DRN-2240455

The complaint

Mr J complains that Bank of Scotland plc (trading as Halifax) won't refund £24,975 he lost when he was the victim of a scam

What happened

What Mr J says

Mr J says he was cold called by what he thought was an investment company I'll call company A and pressured in to investing. He says the caller was professional and persuasive and told Mr J company A was registered with the Financial Conduct Authority (FCA). Mr J had some experience of trading himself but felt the demands of planning and executing successful trades were too great. He felt that company A offered him the opportunity to invest with a company that offered skilled traders who could plan successful trades for him.

Mr J says he made some checks such as looking at an EU-based register of companies (although he can't remember what it showed) and because company A was based abroad, he emailed the banking regulator in that country but didn't receive a reply. He also checked that the address he was given for company A existed and tested the caller's knowledge and understanding of the investment sector in his conversations. Mr J found the caller to be educated and knowledgeable and was reassured that no more than one percent of his capital would be invested in a single trade, which he thought demonstrated good risk management. Mr J says he was aware that if a deal sounded too good to be true it probably was. He was offered modest growth of around 5%. Mr J made the following online payments, which I'll discuss below:

Date	Amount
04/08/17	£475
21/09/17	£4,500
09/10/17	£4,500 returned
11/10/17	£4,500
19/01/18	£20,000
Total	**£24,975**

Mr J says that company A initially said the minimum he could invest was £5,000 but he didn't want to invest this much to begin with. Instead he chose to invest £475 on 4 August 2017 and see how the investment performed before he decided whether to invest further. He was able to see the performance of his investment on a portal that looked professional and legitimate. The investment performed relatively well, so Mr J decided to invest a further £4,500 on 21 September 2017.

After making the payment Mr J received a call from company A to say it hadn't been able to apply the £4,500 to his account so would return it. The funds were returned to Mr J's account and he was asked to pay them to a new account, with a different name, sort-code and account number. On 11 October 2017 Mr J made the payment as instructed.

Mr J says he was able to view an online trading platform and saw that £4,500 was credited to his account. As well as seeing the performance of his investment on the platform Mr J explained he had regular conversations with an account manager. He saw his investments rise and fall and the growth was modest.

In January 2018 Mr J says he received another call from company A. He was told he needed to invest more funds to get more trades per day. He transferred £22,500 from another Halifax account and then transferred £20,000 to the account details provided by company A to invest on 19 January 2018. He paid the same account name as when he made the last transfer and says he didn't notice the sort-code and account number had changed.

In March 2018 Mr J wished to withdraw funds and was told he needed to give 90 days' notice to do so. At the end of this period company A told Mr J it was being investigated by HMRC and his funds would be tied up until the investigation was complete. He then received an email asking him to pay tax to release his funds. Mr J thought this was unusual and contacted Halifax on 13 July 2018. Halifax contacted the three receiving banks that day but was unable to recover any of Mr J's funds.

Mr J thinks Halifax should have recognised his transactions were unusual and to unorthodox accounts and had a conversation with him about it in which Halifax should have discussed the importance of FCA regulation. Had this have happened Mr J says he wouldn't have made the payments.

What Halifax say

Halifax hasn't refunded any of the funds Mr J lost. It said:

- The transactions were not suspicious, so no warnings were given.
- The name of the account the funds were transferred to changed and the bank account details Mr J was provided with changed twice. These changes should have alerted Mr J to a problem, and he should have queried the changes.
- Halifax is unable to tell if accounts held with other banks are being used fraudulently.
- Mr J had previous investment experience but thought the discussions he had about the investment were normal.
- Mr J could have completed further checks. Company A was based in Cyprus, but Mr J accepted its statement that it was regulated with the Financial Conduct Authority (FCA) in the UK.
- It attempted to recover Mr J's funds but was unable to do so.

Our investigation so far

The investigator upheld Mr J's complaint in part. She said Halifax should have flagged the second and third payments (for £4,500 and £20,000) as unusual and suspicious in appearance considering Mr J's normal account and payment activity. She said this because the account was mainly used as a savings account and for transfers between accounts, the payments were made online and to new payees. Previous payments to new payees were for much lower amounts.

The investigator felt that had the payments been flagged by Halifax it would have uncovered that Mr J was potentially the victim of a scam and prevented the payments from being made. So, she asked Halifax to refund £24,500 to Mr J together with interest. The investigator responded to Mr J's points about the name of the beneficiary by saying that it wasn't established industry practice at the time to check the name of the payee. Finally, the investigator said Halifax had done what it could to recover Mr J's funds, but none remained.

