

The complaint

Mr B complains Bank of Scotland plc trading as Halifax won't refund money he lost as a result of a scam.

What happened

After watching an online video in which a well-known investor was apparently advertising cryptocurrency, Mr B left his details on a website. Shortly afterwards he received a message over a popular instant messaging service from someone whom he believed was the investor. They began to discuss making an investment. Unfortunately, Mr B wasn't dealing with the well-known investor, but a fraudster.

Mr B was provided with a 'trading account' and when he made a payment he could see a corresponding amount credit this account. He was also added to an instant messaging group – apparently with other customers who'd successfully traded.

Mr B initially sent some cryptocurrency to a wallet provided by the fraudster. That payment wasn't made from Mr B's Halifax account, so doesn't form part of this complaint. He went on to make three payments to the fraudsters totalling £2,000 all to an account which wasn't in the name of the well-known investor. Mr B's testimony suggests that a £200 payment from his current account was made before two payments from his savings account. But, Halifax's records show that an £800 payment was made first, followed by payments of £200 and £1,000 the following day.

Mr B says that after the £200 payment he received a text from Halifax asking him to call them if he hadn't set up the payment. He says he was worried about the payment he'd made, so tried to call Halifax but couldn't get through.

Mr B also sent a message to the fraudster enquiring about 'long term investments'. The fraudster said this was possible, but only if he deposited \$2,000. The fraudster claimed that if he deposited this amount, Mr B would receive \$9,000 in a week.

Mr B says he was able to see that he'd made £120 in less than 24 hours from a deposit of £200. He thought the returns being offered were realistic, given that the price of cryptocurrency was increasing significantly at the time.

After making the final payment, Mr B said he wanted to withdraw his money before depositing any more funds. The fraudster said that he'd need to wait seven days to do this, but Mr B didn't believe the fraudster and reported the matter to his bank.

Halifax is a signatory to the Lending Standards Board Contingent Reimbursement Model "CRM Code" which requires firms to refund victims of APP scams in all but a limited number of circumstances.

In this case, Halifax argued two such exceptions to reimbursement apply – that Mr B lacked a reasonable basis for believing that the recipient of the payments was legitimate and that he ignored an 'Effective Warning'.

Mr B referred the matter to our service and one of our investigators didn't uphold it. They thought the returns Mr B was offered were unrealistic and there were multiple aspects of the investment that he ought to have found concerning.

Mr B disagreed, he thought the bank should have picked up on the transactions that left his account as being unusual and suspicious and was disappointed that the bank wouldn't at least refund some of his losses.

As no agreement could be reached, the matter was passed to me for a final decision.

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 considered this matter carefully, I don't think Mr B did have a reasonable basis for believing that the recipient of his funds was legitimate and I haven't found that Halifax are responsible for any of his loss for any other reason either. I'll explain why.

Though I haven't seen the video advertising the investment, I don't doubt that this would have been professionally put together. But, I am concerned that Mr B thought that he was messaging a well-known investor, a person he'd heard of. In particular, I'm surprised he didn't find the fact that she was messaging him to discuss investments of just a few hundred pounds when she appears to be the CEO of a large investment management firm.

More concerning still, when he first messaged the fraudster they introduced themselves as someone entirely different offering foreign exchange, rather than cryptocurrency services (before quickly correcting themselves). I think Mr B should have found this very concerning. And, I think Mr B did have doubts – he mentions that he was less worried after the first payment was visible on his trading account and also that he tried to call the bank to ask them about whether the scheme was legitimate. He's also said that he made the first payment as a 'test' – seemingly accepting the possibility that the investment wasn't a real opportunity. I think Mr B was sceptical throughout and was right to be so.

Mr B says his £200 investment yielded a significant return – more than 50%. And while he might have reasonably put that success down to a one-off, the exchange with the fraudster that he says followed ought to have caused him further, serious, concerns. The fraudster said they would give him \$9,000 if he invested \$2,000 and he'd make this return in just a week. The value of certain cryptocurrencies may have been high at the time – but the value was also very volatile. The fraudster wasn't saying that he *could* make this much money or that other customers had, but rather that he *would* get this amount back. It appears to have been the promise of a guaranteed return. Mr B says he had invested in cryptocurrency in the months before and seems to have been well aware of the risk of trading (and losing) money.

While Mr B may have received some limited reassurance from the testimonials of other 'customers' and his conversations with them, as well as checking the authenticity of the website he was provided with, I don't think these steps were really an adequate way of establishing whether the investment was genuine and I'm not sure they really convinced Mr B either.

Even accepting that some of the most concerning statements made by the fraudster may have taken place after Mr B had already made at least one of the payments, I'm afraid I think there were significant red flags throughout which ought to have alerted Mr B to the possibility

that he was being scammed. Furthermore, I think he recognised this possibility but decided to invest despite those concerns.

Under the provisions of the CRM Code, as I don't think Mr B had a reasonable basis for believing that the recipient was legitimate, I don't need to consider whether he ignored an 'Effective Warning'.

I've also thought about whether Halifax, in line with good industry practice and its obligations under the CRM Code, should have identified the payments that Mr B made as being so unusual and suspicious that it ought to have intervened before allowing them to leave his account. The first payment was made from his current account and was in line with normal account use. The other two payments were made from his savings account. While it doesn't appear Mr B had made any payments from his savings account directly to third parties before (at least, not recently), the amounts of the payments were relatively modest and I don't think it's particularly unusual for someone to make the occasional payment directly from a savings account. Neither do I think the payments particularly stand out against his normal current account activity. So, I don't think Halifax should have identified the payments carried a scam risk and I don't think it made a mistake by letting the payments leave Mr B's account.

Finally, I'm satisfied that Halifax contacted the receiving bank to try and recover Mr B's funds by reporting the loss through the agreed channel used by various financial businesses. Halifax acknowledges that it should have done this the day before it did, when Mr B tried to report the matter to it. But, I've seen evidence from the business which received Mr B's funds which show that, even if Halifax had contacted it a day earlier, it wouldn't have changed Mr B's position as the receiving business would still not have been able to return any of his money.

I know this will be very disappointing for Mr B, but I've decided that Halifax haven't made a mistake by declining to refund his loss.

My final decision

For the reasons I've explained, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 19 October 2022.

Rich Drury
Ombudsman