DRN-3341675

The complaint and what happened

Mr W complains Bank of Scotland plc, trading as Halifax, won't refund 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 W was looking to do some trading and found an investment opportunity which was also being advertised with a celebrity endorsement. He was persuaded to invest a total of £9,465 between May and August 2017 with Trade12. Those investments were made using his debit card with Halifax. He also received £2,500 in total as a credit from Trade12. He says he researched Trade12 and saw they were licensed.
- Mr W realised he had been the victim of a scam when he tried to withdraw funds and was unable to do so. He went back to the research he had done and found they were no longer authorised.
- Halifax declined to refund the transactions because they were out of time. It also said as he'd received withdrawals, it wouldn't have been able to chargeback. It did offer Mr W £50 for poor customer service.
- Our investigator upheld the complaint. They were satisfied the trader wasn't legitimate because it wasn't regulated when they ought to have been, there was also a warning about the trader published by the FCA on 16 June 2017 and information in the public domain, such as online forums, which suggested Trade12 were scammers. As the warning appeared part way through Mr W's payments, the investigator required a refund of the payments that occurred after that and 8% interest. They didn't find the earlier payments were unusual or uncharacteristic such that Halifax ought to have intervened.

Halifax didn't respond to the view initially and then asked for an extension. Our operational contact team notified it that the complaint would be referred to an ombudsman on or after 25 February 2022. As we have heard nothing further from Halifax, it is now appropriate for the complaint to move to our 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 W authorised the transactions in question; he made the payment using his card and legitimate security credentials. Whilst he didn't intend for his money to go to fraudsters, he is initially presumed liable for the loss.
- 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 Trade12 published on the FCA website on 16 June 2017. This was over two months before Mr W made his final two payments to the 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 W before processing them.
- Had Halifax carried out its due diligence and duties and asked Mr W 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 Mr W 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, that they are dealing with a legitimate person – such as checking the payee was authorised with 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 trading and the potential for fraud, and provided Mr W with a potential scam warning.
- There isn't any evidence that Halifax intervened. Had it done so, I'm satisfied Mr W 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 trading scams. Indeed, its likely he would have come across the FCA warning himself as he did later, when discovering it was a scam. It follows, that a warning from Halifax would likely have exposed the scam, and caused Mr W to stop trading, thereby preventing the further loss of £5,610.
- There were earlier payments made by Mr W to Trade12. However, they occurred before the warning was published. As the earlier payments to Trade12 took place over a month or so, and were for relatively small sums, I don't consider they were so unusual or uncharacteristic that Halifax ought to have intervened; I don't find it ought to have realised its customer might have been at risk of fraud. I therefore don't require it to refund any of the payments made prior to the warning being published.
- But that isn't the end of the matter. I have also considered whether Mr W should bear some responsibility for the situation in which he finds himself. Having done so, I've not seen anything to suggest Mr W could or should have foreseen the risk the trader wasn't legitimate and was a scam. I therefore don't reduce any compensation accordingly.
- For the sake of completeness, given the date these transactions took place, Mr W wouldn't have had any chargeback rights in the absence of written documentary evidence of guarantees being given by the trader. Nevertheless, Halifax paid £50 compensation for poor service. I don't find any basis on which to increase this.

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 pay Mr W:

- £5,610 representing the final two payments made to Trade12; and
- Add 8% simple interest to that sum from the date of the payments to the date of

settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 4 April 2022.

Claire Hopkins
Ombudsman