DRN-3285024

The complaint and what happened

Mr P complains Bank of Scotland plc, trading as Halifax, won't reimburse money he lost when he fell victim to a scam.

The full details of this complaint are well known to both parties, so I won't repeat them here. Instead, I'll recap the key points and focus on giving reasons for my decision:

- Mr P was looking for an investment opportunity online and came across Brokerxp. He was persuaded to invest a total of £20,997.00 between 24 August 2018 and March 2019. All payments were made to Brokerxp and by debit card.
- Mr P realised he'd been the victim of a scam when he tried to withdraw funds and was unable to do so. Since then the website has been shut down.
- Halifax declined to raise a chargeback as it was out of time, and it said the CRM didn't apply to the transactions as they happened prior to its introduction.
- Our investigator upheld the complaint. She was satisfied the trader wasn't legitimate because the trader wasn't regulated by the FCA when it should have been. There was also warning about the trader published by the FCA and there were reports in the public domain which added to a bigger picture of this being a scam. She said Halifax should refund the transactions and add 8% simple interest.

Halifax didn't respond to the view, or to our chasers. And it hasn't provided any response to the notification the case was being referred for a final decision, due to its non-response. I'm satisfied Halifax has had plenty of opportunity to provide its side of the story and its now appropriate for the complaint to progress to this final stage.

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 would like to reassure the parties that although I have only set out the key points above, I have read and considered everything provided. Having done so, I agree with the conclusions reach by the investigator for the following reasons:

- There is no dispute that Mr P authorised the transactions in question; he made the payments using his legitimate security credentials. Whilst he didn't intend for his money to go to fraudsters, he is initially presumed liable for the loss.
- There also doesn't appear to be any dispute Mr P has been the victim of a scam.
- Halifax is aware of our approach of expecting it to have been monitoring accounts to counter various risks, have systems in place to identify unusual transactions or other indicators that its customers were at risk of fraud and, in some situations, make additional checks before processing payments, or declined them altogether to protect customers from possible financial harm from fraud. And as explained by the investigator, it's considered good industry practice for firms to have updated watch-lists with types of scams and potential fraudsters and for those watch-lists to be updated and communicated internally to staff within one month of an alert being posted by the FCA or IOSCO (International Organisation of Securities Commission).

- Such an alert should automatically trigger its systems and lead to payments being paused, pending further intervention - such as making enquiries, or giving a scam warning.
- In this case, there was a warning about Brokerxp published on the FCA website on 24 May 2018. This was three months before Mr P made his first payment to this trader. Given the timing of the alert and when the payments were made, Halifax ought to have automatically blocked them. Halifax had had time to update and communicate its watch-list between the publication of the warning and the payments being made and it should have properly questioned Mr P before processing them.
- Had Halifax carried out its due diligence and duties and asked Mr P about the payments, I've no reason to doubt he would have explained what he was doing. Whilst I accept Halifax had no duty to protect him from a poor investment choice, or give investment advice, it could have provided information about the steps a customer can take to ensure, as far as is reasonably possible, they are dealing with a legitimate person – such as checking the payee was authorised by the FCA. And it could have drawn on its own knowledge and information that was within the public domain (as referenced by the investigator) about the high risks associated with cryptocurrency and the potential for fraud and provided Mr P with a scam warning.
- There isn't any evidence that Halifax intervened. Had it done so, I'm satisfied Mr P would have looked further into the opportunity, about the investment type in general, whether the trader was regulated here or abroad and noted the various warnings about cryptocurrency scams. He might have even come across the FCA warning for himself. It follows, that a warning from Halifax would likely have exposed the scam, and caused Mr P to stop trading, thereby preventing the loss of £20,997.00.
- But that isn't the end of the matter. I have also considered whether Mr P should bear some responsibility for the situation in which he finds himself. And having done so, I don't think he should. Although Mr P had shown an interest in investing in cryptocurrency, I'm not persuaded he foresaw the risk that he might have been involved in a scam until after he had tried to make a withdrawal. I'm therefore not persuaded it would be fair to reduce compensation accordingly.

My final decision

For the reasons given, my final decision is that I uphold this complaint. I require Bank of Scotland plc, trading as Halifax, to reimburse £20,997.00 to Mr P and add 8% simple interest per year to that sum from the date of the payments to the date of settlement, less any lawfully deductible tax.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 21 March 2022.
Claire Hopkins
Ombudsman