

The complaint

Mrs S is unhappy that Bank of Scotland plc trading as Halifax (Halifax) won't refund payments she made after falling victim to an investment scam.

What happened

In 2018, Mrs S was looking for a high interest investment opportunity. She came across company P which she says was advertised heavily on a number of websites, as well as in a regular investment circulated email she received.

Mrs S checked the Financial Conduct Authority's (FCA) website and found P, who were a subsidiary of a well-known UK construction firm. After a few conversations with contacts at P and receiving information about the investment opportunities they had available, Mrs S completed an application form and provided identification in order to make an investment.

Mrs S says she was given an account number to pay her funds into, and she contacted the bank the account was held with to verify if the account she was going to pay her funds into was legitimate. But the bank wasn't prepared to give Mrs S any information as she wasn't an authorised party to the account. Mrs S says all the documentation was professional, the website looked legitimate and her checks had shown that P was a genuine company – so she decided to proceed.

Mrs S made three separate payments to P to invest in bonds. In July 2018 she paid £5,000, followed by £4,850 two weeks later and a third payment of £10,000 a couple of weeks later in August 2018. The bonds were fixed for a one-year term and offered a return of 12.9% per annum.

In January 2019, P got in touch with Mrs S again and let her know they'd been successful in securing a major construction contract for the UK government and were looking for investors. They said the new bond would offer a 20% return for a six-month deposit.

Mrs S was given different bank account information to make her payment to, and says she called the bank that held the account to ask if the account was legitimate. Again, the bank wouldn't provide any information to Mrs S as she wasn't an authorised party to the account. Mrs S says that she didn't have concerns about paying her funds into different accounts each time, as the investments were in different construction projects which each had their own account. And Mrs S had received bond certificates for each of her prior investments. So, Mrs S made a further four payments over the space of 48 hours, in the amounts of: £500, £5,000, £5,000 and £1,000. This took Mrs S's total investment with P up to £31,350.

A couple of weeks after she made her last payment in January 2019, Halifax called Mrs S.

Halifax told Mrs S they'd been contacted by another bank who had detected suspicious activity on one of their accounts. Mrs S had paid money into that account in relation to making investments with a company I'll refer to as Q (this was separate payments to a separate company – not company P). Halifax told Mrs S they believed she'd been the victim

of an investment scam and that all of the funds she'd sent to Q were sent to a scammer. Halifax told Mrs S they would attempt to get her funds back in relation to her payments to Q.

While talking to Mrs S they asked about her payments to P. They asked how she'd found P and whether P could also be a scam. Mrs S was adamant that P was a genuine investment firm based on the checks she'd done, their website and the bond certificates she received.

The next day Halifax called Mrs S again and let her know that the payments she made to P had actually gone to a personal account not connected to investments. They asked for her consent to raise a fraud claim relating to the payments to P, so they could try and recover those funds for her – which she agreed to.

Halifax say that during this second call they told Mrs S not to send any further money to P. And that it was highly likely P would contact her again and tell her that she needed to pay a release fee or tax payment to get her money back. But that it was a scam and not to send them any more money. Mrs S says she thought that the warnings Halifax were giving her related to company Q, not to company P.

In August 2019, P got in touch with Mrs S saying her bonds had matured and in order to get her funds back she had to pay in additional money – as her investment had to reach a certain threshold in order for her to withdraw her funds.

On 1 August 2019, Mrs S sent a payment to P for £1,500 and on 28 August 2019, she sent a further payment of £10,000. When Mrs S attempted to send a third payment of £6,000 the payment was blocked by Halifax. In total including her previous payments, Mrs S had sent P £42,850.

When Mrs S didn't get her money back and realised that P was a scam, she asked Halifax to refund her.

