

## The complaint

Mr M is unhappy Bank of Scotland plc (trading as Halifax) hasn't refunded him £58,000 he lost to an investment scam. It's refunded half but has said he bears responsibility for the remaining loss.

## What happened

The details of this case have been clearly set out by our investigator when she wrote to the bank upholding Mr M's complaint. As such, the facts are well-known to both parties, so I don't need to repeat them at length here. In summary:

- Mr M sent £58,000 via online banking to an account controlled by fraudsters. He did so in three payments across three days.
- He did so on the premise he was investing money with a legitimate investment company.
- The company had in fact been 'cloned' by the fraudsters. They'd set up a website that appeared professional and genuine but was in fact fake.
- The fraudsters had used details of a genuine investment firm to make the scam more convincing, including copying FCA registration numbers and using what appeared to have been genuine literature.

The case was considered under the Contingent Reimbursement Model Code (CRM). This is a voluntary scheme Halifax has signed up to, designed to reimburse customers that have fallen victim to a scam. The starting position under the Code is for a customer to be refunded. A firm might choose not to refund if it establishes that a customer has not met their requisite level of care. In making such an assessment, a firm may consider whether the customer:

- ignored an effective warning;
- made the payment without having a reasonable basis for belief that it was for legitimate purposes; or
- has been grossly negligent.

Halifax refunded Mr M 50% of his loss when he reported the scam. A complaint manager at Halifax said, "I do believe that we should have done more to protect you. I found the fraud alerts on the payments weren't catered to your individual situation, and these payments were significantly larger than your normal account activity."

Halifax declined to refund the remaining 50% as it felt Mr M hadn't done enough to check the company he was paying. It also said there had been a warning on the FCA website about the legitimate investment firm being cloned and its details being used in scams.

Halifax contacted the receiving bank to try to recover the money. But no funds remained in the recipient account.

The bank said that these points meant Mr M was due a refund of half of his loss. The bank agreed to pay interest on that loss at 8% simple for the time Mr M didn't have the money.

The refund offered to Mr M came after the bank initially declined his claim and the bank recognised that it hadn't handled the claim well. And so it also paid him £300 in compensation.

Mr M brought his complaint to our service as he wasn't happy with Halifax's decision. One of our investigators looked into it and recommended the complaint be upheld, with Mr M's loss being refunded in full.

Our investigator found Mr M had a reasonable basis for believing he was pursuing a legitimate investment. She noted the sophistication of the scam; how convincing the literature was; and the fact that a genuine authorised/regulated firm had been cloned. She also noted that it was Mr M that had initiated contact (as opposed to being cold called); that he'd dealt with people that had appeared professional and knowledgeable; that he was an inexperienced investor; and that he had no knowledge of the FCA register prior to falling victim to the scam.

The investigator said Halifax ought to have fully reimbursed Mr M at the time he made his claim and so should refund the remaining 50% of his loss in order to settle the complaint. She said a further interest payment was due on the additional refund, endorsing the rate that Halifax had applied previously, because Mr M had been deprived of the funds and had been unable to invest for his pension as planned.

She thought the £300 offered by the bank was fair compensation for its handling of the complaint and so made no further recommendation.

The investigator's findings were sent to both parties on 8 July 2021 with a deadline for responding of 5 August 2021. That deadline passed without contact from the bank. The investigator gave a further extension of one week, but we didn't hear from the bank until 17 August 2021. That response asked for a copy of the literature Mr M had received. The investigator shared it and said the case would be passed to an ombudsman for a final decision on 23 August 2021. She noted that the bank had had the opportunity to obtain the evidence from Mr M at the time it was investigating the complaint. So she didn't think it would be fair to delay the progression of the case any further.

We've not heard anything further from the bank since and so the case has been escalated 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 I'm upholding it.

Our statutory rules provide – at DISP 3.5.8 to 3.5.15 of the Financial Conduct Authority Handbook – that we may give case-management directions and fix or extend deadlines; and that we may:

*...reach a decision on the basis of what has been supplied and take account of the failure by a party to provide information requested;*

And that...

*If a respondent fails to comply with a time limit, the Ombudsman may: (1) proceed with consideration of the complaint; and (2) include provision for any material distress or material inconvenience caused by that failure in any award which he decides to make.*

I've therefore concluded that, in the absence of a response from Halifax to the investigator's initial assessment, it is fair and reasonable to proceed on the basis of the evidence we already have and/or to take account of Halifax' failure to reply to the investigator's opinion.

I've considered whether, under the CRM, Mr M ought to have been fully reimbursed when he notified Halifax of the scam. In doing so, I've considered whether or not he met his requisite level of care. I believe he did, for substantively the same reasons the investigator has already explained, so it would have been fair and reasonable for Mr M to have received a full refund at the time.

Halifax should now compensate Mr M for his loss and pay him the £29,000 that hasn't been refunded. It should also pay the compensatory interest recommended by the investigator (8% simple per year). Whilst the money may have been held in savings, it's clear Mr M had plans for the money that couldn't be realised. That interest should be calculated from the date of loss to the date of settlement, given the bank has acknowledged it didn't do enough to protect Mr M at the time he was making the payments and that they were unusual.

I've also noted that the bank doesn't appear to have acted quickly enough when the scam was reported. Mr M contacted the bank at 14:36 to report the scam. But the bank doesn't appear to have contacted the receiving bank until 10:24 the following day. The relevant rules state that attempts at recovery should be made immediately. There isn't further clarification on what immediately might mean. But to wait twenty hours would not appear to fairly and reasonably meet that definition. However, it seems very unlikely this made any difference to the likely recovery of Mr M's funds, given he'd sent the money to the scammers some six months earlier; the money was more likely than not already gone and so irrecoverable. So I'm satisfied the bank's delay likely had no material impact on the outcome.

### **Putting things right**

For the reasons set out by the investigator and above, I've decided that Mr M ought reasonably to have been fully refunded under the CRM. I therefore direct Halifax to pay Mr M:

- the remaining 50% of the money he lost -- £29,000 – within 28 days of receiving notification of his acceptance of my final decision; plus
- interest at the simple rate of 8% per year on that amount (less any tax properly deductible) from the date of loss to the date of settlement.

### **My final decision**

I 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 M to accept or reject my decision before 23 September 2021.

Ben Murray  
**Ombudsman**