DRN-3337886

The complaint

Mr T complains that Bank of Scotland plc, trading as Halifax, won't refund the money he lost when he fell victim to a scam involving several companies between mid-2015 and early-2016. He thinks Halifax is responsible for his loss as it failed to identify the scam. Halifax says Mr T is responsible as he authorised the payments, and it's too late to raise a chargeback claim.

What happened

The details of this complaint are well known to both parties, so I won't repeat them again here. The facts aren't in dispute, so I'll focus on giving the reasons for my decision.

I issued my provisional decision in February 2022 setting out what I was minded to decide:

> *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 minded to direct Halifax to refund Mr T £125—half of the last disputed payment (£250)—but not the earlier payments, for these reasons:*
>
> - *It's not in dispute that Mr T was scammed. But nor is it in dispute that, for the purposes of the Payment Services Regulations 2009 (in force at the time), he authorised the payments. So the starting position is that he's liable for them.*
> - *However, taking into account the law, regulators' rules and guidance and what I consider to have been good industry practice, I would have expected Halifax to have systems in place to monitor payments for indications that its customers were at risk of fraud. In some circumstances, when such a risk was identified, I'd expect it to make additional checks on the payment. If it failed to do so, and that failure led to a fraudulent loss, it might be fair to hold Halifax liable.*
> - *Up until the last disputed payment, I wouldn't reasonably have expected Halifax to have identified that Mr T was at risk from fraud. Most payments were under £1,000, with the highest being around £2,500. It would be too high a burden to expect Halifax intervene based on this, given the volume and value of transactions it processes and Mr T's general account activity.*
> - *I appreciate Mr T's point about the overall level of spending/transfers over the (approximately) six-month period. But the payments were spread out, often going to existing payees, and not for suspiciously high amounts compared to his general spending. Any payments in from his savings weren't generally being spent immediately, in one go. As time went on, the payments came to form part of Mr T's pattern of account activity – so they wouldn't reasonably have appeared suspicious to Halifax.*

- *Mr T has provided information he found online to show that the companies were a scam. But I think it would be expecting too much of Halifax to play amateur detective and carry out extensive checks on individual merchants its customers choose to pay. That said, I'd reasonably expect it to keep track of the Financial Conduct Authority's (FCA's) scam warning list, and of warnings published by Investor Alerts Portal Organisation of Securities Commissions (IOSCO), the international body that brings together the world's securities regulators. As long ago as June 2012, the FCA's predecessor indicated indicated—in its consultation paper entitled "Banks' Defences Against Investment Fraud: detecting perpetrators and protecting victims"—that it was good industry practice for firms to build up an updated watch-list of types of scams and potential perpetrators; and regularly share "timely and detailed intelligence" about this.*

- *Most of the companies Mr T paid didn't have FCA or IOSCO warnings at the time of the payments. But dating back to December 2014, there was an IOSCO warning about "B. O. Technologies Limited doing business as Option Financial Markets". This explained they were doing business at "option.fm" and that the Ontario Securities Commission had found they were trading in securities without being properly registered. The very last payment Mr T is disputing is £250 sent to "www.option.fm" in February 2016. No other payments went to this company.*

- *The warning alone doesn't necessarily mean Option Financial Markets were a scam company. But I think it put Halifax on constructive notice that they might not be a legitimate merchant. So it would have been reasonable for it to have looked into the circumstances of the payment further. If it had done so, I consider it likely that Halifax would have uncovered the scam. As well as telling Mr T about the IOSCO warning, it could have told him to check if the company were properly registered in the UK with the Gambling Commission. The fact they weren't properly registered was a sign of dishonest intentions, and I think it would have alarmed Mr T.*

- *Additionally, if Halifax had questioned Mr T about how he came to make the payment, I think he would have told them (as he's told us): the companies contacted him via "cold calls"; they told him they'd match his investments; he was put under pressure to investment increasing sums; he was offered unrealistic returns/guarantees; and he didn't have control over the trading accounts. I think Halifax ought to have realised this sounded like a scam. If it had told Mr T this, I've no reason to doubt he wouldn't have heeded the warning – as he did when his family explained this to him once they found out what was happening. I therefore think Halifax is to blame for not stopping this last payment.*

