DRN-3504563

The complaint

Mr P is unhappy that Bank of Scotland plc trading as Halifax (Halifax) won't refund payments he made after falling victim to a scam.

What happened

In March 2020, Mr P was contacted via an online messaging website by a company I'll refer to as O. O was offering Mr P an opportunity to invest, and said that in return for investing £100 he would receive $1,000USD per week.

Mr P made an initial payment from his Halifax account on 6 March 2020 for £103.29. In total Mr P made over 17 payments between 6 March and 15 April 2020. All of the payments went to a new account he opened in his name with a cryptocurrency exchange – which I'll refer to as D. The funds were then transferred from his account at D to O for investment. In total Mr P sent over £49,000.

Mr P says:

- When he was initially contacted, he thought the return sounded too good to be true. But the contact at O worked hard to convince him it was genuine, including arranging for previous customers to ring Mr P and tell him how they'd received money through investing with O.
- Mr P was told to set up an account with D, and to move funds from his Halifax account to his account with D and then onto O.
- After the first day's trading Mr P tried to withdraw the profit he'd made but was told that he needed to upgrade his "package" and needed to deposit more funds in order to take his funds out. He was told his profit was $10,000USD and that he needed to pay $1,000USD in order to upgrade.
- Mr P was continually told that he needed to pay more and more fees, before he could withdraw his profit. All of the payments made after the first one of £103.29 were for fees or charges including an exchange fee, broker permit fee, schedule fee and a tax fee to the United States Inland Revenue Service.
- By the end of March 2020, Mr P was told his investment had grown and was worth $630,000USD
- Eventually the contact at O stopped responding to Mr P when he wouldn't send any further money, at which point Mr P became aware he was the victim of a scam.

Mr P reported the fraud to Halifax and asked them to refund him.

Halifax investigated Mr P's fraud claim but declined to refund him. Halifax explained that only two of the payments were made with Mr P's card, and therefore could be considered under a chargeback. However, Halifax declined to raise a chargeback on the basis it would be unsuccessful, because Mr P had received the service he paid for – he'd used the card to put bitcoins in his account with D which he received. With regards to the other payments, Mr P wasn't eligible under the Contingent Reimbursement Code (the CRM Code) as the funds went from an account in Mr P's name at Halifax to an account in Mr P's name with D – and the CRM Code specifically doesn't cover payments in that situation. Halifax did pay Mr P £200 for not providing him with a better service while investigating his fraud claim, and for not getting back to him sooner.

Mr P wasn't happy with Halifax's response, so he brought a complaint to our service.

An investigator looked into Mr P's complaint. Ultimately, they decided Mr P wasn't entitled to a refund and felt the £200 paid by Halifax regarding the level of service Mr P received was fair. So, the investigator didn't uphold Mr P's complaint.

My provisional findings

On 3 May 2022 I issued a provisional decision due to reaching a different outcome than our investigator had. I asked for both parties to provide any more comments or evidence that they wanted to be considered before issuing my final decision.

In my provisional decision I said:

Are the transactions covered by the Contingent Reimbursement Model (the CRM Code)?

I started by considering whether Mr P is entitled to a refund under the Lending Standards Board's voluntary Contingent Reimbursement Model (the CRM Code), which Halifax are signed up to.

Under the CRM Code, the starting principle is that a firm should reimburse a customer who is the victim of an authorised push payment (APP) scam. But the Code is quite explicit that it doesn't apply to all push payments. The Code only covers APP scam payments when the funds are being transferred to another person and not to a consumer's own account. In this case, Mr P sent the money to a digital wallet held with D in his name, before it moved onto the fraudster. This means I don't think Halifax is responsible for reimbursing him because of any obligation under the CRM Code.

I recognise that Mr P was coerced into sending money to D to buy cryptocurrency for the investment, and that the funds ultimately were obtained by the fraudsters. But as far as I can see the digital wallet with D belonged to Mr P and he had ultimate control over what happened to the funds in it, albeit that the fraudster may've also had access to it.

I understand this can be a bit confusing. But in order for me to consider Halifax liable under the CRM Code the funds would have to have gone from Mr P's Halifax account to an account held by the fraudster - that Mr P had no control over. I realise that ultimately it ended up in the fraudster's account, but the digital wallet is a stop off point on that journey and means the loss occurred at D.

But I went on to consider whether Halifax should've prevented the payments from being made.

Should Halifax have prevented the payments from being made?

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 Mr P's complaint.

The first seven payments that Mr P made were each for less than £700 and totalled just over £1,800. The largest individual payments in that series, were the last two payments of £698 each. Having reviewed Mr P's previous account use, I'm not satisfied that these payments were particularly unusual or out of character. Mr P had previously made payments for between £500 and £1,300. So, there isn't enough about the first seven payments that I think they should've concerned Halifax.

The next payment Mr P made was for £3,100 on 27 March 2020. While this is significantly higher than the previous payments he'd made as part of the scam, I don't consider it to be so significantly different to his previous genuine payments whereby it should've stood out.

However, the next payment of £8,100 was particularly out of character. It was the second payment made on 27 March 2020 and meant the total Mr P had transferred that day was just over £11,000. This is significantly higher than any previous payments, and I'm satisfied that at this point Halifax should've identified that Mr P was potentially the victim of a scam.

I would've expected Halifax at this point to get in contact with Mr P and ask him some questions about the purpose of the payment to satisfy themselves that the payment was for a genuine purpose. I can see that Halifax provided a warning on the mobile banking app when Mr P was making the payment, but I'm not satisfied that this went far enough to say Halifax fairly met their obligations.

