DRN-3571049

The complaint

Mr C is unhappy Bank of Scotland plc trading as Halifax won't refund money he was tricked into sending to a fraudster.

What happened

Mr C was contacted by someone claiming to represent an investment company after he'd left his contact details online.

The first email he received displayed a Financial Conduct Authority ("FCA") registration number which linked to a genuine firm. Following this contact, and after carrying out some research on the firm, Mr C agreed to purchase corporate bonds in two household names - £100,000 in one company and £85,000 in a second. The coupon rates for the bonds were between 6% and 7%. The payments were made to accounts operated by two different regulated firms.

In early April 2020, Mr C transferred the money to the investment company in amounts of £25,000. The first payment was flagged by Halifax's security systems and Mr C spoke to the bank. A recording of this conversation is not available but there is a written record, the accuracy of which is disputed.

Mr C could see his investment through an online portal provided by the investment company. By late April 2020 the investment company had suggested that Mr C also purchase government bonds costing £100,000. Mr C agreed to do this, but because some of his money was tied up, his partner, Ms S, agreed to provide half the money for this investment and paid £50,000 from her own account. Again, Mr C transferred the money in amounts of £25,000.

In mid-May 2020, Mr C tried to log on to his account with the investment company but was unable to do so. Now worried, Mr C and Ms S searched online and found that a warning had been issued by the FCA alerting consumers to the fact that the genuine investment company had been impersonated or 'cloned'.

Mr C reported the matter to Halifax. It is a signatory of the Lending Standards Board Contingent Reimbursement Model 'CRM' Code, which requires firms to refund customers in all but a limited number of circumstances. In this case, it said that two exceptions to reimbursement applied – that Mr C had ignored an 'Effective Warning' and made the payments without a reasonable basis for belief. It did, however, pay Mr C £350 compensation to reflect deficiencies in its complaint handling and the impact this had on Mr C.
The matter was referred to our service and one of our investigators upheld it. They thought that neither the written warnings provided to Mr C nor the telephone call that took place prior to the first payment constituted an Effective Warning under the CRM Code.

They also thought that Mr C had carried out sufficient research into the investment before deciding to go ahead – so he hadn't lacked a reasonable basis for believing the investment to be legitimate.

They recommended that Mr C be refunded the amount he lost - £235,000, as well as interest based on the Bank of England's published rate for two-year fixed rate bonds.

Halifax disagreed, in summary it said:

- The rate of return for the bonds was too good to be true.
- Mr C knew this, he was an experienced investor and he'd recently received funds back from a legitimate investment of a similar nature, which only paid 1.25% interest per year.
- The notes of the call that took place prior to the first payment show that Mr C was aware of the risk of continuing with the payment if the firm had been cloned. The advisor also said that they could not verify that the investment company was genuine.
- Mr C was aware that firms could be cloned as he'd mentioned being dissuaded from investing in another firm because he'd seen warnings on the FCA website that the firm had been cloned.
- The fact the payments were not made directly to the investment company should have caused Mr C concern.

Despite further clarification from our investigator, Halifax continued to disagree. Mr C said that he'd broadly accept the investigator's findings but would like me to consider whether 8% interest should be paid instead of the investigator's interest recommendation.

So, the complaint 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.

There's no dispute that Mr C made the payments to the fraudsters himself. So, under the Payment Services Regulations 2017 and the terms of his account, he is presumed liable for the loss in the first instance. However, that's not the end of the story, Halifax are signatories of the CRM Code and have well-established obligations to be on the lookout for out of character and unusual transactions to help (among other things) protect customers from financial harm from fraud.

I've first considered whether Halifax have fairly relied on the exceptions set out in the CRM Code.

Did Mr C ignore an 'Effective Warning'?

Halifax argue that Mr C ignored both written and verbal warnings that were 'Effective' – that is one that meets the definition of 'Effective Warning' in the CRM Code.