- *I've also considered whether Mr T is partly to blame. I appreciate that he was being deceived, but he doesn't seem to have looked into the companies before paying them. If he had, I think he would have found some of the information he's provided as evidence they were a scam, such as the international regulatory warning about Option Financial Markets, plus some reviews for them pre-dating his payment. It appears this information was readily available online at the time. Mr T also told us in his initial submissions that he was being offered unrealistic returns/guarantees. But he's since told us that the companies actually lost his money and convinced him to "invest" more to recoup this. And that his concern grew – by the end, he was ignoring calls from the companies. So by the time of this last payment, I think he likely did—or ought to have had—misgivings. I therefore consider it fair to deduct 50% from the loss I've found Halifax could have prevented. Effectively, I think Halifax and Mr T should share the blame for this.*

- *I've also considered whether Halifax ought to have done more to help Mr T recover the earlier payments. Under the VISA chargeback rules in force at the time, claims in circumstances like this this would only succeed if the consumer had written documentation of the merchant(s) guaranteeing an amount of profit. And such a claim would need to be raised within 120 days of the transaction. By the point Halifax could have uncovered the scam, it was already too late to raise a claim for some of these payments. And based on what Mr T has told us, he didn't have written guarantees from the companies. So I'm not persuaded that Halifax would have been able to help Mr T recover more of his loss, even if it had identified the scam when I think it should have done.*

I appreciate this will be a disappointing outcome for Mr T, given the overall amount he lost to the scam. But I can only fairly make an award if I think Halifax's errors caused, or contributed to, the loss. I've only found that to be the case for the last payment. For the remainder, I think it's the cruel actions of the scammers—not any errors that Halifax—which caused the loss.

I invited both parties to submit any further comments and evidence. Halifax has confirmed that it accepts my decision, but Mr T disagrees. In summary, he says:

- The activity on his account showed a clear change. He didn't generally make payments over £1,000.
- He thinks he did speak to Halifax on some occasions when transferring funds from his savings account to his current account, and explained this was for options trading.
- The scammers told him to keep paying money as he needed to reach a certain amount in order to get it back.
- The warnings were obvious and Halifax should have been concerned that his savings and current account were being "drained", as banks will quickly chase up if customers are short by a few pounds.
- If Halifax had intervened when he thinks it should have done, the chargeback claims would have been in time.

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 decided not to uphold it. As this is largely for the reasons set out in my provisional decision, I'll focus here on addressing the responses to this.

Although Mr T says he believes Halifax questioned him over the phone about some payments connected to the scam, it has no record of doing so. Mr T hasn't been able to provide any firm records of this either. Whilst I place weight on what he's told us, I'm not persuaded that alone is enough to safely conclude that any payments triggered and that Halifax missed a chance to prevent the scam. Particularly when Halifax's (lack of) records contradict this. I'm also mindful of how long ago this happened – which is likely to have affected Mr T's recollections. For example, I can't rule out that the call(s) he's remembering related to something else, or that he simply made these payments via telephone banking without them flagging as suspicious – which I wouldn't have expected them to.

I appreciate why Mr T thinks Halifax ought to have picked up on the warning signs. But without the benefit of hindsight, I can understand why it wasn't concerned at the time. The starting position is that Mr T authorised these payments, so it was expected to promptly execute them. Thinking about what level of monitoring and intervention can reasonably be expected of banks, I'm conscious these payments didn't generally clear his account balance and weren't of such a value that I'd expect it to intervene. They were also spread out, so came to form part of his expected account activity – which went on for a substantial period before he raised any concerns. Overall, I'm satisfied it was reasonable for Halifax to promptly act on Mr T's authorised payment instructions without completing further checks.

It follows that I'm not persuaded Halifax should have known to consider a chargeback claim any earlier than the last payment. And, as set out in my provisional decision, I've not seen enough to show that Mr T would have been able to provide the information needed for the claim to have succeeded under VISA's chargeback rules, even if this had been raised sooner.

Mr T has explained part of his rationale for continuing to pay the scammers was that he was told he needed to reach a certain amount before he could withdraw. This doesn't alter my overall view that there were, or ought to have been, warnings signs apparent to Mr T by the time of his *last* payment. So I still consider it fair that he and Halifax should share liability for it.

My final decision

For the reasons given above, I partly uphold this complaint. To put things right, I direct Bank of Scotland plc to refund Mr T £125, which constitutes 50% of the £250 disputed payment he made on 18 February 2016, and to pay 8% simple interest on this amount from the date of payment to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 27 April 2022.

Rachel Loughlin
Ombudsman