Mr J accepted what the investigator said and added that Halifax should have delayed his payments and called him before making them. Had Halifax have told him he was crediting a pre-paid card when he made the £20,000 transaction he wouldn't have made the payment. Mr J didn't have the banking knowledge to be aware of this fact himself. Mr J also referred to the due diligence undertaken by another bank in the same group as Halifax when his mother made a payment and questioned why Halifax didn't ask similar questions before making his payments.

Halifax didn't agree with the investigator's findings. It said:

- Mr J was an experienced investor who had been on a number of courses and so should have done more to prevent the scam from happening. Halifax referred to funds debited and credited from various accounts that it felt related to previous investments;
- Although Mr J asked if company A was FCA registered he simply accepted that it was and didn't check for himself – the fact that it was based abroad made this improbable;
- Mr J wasn't asked to pay the company he was dealing with, which should have rung alarm bells;
- At the time the payment was made there was no requirement to check the name of the payee and it was up to Mr J to satisfy himself funds were going to the right beneficiary and to ask questions if necessary before he transferred funds.
- Even if Halifax had spoken to Mr J at the time he made the payments it's likely he'd have said he was making an investment. Given Mr J's previous account activity this would have seemed plausible.

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.

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 at law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. And I have taken that into account when deciding what's fair and reasonable in this case.

However, taking into account the law, regulator's rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider Halifax should fairly and reasonably:

- Have been monitoring accounts and any payments made or received to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams.

- Have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer.
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or make additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

This means that there are circumstances, irrespective of the payment channel used, where a bank should, in my opinion, fairly and reasonably take additional steps, or make additional checks, before processing a payment, or in some cases decline to make a payment altogether, to help protect customers from the possibility of financial harm.

This is particularly so in light of the environment created by the increase in sophisticated fraud and scams in recent years - which banks are generally more familiar with than the average customer.

In this case, I need to decide whether Halifax acted fairly and reasonably in its dealings with Mr J when he made the above payments, or whether it should have done more than it did.

Did Halifax act fairly and reasonably in Mr J's case?

As I've explained above, I consider that as a matter of good practice Halifax should have been on the lookout for out of character or unusual transactions. So I've first considered whether the payment requests Mr J made were out of character and unusual.

The payments Mr J made to the scammer were from two different accounts in his sole name. The account the payments of £475 and £4,500 were made from was used rarely and only for payments of under £100 before the first scam payment. The final payment of £20,000 was made from another account that was used to a greater extent, but largely for transfers to Mr J's other accounts and to his wife's account. Some of these inter account transfers were for large sums, but the largest payment out of the account was for less than £1,000 and most payments were for much less.

Like the investigator, I wouldn't expect Halifax to flag or ask questions about the initial £475 payment. It was a relatively small amount and given the overall pattern of spending across the two accounts wasn't particularly unusual or out of character. But I think the next payment of £4,500 was unusual. It was for a greater sum than any previous transaction on the accounts and was to a new payee. Mr J didn't make many online transfers (except to other accounts he and his wife held) and when he did the amounts were far lower – no higher than £500. And the £20,000 payment was very unusual given previous account activity – it was for a significantly greater amount than any other payment in the preceding six months (excluding transfers between accounts). It was also to a new payee.

For all the reasons I've explained, I think Halifax ought fairly and reasonably to have identified that Mr J was potentially at risk of financial harm. I'm persuaded that as a matter of good practice, Halifax should fairly and reasonably have made additional checks before processing the second payment Mr J made to the scammer (for £4,500). Specifically, I consider Halifax ought to have contacted Mr J to question him about the purpose of the payment, how he was contacted by the investment company, whether it was FCA regulated and the checks he'd undertaken to ensure company A was genuine.

Halifax say that even if it did fail in its duty to Mr J, it doesn't consider it's liable for his loss because it doesn't believe its intervention would have made any difference to Mr J making the payment. Halifax says Mr J would have said he was investing and as he'd invested before this would have sounded plausible. But I don't agree. If Halifax had acted on the triggers outlined above, it seems likely it would have contacted Mr J and asked reasonable but probing questions to verify he wasn't being scammed or at risk of financial harm in relation to the unusual and uncharacteristic payment he'd requested.