I think that any conversation with Mr P would've identified that he was the victim of a scam and that Halifax could've and should've prevented him from making any further payments. I say this because the base information Mr P would've given them had all the tell-tale signs of a scam. He was cold called by a company about investing, the investment involved cryptocurrency and required him to set up an account with a crypto exchange. By March 2020, this was a common scam scenario and one I think Halifax should've been on the look-out for. Also, the returns that Mr P was promised were too good to be true, and the continual pressure to pay fees in order to access his profits or make a withdrawal – again is a common tactic in scams of this kind.

So, I think Halifax should've intervened and such intervention would have prevented Mr P from making any of the payments - from the payment of £8,100 onwards.

However, I also have to consider whether Mr P could've or should've done anything to mitigate his loss.

Could Mr P have done more to mitigate his losses?

I've also considered whether Mr P should bear some responsibility by way of contributory negligence.

Mr P has told us that right from the start he thought the return was too good to be true, and I think he should've been concerned with the returns he was being promised. He was initially promised a $1,000USD per week return on a £100 investment. Later he was told that his £100 initial investment had become worth $10,000USD and then $630,000USD. I don't think a reasonable person would think that this type of return on an investment in the economic climate at that time was possible in any legitimate investment. Also, Mr P voiced concerns over being asked to pay ever increasing fees in order to withdraw his money, when he hadn't been told that any fees would be payable upfront.

At the time Mr P made his initial payment there were warnings published by the Financial Conduct Authority and Action Fraud about cryptocurrency scams. And while I wouldn't expect Mr P to have visited these websites as a starting point, following his concerns I think an online search about the company and crypto investments would've provided at least some results which would've indicated that the offer was probably fraudulent. And, although Mr P had numerous concerns both at the start and during the time he was making payments – I can't see that he completed any checks to satisfy himself that it was a legitimate investment.

On that basis, I think it's reasonable for Mr P to share the responsibility with Halifax and reduce the refund on the payments already mentioned by 50%. Therefore, I intend to recommend that Halifax refund 50% of the payments Mr P made from the payment of £8,100 onwards, and Halifax should pay 8% simple interest on those payments.

Mr P raised some concerns about the service he received from Halifax, and Halifax acknowledged he had received poor service – making a payment of £200 in compensation. Having reviewed everything, I consider the £200 fair compensation for the poor service Mr P received and won't be asking Halifax to pay any more in this regard.

To put things right

To put things rights I'll be asking Bank of Scotland plc trading as Halifax to:

- Refund 50% of all the payments Mr P made as a result of the scam, from the payment of £8,100 onwards.
- Pay interest on the above refund at 8% simple interest from the date the payments debited the account, until the date of settlement.

Halifax responded to my provisional decision, saying they agreed with my recommendation.

Mr P replied with a very detailed response explaining why he disagreed with the outcome I'd reached. I'd like to assure Mr P that I've read his entire response. I won't comment on each individual point he's raised, but I have considered how they affect the answer I've reached in his case.

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.

Mr P has raised a number of concerns under the CRM Code and quoted several sections of the Code. However, as I've already explained as the money went from Mr P's Halifax account to another account held in his name with D, his payments aren't covered by the CRM Code. Therefore, I can't apply any of the Code's provisions to his payments.

Mr P also feels that Halifax have failed under their duty of care to him, referring to several regulations and industry guidelines that were in place at the time he made his payment. I'd like to reassure Mr P that in deciding what's fair and reasonable in his complaint, I'm required to take into account relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to be good industry practice at the time. So, I have considered what obligations and expectations were on Halifax at the time, with regards to them protecting Mr P from potentially falling victim to a scam and monitoring his account for payments that may indicate this.

Mr P has emphasised why he feels the payments were unusual and out of character and says that if Halifax had given him a warning or discussed the payments with him – the scam would've been uncovered. However, I'm not satisfied that the first eight payments should've raised concerns for Halifax or suggested to them that Mr P may've been the victim of fraud.

All of the payments made between 6 March and 27 March were for quite low values, with the highest payment being £698 until the eighth payment of £3,100. There were also gaps between the payments, with the first payment made on 6 March, the second payment made on 7 March and then the next payment not made until the 23 March. While there were two payments made on 23 March, they only totalled £30, and the following three payments made on 25 March, totalled less than £1,400. Having considered all the aspects of these payments, their value, the frequency, the type of payment etc, I'm not satisfied that there is enough about them that I think they should've concerned Halifax.

Mr P also raised a concern that he hadn't previously purchased cryptocurrency, but that still isn't sufficient for me to say the payments should've stood out to Halifax and caused them concern. In this case, I don't think Halifax should have intervened or talked to Mr P before processing the first eight payments.

However, I did consider that the payment made on 27 March for £8,100 was significantly out of character and should've warranted intervention by Halifax. And, I'm satisfied that had Halifax contacted Mr P to discuss that payment, the scam would've been uncovered and Mr P wouldn't have made any of the payments that followed. I'm still persuaded (for the reasons set out in my provisional decision above) that it's reasonable for Mr P to share the loss with Halifax, and therefore Halifax should only refund 50% of the payments made from the payment of £8,100 onwards.

Having very carefully considered all of the points Mr P has raised and his depth of feeling around why he feels Halifax should refund him fully, I'm not persuaded to reach a different answer or recommendation than I did in my provisional decision.

Putting things right

To put things rights Bank of Scotland plc trading as Halifax should:

- Refund 50% of all the payments Mr P made as a result of the scam, from the payment of £8,100 onwards.
- Pay interest on the above refund at 8% simple interest from the date the payments debited the account, until the date of settlement.

My final decision

My final decision is that I uphold this complaint against Bank of Scotland plc trading as Halifax.

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

Lisa Lowe
Ombudsman