2017	Faster payment inwards	£700
February 2018	Faster payment inwards	£2,200
June 2018	Faster payment inwards	£500
December 2018	Faster payment inwards	£500
<b>Total income</b>		<b>£29,500</b>

*Net losses:*

Payments	£70,000
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Income	£29,500
<b>Net losses</b>	<b>£40,500</b>

The estate of Ms W says that Halifax should've stopped the payments and done more to protect Ms W. It was clear the scheme was a fraudulent 'ponzi' scheme and Halifax should've known that. Ms W was not an experienced investor and had little experience of such matters. The payments had all the hallmarks of a scam and if Halifax had intervened, Ms W could've been warned and she wouldn't have gone ahead.

The estate of Ms W say that Halifax should refund £70,000 plus interest at 8% per annum.

#### *What Halifax said:*

Halifax said:

- The bank noted Ms W received income of £24,900 (sic) during the period November 2014 to June 2017.
- But Authorised Push Payment ('APP') fraud is where customers are tricked into authorising a payment controlled by a fraudster. But in this case, the payments were made to an account held by the intended beneficiary.
- It didn't therefore constitute an APP fraud.
- The Contingent Reimbursement Model (CRM) Code didn't apply as it only came into effect in May 2019, after the payments were made. And as the payments were made by cheque, the Code wouldn't have applied in any case.
- The investment company is now in liquidation. So, Ms W's payments were considered a failed investment.
- The payments were in line with Ms W's normal account activity and so Halifax didn't need to intervene.
- Halifax didn't uphold the estate of Ms W's complaint or refund any money.

#### *Our investigation so far:*

The estate of Ms W bought the complaint to us. Our investigator didn't uphold it. He said:

- There wasn't any adverse information about the investment firm when the payments were made. It was only in October 2020 when the Financial Conduct Authority published a statement - that matters came to light.
- The payments related to a failed investment and not a scam.

The estate of Ms W asked that an ombudsman look into the complaint, and so it has come to me to do that.

#### **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.

It's not clear or established in this case – whether this was a scam (whereby Ms W was tricked into making the payments, and there was no intention of repaying her); or whether it was a failed investment.

But setting that aside, I need to consider what happened here in the context of the guidance that banks were operating to at the time of the payments in question.

In broad terms, the starting position in law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the terms and conditions of the customer's account. During the period in which the payments were made by Ms W, there were some limited circumstances where a bank should have taken additional steps before processing a payment to help protect customers from the possibility of financial harm. For example, there were some guidelines which should have been followed when older or vulnerable customers asked to make unusually large cash withdrawals or where someone appeared to be telling them what to do.

In recent years, there has been an increase in sophisticated fraud and scams, leading to greater expectations of banks in terms of their role in preventing fraud. For example, the British Standards Institute's 'Protecting Customers from financial harm as a result of fraud or financial abuse – Code of Practice' was published in October 2017. This recognised that banks should look to identify and help prevent transactions – particularly unusual or out of character transactions - that could involve fraud or be the result of a scam. This was after six of the seven payments made by Ms W.

It was only later – that the expectations of banks were increased: with the Banking Protocol in 2018; and the Financial Conduct Authority's (FCA) Banking Conduct of Business Sourcebook (BCOBS) 5.1.10A (R) (since 13 January 2018) & 5.1.10B (G) (since 19 December 2018).

And the Contingent Reimbursement Model (CRM) Code, effective from 28 May 2019, was set up to provide protection for customers who fall victim to Authorised Push Payment (APP) scams, and also to reduce the occurrence of APP fraud.

It can be seen that the increased expectations of, and guidance given to, banks – were only put in place after most of the payments in question. That is, up to the end of 2017, the specific and targeted guidance as regards protecting customers from payments which turned out to be scams – was limited.

But equally, banks were still required to conduct their “...*business with due skill, care and diligence*” (PRIN 2.1.1 - FCA Principles for Businesses: Principle 2) and to “*pay due regard to the interests of its customers and treat them fairly*” (PRIN 2.1.1 - FCA Principles for Businesses - Principle 6). In other words, there was a more general and broad principle of how banks should treat and if necessary, protect customers from fraud and scams.

Bearing all of this in mind, I need to decide whether Halifax acted fairly and reasonably in its dealings with Ms W when she requested the payments, based on the expectations of banks at that time.

The important matter here is whether these were payments that Halifax might reasonably have considered unusual, and therefore whether they should've held or stopped them and contacted Ms W.

I looked at Ms W's' account history with Halifax. And I don't think the payments were unusual for her. For example, there were a number of similar payments made from her account in the period leading up to and during the period of the payments in question:

February 2015: £5,000

June 2014: £10,000

April 2014: £1,061

August 2014: £1,000

August 2014: £1,000

December 2014: £5,000

September 2015: £1,018

September 2015: £3,000

December 2015: £1,657

March 2017: £1,000

March 2017: £3,343

April 2017: £1,800

Also, I noted the cheque payments in question were made over period of five years – which isn't typical of a scam, where payments are usually made together, or in a short period of time.

So, putting all this together, I consider that Ms W's account activity, added to the expectation of banks at the time the payments were made, lead me to say that I don't think it's reasonable to have expected Halifax to have intervened and asked questions of Ms W.

I went onto consider what might have happened if Halifax had intervened. And here, I noted that it was later, in October 2020 that the investment firm entered bankruptcy – and at which time the Financial Conduct Authority published a warning and information about the firm. This was almost a year after the final payment was made. And before that time – if Halifax had intervened, I'm persuaded that it was more likely than not that Ms W would've been satisfied with the income she was receiving – and would likely have been content to make the further payments.

I'm sorry that the estate of Ms W has brought the losses to the attention of Halifax and ourselves. I can see that a claim has been lodged with the liquidators of the investment firm, and I hope that some money can be repaid to the estate.

But in the circumstances of this complaint, I don't consider Halifax needed to intervene in the payments, and the bank aren't liable to refund any money here.

### **My final decision**

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Ms W to accept or reject my decision before 2 May 2024.

Martin Lord  
**Ombudsman**