Had Halifax contacted Mr J and asked him some questions about the payment and provided some warnings about the prevalence of investment scams I believe it's more likely than not the scam would have become apparent and would have been prevented. Mr J would have explained that he received an unsolicited call, which is often how investment scams start. When asked about FCA registration Mr J would have explained he hadn't checked if company A was registered with the FCA in the UK, although he'd been told it was. He's told this service that at the time of the transactions he had no knowledge of the importance of FCA regulation – this only came to light when he later reported the scam to the police. He also explained he was not aware that platforms existed showing faked investment results.

I consider Mr J demonstrated he was a cautious investor by initially only investing £475 in spite of the fact he was told the minimum investment was usually £5,000. I'm persuaded that if Halifax had explained the potential that he was transferring funds as part of a scam and some simple steps he could have taken to protect himself – like checking the FCA register - he'd have paused to make enquiries before committing to more substantial payments. I don't consider that because Mr J had invested before, and so the reason for the payment was plausible, Halifax shouldn't have asked further questions designed to get sufficient detail to disturb or unearth a potential scam.

Finally, I've thought about Halifax's comments that Mr J didn't do enough to protect himself. The best way Mr J could have done so was to check company A on the FCA register but he was unaware of the importance of FCA regulation when investing. Mr J also wasn't alert to the potential for fake investment companies to appear as genuine ones and provide fake platforms. But Halifax was aware of the prevalence of scams of this nature. And although Halifax is aware that a UK registered investment company is unlikely to be based in Cyprus (as company A was) I'm not persuaded Mr J should have known this.

As I said above, Mr J initially made a small investment to test its performance. He saw a moderate and not unrealistic rate of growth and so decided to invest a larger sum of £4,500. When this sum was returned to him Mr J was reassured that the investment was legitimate as he didn't consider someone dishonest would risk losing this sum of money. He could see the performance of his investment online. He saw the value of his investment go up and down and overall a modest rate of growth, which is what he expected. On 15 December 2017, before he made his final £20,000 payment Mr J was told in an email from company A the total profit on the account was £58.82. This is certainly not a rate of return that's too good to be true. So I consider Mr J had taken precautions and believed he was investing with a genuine company.

Halifax has referred to the fact Mr J was an experienced investor and so should have done more to prevent the scam from happening. It has provided statements for other accounts held by Mr J and highlighted certain payments and credits that appear to relate to previous investments. Whilst it appears Mr J has previous experience of investing himself, I'm not persuaded this means he knew of the risk of being scammed or of the kind of checks it would be prudent to complete before investing. This was a sophisticated scam, but it could easily have been prevented if straightforward questions had been asked and advice given about investment scams and the importance of checking the FCA register.

Halifax say that the fact Mr J was asked to make payments to different accounts should have been a red flag to him that something was amiss. As I've said above, Mr J had previously made his own investments and hadn't used a company that would plan the trades for him. So I'm not confident he should have known that transferring funds to different accounts was a cause for concern.

So, on balance, I think a suitable warning about the risks of the payment Mr J was instructing combined with the amount of money involved would have caused him to pause and consider his options. And I've seen no indication that Mr J was so anxious to proceed that he would have ignored warnings or been unprepared to postpone the payment to reflect on the matter and make further enquiries.

Mr J has referred to the fact he was making payments to unorthodox bank accounts including a pre-paid card and that had Halifax have told him this he wouldn't have made the transfers. At the time Mr J made the payments Halifax was under an obligation only to pay the funds to the correct unique identifiers (the sort code and account number). So, it follows that I don't consider that Halifax did anything wrong in processing Mr J''s instructions for each of the payments and consequently sending the money to the unique identifiers he entered.

Putting things right

For the reasons given above, I uphold Mr J's complaint against Halifax in part. I don't think it was fair and reasonable for Halifax not to refund the second and third payments Mr J made when he was the victim of a scam. As a result, Halifax should refund Mr J the second and third payments he made (for £4,500 and £20,000) and also refund interest as set out below.

My final decision

I uphold this complaint and require Bank of Scotland plc trading as Halifax to:

- Refund Mr J £24,500 less any funds recovered;

- Pay interest on the above sum at the rate of 8% simple from the date of each transaction to the date of settlement. If Halifax deducts tax from the interest element of this award, it should provide Mr J with an appropriate tax deduction certificate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 16 March 2021.

Jay Hadfield
Ombudsman