

## The complaint

Mrs A and Mr A complains that Bank of Scotland plc trading as Halifax ("Halifax") won't refund the full amount of money they lost after they say they fell victim to an 'authorised push payment' ("APP") scam.

Mrs A and Mr A are being represented by a third party.

## 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 and based on the submissions of both parties, I understand it to be as follows.

Mrs A and Mr A complain that in August 2018 they made two payments from their account held with Halifax to what they believed was an investment company.

	Date	Amount
Debit	20 August 2018	£25,000
Debit	20 August 2018	£10,050
Credit	16 January 2019	£816.99

Mrs A and Mr A say in August 2018 they were cold called by an Independent Financial Advisor/Introducer and offered an investment into an affordable housing bond. Mrs A and Mr A say they used their pension pot and invested a total of £35,050 into the bond. The payments were sent to an administrator, then on to the company offering the investment.

Mrs A and Mr A got one credit back from the investment before the company went into administration, and Mrs A and Mr A believe they have now been scammed. So, they logged a complaint with Halifax.

Halifax looked into the complaint but didn't uphold it. Halifax said that as the payments were in line with previous spending, it hadn't found the bank had made any error when it hadn't prevented Mrs A and Mr A from making the relevant payments. As Mrs A and Mr A remained unhappy, they brought their complaint to our service.

Our investigator looked into the complaint but didn't think it should be upheld. Our investigator thought that even if Halifax had discussed the payments with Mrs A and Mr A before they were sent, this likely wouldn't have made a difference – she thought Mrs A and Mr A would most likely have made them anyway.

Mrs A and Mr A via their representative didn't agree with the investigator's view, so, the complaint's 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.

I've decided to not uphold this complaint for materially the same reasons as our investigator.

I'm sorry if Mrs A and Mr A lost money but this doesn't automatically entitle them to a refund from Halifax. It would only be fair for me to tell Halifax to reimburse Mrs A and Mr A if I thought it reasonably ought to have prevented the payments or it unreasonably hindered recovery of the funds.

### Prevention

Banks have various and long-standing obligations to be alert to fraud and scams and to act in their customers' best interests. These are predicated on there having been a fraud or scam. So, a first consideration in determining Halifax's obligations here would normally be: were Mrs A and Mr A scammed as they allege?

Here though, I don't think the answer to this question makes a difference to the fair outcome to this complaint. This is because if Mrs A and Mr A *weren't* scammed, Halifax had no obligation to prevent Mrs A and Mr A's payments, and so I couldn't reasonably hold it responsible for not preventing the payments. On the other hand, if Mrs A and Mr A *were* scammed:

- I'm satisfied Mrs A and Mr A authorised the relevant payments. Halifax would generally be expected to process payments a customer authorises it to make. And under The Payment Services Regulations and the terms and conditions of the account, Mrs A and Mr A are presumed liable for the loss in the first instance, in circumstances where they authorised the payments. That said, as a matter of good industry practice Halifax should have taken proactive steps to identify and help prevent transactions – particularly sufficiently unusual, uncharacteristic or suspicious transactions – that could involve fraud or be the result of a scam. However, there are many payments made by customers each day and it's not realistic or reasonable to expect a bank to stop and check every payment instruction. There's a balance to be struck between identifying payments that could potentially be fraudulent and minimising disruption to legitimate payments.
- In this case, having considered the circumstances of the payments Mrs A and Mr A made, both payments were unusual and extremely large compared to other payments they had made from their account in the previous six months. I understand that Halifax have highlighted some larger payments going back to 2017 to support the fact its payment system didn't flag the two payments in question for further checks, but I'm satisfied these are too far back to be relevant in these circumstances. So in these particular circumstances, in order to meet its obligations summarised above (assuming, for the sake of argument, that Mrs A and Mr A were scammed), I would reasonably expect Halifax to have flagged the payments, and then called Mrs A or Mr A to ask who the payments were for, what they were for, and for the basic surrounding context, and to then have proceeded appropriately from there, with the

intention to disturb or unearth a potential fraud or scam.

- Mrs A did speak with Halifax on 20 August 2018 as she was unable to make a payment of £35,050 in one amount from their account. On the call Mrs A said she was attempting to make a payment to an investment company. Mrs A was told there was a daily limit of £25,000 on her account, and she would need to split the payment. Having listened to the call, no scam warning or further advice was given. Mrs A didn't give any personal information to allow the advisor to log into their account, and it was more a general enquiry.

So, I've gone on to think about whether appropriate intervention or further questions would likely have made a difference. Ultimately, I don't think any intervention by Halifax would have made a difference or prevented the payments. I say this because when Mrs A and Mr A made the payments, they were led to believe they were investing into a legitimate company and product. I'm not aware of any information Halifax could or should have known at the time from which it ought to have been concerned Mrs A and Mr A were being scammed. It could have given Mrs A and Mr A general fraud and scam advice in relation to investing in particular. But ultimately, I don't think I can fairly say it would have been able to give Mrs A and Mr A any information that would have led them to doubt what they already knew about what they were doing, including if they'd undertaken further reasonable research at the time.

So, even if Mrs A and Mr A had been questioned in more detail about the investment by Halifax, I don't think it would've highlighted anything that would've caused concern or led Halifax to believe Mrs A and Mr A were at risk of financial harm from a fraud or scam. So, even if Halifax did intervene and tell Mrs A and Mr A to conduct further checks on their investment, I'm not persuaded they would have found any negative information online.

### Recovery

I've also looked at whether Halifax took the steps it should have once Mrs A and Mr A contacted them to dispute the payments.

After the payments were made, I couldn't reasonably expect Halifax to have done anything further until Mrs A and Mr A alleged to Halifax that they had been scammed.

As the company Mrs A and Mr A sent the money to is now in administration, I find it fair and reasonable that Halifax have directed Mrs A and Mr A back to the administration/liquidator to log a claim rather than try and recover funds through the bank.

I realise this means Mrs A and Mr A are out of pocket. And I'm sorry they lost this money. But I think this was ultimately caused by the investment company here, and not Halifax. I can't reasonably ask Halifax to reimburse Mrs A and Mr A in circumstances where I don't think it ought reasonably to have prevented the payments or recovered them.

### **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 Mrs A and Mr A to accept or reject my decision before 16 August 2023.

Tom Wagstaff  
**Ombudsman**