Halifax investigated her fraud claim and offered to make a partial refund on some of the payments. For the payments made in August 2018 and January 2019 – which totalled £31,350 – Halifax was able to recover £3,109.41 from one of the receiving banks. But they declined to refund the balance of the funds, saying they didn't feel Mrs S had done sufficient research into P prior to investing. With regards to the two payments made in August 2019, these payments were covered by the Contingent Reimbursement Model (the CRM code). Halifax was able to recover £36.66 from one of the receiving banks and offered to refund 50% of the two payments made - saying they hadn't given Mrs S an effective warning. But they withheld the remaining 50% saying Mrs S hadn't done sufficient checks to meet her requisite level of care under the CRM code.

Mrs S wasn't happy with Halifax's response, so she brought a complaint to our service.

An investigator looked into Mrs S's complaint and didn't uphold it. They felt the first payment Mrs S made of £5,000 in July 2018 should've flagged with Halifax as appearing suspicious, but wasn't persuaded that the scam would've been uncovered if Halifax had called Mrs S. As the checks Mrs S had done on the company convinced her it was a legitimate investment – so they didn't feel the bank's involvement would've prevented the payments. And with regards to the payments made in August 2019, they felt Halifax had acted fairly in refunding 50% saying Mrs S was warned in January 2019 not to send any further funds to P – but sent funds anyway.

Mrs S disagreed with the investigator's opinion, so the case was passed to me to review.

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've reached the same answer as the investigator and for broadly the same reasons. I understand that Mrs S will be disappointed, but I'll explain why.

I've separated the transactions out into two time periods, as different rules and industry standards applied at the time.

The payments made before 28 May 2019 – not covered by the CRM code

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. And I have taken that into account when looking into what is fair and reasonable in this case. But a bank also has to be on the lookout for, and help to prevent payments, that could involve fraud or be the result of a scam. So, I've taken all of that into consideration when looking through this complaint.

I don't agree with the investigator that the first payment Mrs S made in July 2018 for £5,000, was particularly unusual or out of character looking at her previous account use. Mrs S had previously made payments for £3,840 and £4,000 from her account. So, I'm not persuaded the first payment should've flagged with Halifax. But I think Halifax should've been concerned when she made the third payment for £10,000, and I would've expected Halifax to call Mrs S to discuss what the payment was for. So, I've gone on to think about what is most likely to have happened if Halifax had got in touch with Mrs S at that point.

I would expect a call to Mrs S to have included questions such as what the purpose of the payment was, which was investment. I'd then expect Halifax to ask some further probing questions, which might've included: how she'd found the investment company – P, what research she'd done on them, whether she'd checked them on the FCA's website, and what return they were offering.

Mrs S has told us that P was advertised heavily online including on an investment circulated email she received and also on a website that offers investment opportunities. She said she did several checks on P including checking the FCA website, which showed that P was a subsidiary of a large and well-known UK company. Also, that she checked P's website and the documents they sent. Having looked at the information Mrs S had from P, I can see there is a genuine company in the name of P. It's registered with Companies House and the company registration number on the documentation Mrs S received matched the information for the genuine company. The documents included the genuine company's logo, contact information, details of their staff and all of the documentation was very professional in appearance. There were no obvious errors, poor spelling, misalignment etc. Also at the time that Mrs S made the third payment in August 2018, I can't see that there were any warnings about P being a cloned investment firm (a fraudulently set up company that mirrors a legitimate firm), a scam firm, or any negative reviews saying there were issues with P. There is an FCA warning to say the firm isn't regulated to offer investments – but this wasn't added until October 2019, after the scam had already been uncovered.

So, I think it's most likely that Mrs S's responses to Halifax's questions about the investment and level of checks she had done meant it was unlikely that Halifax would've uncovered that Mrs S was the victim of a scam. Therefore, I don't think that Halifax missed an opportunity to intervene and prevent these payments.

On that basis, I can't fairly ask Halifax to refund Mrs S for the payments made prior to August 2019.

The payments made after 28 May 2019 – which are covered by the CRM code.

