

The complaint

Mrs B complains that Bank of Scotland plc (trading as Halifax) won't reimburse money she lost when she says she fell victim to a binary options investment scam.

What happened

Mrs B was cold called by a representative of 365 binary options. The caller told her that if she invested with them, she'd get back £25,000. Mrs B agreed to deposit three payments totalling £4,500 between 6 September 2017 to 12 September 2017. When she didn't get the profits she was promised, she called the representative but was told she couldn't get her money back, so she contacted Halifax for help.

Halifax said it was unable to assist with chargeback claims because 365 binary options' terms and conditions confirmed the investment was high risk. Mrs B referred her complaint to this office.

Our investigator concluded first of all that 365 binary options were scammers. She felt that Halifax should return the payments plus interest. She also felt the transactions were unusual for Mrs B. She later wrote to Halifax to explain that based on good industry practice, Halifax should have identified 365 binary options as scammers when the initial payment was attempted. She suggested that Halifax should refund the disputed amounts plus interest. Halifax didn't reply so the case has been passed to me for determination.

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 agree with the outcome our investigator reached for much of the same reasons.

Halifax is aware of our general position on a PSP's safeguarding and due-diligence duties to protect customers from the risk of financial harm due to fraud. We have published many decisions on our website setting out these principles and quoting the relevant rules and regulations. It is unnecessary to rehearse them again here in detail.

It is common ground that the disputed payments were 'authorised' by Mrs B for the purposes of the Payment Services Regulations 2009 ('the Regulations'), in force at the time. This is because they were made by Mrs B using the legitimate security credentials provided to her by Halifax.

However, taking into account the law, regulatory rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider Halifax should fairly and reasonably:

- Have been monitoring accounts—and any payments made or received—to counter various risks, including anti-money-laundering, countering the financing of terrorism, and preventing fraud and scams;
- Have had systems in place to look out for unusual transactions or other signs that might indicate its customers were at risk of fraud (amongst other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer; and
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

I'm satisfied 365 binary options were scammers for the reasons explained by our investigator.

As long ago as June 2012, the FCA's predecessor 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 to share "timely and detailed intelligence" with other banks, UK and overseas regulators, the police, etc. Whilst the regulator gave no specific timings, it is not unreasonable in my view to expect an international bank to update its watch-list and communicate internally to staff within, say, one month of an alert being posted by the FCA or International Organization of Securities Commissions (IOSCO). In my judgment, such alerts should automatically trigger alarm-bells—and lead to the payment being paused—pending further enquiries (and a possible scam warning) to the payer.

There were regulator warnings published about 365 binary options on the International Organization of Securities Commissions (IOSCO) Investor Alert Portal dating back to May 2017 – which is more than a month prior to Mrs B's first payment to them. I'm satisfied Mrs B's initial payment should have triggered Halifax's fraud detection systems because of this. Therefore, it would have been reasonable for Halifax to have properly questioned Mrs B before processing the payment to satisfy itself that all was well.

If Halifax had fulfilled its duties by asking suitably probing questions, there is no reason to doubt that Mrs B would have explained what she was doing. In such circumstances, whilst the bank had no duty to protect her from a bad bargain or give investment advice, it could have explained to her the very high risks of getting involved with unregulated and unlicensed binary options dealers. It could have also explained its own customer experiences with unregulated and unlicensed high-risk investment traders in that customers would often be prevented from withdrawing available balances. After all, at that time, there was information in the public domain—which a bank ought to have known even if a lay consumer ought not—about the very high risks associated with binary options trading, including many warnings of potential fraud (e.g. Action Fraud's June 2016 warning; the European Securities and Markets Authority's July 2016 warning; the Financial Conduct Authority's consultation paper of December 2016; and the Gambling Commission's December 2016 scam warning that "an unlicensed operator is likely operating illegally"; City of London Police's October 2017 report noting victims had lost 'over £59m' to binary options fraud; Visa's Business News publication of October 2017 where it expanded its chargeback scheme rules to cover binary options and investment disputes arising from merchants often unlicensed and unregulated deploying 'deceptive practices'; and so forth).

I am satisfied Halifax ought fairly and reasonably to have intervened by calling Mrs B to ask some questions about the nature and purpose of the payment before agreeing to process it.

If Halifax had asked Mrs B what the payment was for and the basic surrounding context, it is likely she would have fully explained what she was doing and that everything had been done over the phone and online with 365 binary options' representatives. Halifax did not need to know for certain whether Mrs B was dealing with a fraudulent high risk investment trader or investing in a legitimate (albeit highly speculative) product; reasonable grounds for suspicion are enough to trigger a bank's obligations under the various regulations and principles of good practice. I consider there were such grounds here and, therefore, that Halifax ought reasonably to have provided a scam warning in light of all the information then known to financial professionals about the risks associated with unregulated binary options dealers.

If Halifax had given a warning, I believe that Mrs B would have paused and looked more closely into 365 binary options before proceeding. There is no evidence that she was willing to take high risks or had a history of speculative investments or gambling. It seems more probable that she would have made further enquiries into whether or not 365 binary options were regulated in the UK or abroad. She could have discovered they were not and the various regulatory warnings about the risk of unregulated investment scams (see above). In other words, I am satisfied that a warning from her trusted bank would probably have exposed 365 binary options' smoke and mirrors, causing her not to 'invest' and preventing any losses.

Even if she had not worked out that this was a scam, it is likely that a warning would have alerted her to the common issues arising in relation to binary options and unregulated high risk investment dealers, which in turn would have revealed the truth behind her supposed representative's (mis)representations — i.e. that they were not really regulated UK investments but highly-risky bets more akin to a wager in which the broker must lose if she is to win. So before Mrs B's payments were actually processed, she would probably have stopped in her tracks. But for Halifax's failure to act on clear triggers of potential fraud or financial harm, Mrs B would probably have not lost any money.

In the circumstances, I do not think it would be fair to reduce compensation on the basis that Mrs B should share blame for what happened.

My final decision

For the reasons set out above, I uphold this complaint and require Bank of Scotland Plc (trading as Halifax) to:

1. Refund all the payments made to 365 binary options totalling £4,500.
2. Pay interest to Mrs B on the above sums, at an annual rate of 8% simple, from the respective dates of loss, to the date of settlement. If Halifax is required to deduct tax from the interest it should send Mrs B a tax deduction certificate so she can claim it back from HMRC if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 25 April 2022.

Dolores Njemanze
Ombudsman