On 28 May 2019, the Contingent Reimbursement Model (the CRM code) came into force, so I've considered the later payments taking that into account.

The first payment Mrs S made after the CRM code came into effect was on 1 August 2019 and was for £1,500. She then made a second payment on 22 August 2019 for £10,000. The third payment of £6,000 was stopped and didn't leave her account.

Under the CRM Code we would expect Halifax to refund Mrs S in the case of a scam, unless one of the exceptions apply under the Code. The exception they're saying applies in this case is:

- *The customer made payments without having a reasonable basis for believing that: the payee was the person the Customer was expecting to pay; the payment was for genuine goods or services; and/or the person or business with whom they transacted was legitimate*

Halifax point to the conversation they had with Mrs S in January 2019, when they say they warned Mrs S that this was a scam. Halifax has been able to provide one of the calls they had with Mrs S, but not the second call which was the following day. However, they have provided the contact notes which they say set out what was discussed.

Having listened to the first call with Mrs S, the contact notes seem accurate and match with what was discussed on that call. So, I think it's more likely than not that the conversation on the second call is reasonably accurately captured in the contact note.

The contact note says Bank X had been in contact with Halifax to say that Mrs S's payments to P were also fraud, and that Mrs S agreed to pursue a fraud claim to try and recover her funds. It says Halifax told Mrs S that P would get back in touch and ask for more money – but not to send them any more as she wouldn't get it back.

I also think it's reasonable to rely on the second contact note, as it mirrors what was said to Mrs S in the first call when Halifax talked to her about the other investment company Q. Halifax was very clear in telling Mrs S that it was likely that Q would contact her again after they raised the fraud claim, telling her they would return her funds but ask for additional payments first for things like release fees or taxes.

Having already told Mrs S this regarding the other investment scam, I think it's most likely Halifax gave her the same advice regarding P in the second call. But regardless, Mrs S was aware in January 2019 that P wasn't a genuine investment firm as she agreed to a fraud claim being raised by Halifax. So, I don't think she had a reasonable basis for believing that she was making a payment to a legitimate business when she made the two further transfers in August 2019.

Halifax refunded Mrs S 50% of those two payments under the CRM code, saying they didn't give an effective warning – which isn't unreasonable. And having considered everything, as I'm not satisfied that Mrs S had a reasonable basis for believing the firm she was paying the funds to was legitimate, I can't fairly ask Halifax to refund her anything further in relation to these payments.

The additional concerns Mrs S has raised

Mrs S has raised concerns that Halifax didn't identify that she was paying funds to scammers earlier on, saying they should've checked the accounts she was sending her payments to. But there wasn't an obligation on Halifax to check the recipient account name against Mrs S's payee details.

This is now done by some businesses under the Confirmation of Payee (COP) test, which checks the payee name against the account name and confirms whether there is a match. So, while I appreciate that Mrs S feels Halifax should've done more checks, I can't fairly say they should've as there wasn't an expectation for them to do so.

Mrs S also asked why the CRM code wasn't applied to all the payments she made. The CRM code came into effect on 28 May 2019, and only applies to payments made from that date onwards. It isn't retrospectively applied to any payments made prior. So, I can't fairly apply the CRM code to all of Mrs S's payments, when most of them were made prior to it coming into effect.

Could Halifax have recovered more funds for Mrs S?

I've also thought about whether Halifax did what it should've in attempting to recover Mrs S's money once they were aware of the scam. From what I've seen they promptly contacted the receiving banks once they were aware of the scam and recovered the money that was available – which has been paid into Mrs S's account. Unfortunately, most of the money had already been removed from the accounts by the scammers.

I realise that Mrs S will be disappointed and that she's lost a lot of money. But in the circumstances, I can't fairly say that Halifax should've done more to prevent her losing this money. So, it wouldn't be fair for me to ask Halifax to refund her more than they already have.

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 Mrs S to accept or reject my decision before 25 November 2021.

Lisa Lowe
Ombudsman