I've first considered the notes left by the advisor of the call which took place on 3 April 2020. The notes are not a transcript of the conversation and don't give me a good impression of what happened during the call. They don't record Mr C's responses to any questions and there also doesn't appear to have been any description of how investment scams involving cloned companies work and how to avoid them. Also, despite Halifax's subsequent arguments that the rate of return offered by the investment firm was too good to be true, the notes record nothing about this.

Other than indicating that Mr C wouldn't get his money back if he falls victim to a scam, neither the notes nor the 'scam script' which Halifax say was read (which doesn't appear to mention investment scams at all), demonstrate that any substantive and tailored warning was given. So, I can't agree that these notes demonstrate an 'Effective Warning' was given.

Halifax say that Mr C would have also seen the following warning when making each payment:

'Just a minute

Be sure that you know who you're sending money to. Please check the account details with a trusted source.

Fraudsters invent persuasive reasons to get you to make a payment. See all the latest scams fraudsters use on our fraud hub page.

Failure to take precautions before you make your payment could mean we are not able to get your money back in the event of fraud.'

This warning is not specific to investment scams, it doesn't explain how they work and, overall, isn't likely to be impactful for Mr C, or anyone else in his circumstances. So, I don't think this warning meets the definition of Effective under the CRM Code.

Halifax further reference the results of the 'Confirmation of Payee' checks that Mr C received when he tried to make the payments. But, those responses show that the names input by Mr C only differed slightly from the names of the actual accounts he wanted to pay. So, unsurprisingly no substantive warning was given – Mr C was simply asked whether he wanted to pay the accounts in question (which he did).

Overall, I'm satisfied that Mr C didn't ignore an Effective Warning.

Did Mr C have a reasonable basis for believing that the recipient of his payments was legitimate and he was paying for genuine services?

I've first considered Mr C's basis for belief prior to the call on 3 April 2020. The paperwork I've seen all looks very convincing and, it appears that Mr C and his partner carried out many of the checks I'd expect of consumers with their knowledge and experience – checking that the website they visited was secure, checking that the bonds actually existed, calling the genuine firm and asking to confirm whether the employee they thought they were dealing with worked there and checking that the firm was on the FCA register (which it was, albeit under a slightly different name, without any warnings about the firm having been cloned).

I note the bank's comments about Mr C's awareness that firms could be cloned, but I don't think it's as significant as the bank argues. Mr C says he was dissuaded from investing in another firm because there was an existing FCA warning about it having been cloned. In that case, he had spoken to fraudsters impersonating another firm and had also found aspects of their communication concerning. That wasn't the case here – there was no warning about the firm he invested in being cloned until after the payments were made and, according to Mr C, nothing else that concerned him about the interaction. There's not enough evidence that Mr C was aware of both the existence of cloned firms *and* how to avoid them.

I don't think the Confirmation of Payee result that Halifax seek to rely on is at all relevant here – the names Mr C entered for the accounts were essentially correct. Halifax have also questioned why Mr C wasn't being asked to pay the cloned investment company directly, but

I don't think it was unreasonable for Mr C to believe that other, legitimate, firms would receive payments on their behalf.

Halifax argue that the rates being offered were simply too good to be true. While the rates were significantly higher than he might have obtained from fixed-rate savings bonds, this is not what he was purchasing. The bonds were real products and the coupon rates the fraudsters promised matched those of the genuine bonds. I don't know how much of the relative complexity (and risk) of purchasing corporate bonds and government gilts was understood by Mr C, but I can't agree that the rates themselves were too good to be true (certainly in the case of the corporate bonds) for the simple reason that they *were* true.

So, I think that Mr C's reasonable basis for believing the recipient to be legitimate was strong going into the call on 4 April 2020 and, contrary to the bank's arguments, I don't think that call ought to have done anything to change his mind.

I lament the fact that a call recording is not available. The notes are not a transcript, nor even a description of the conversation – but rather seem to be a summary of the advisor's own research into the investment itself. Given the asymmetry in the level of knowledge between the bank and Mr C, it's odd that it should argue that Mr C ought to have known that he was being scammed and yet accept that their own member of staff was unable to reach the same conclusion, despite carrying out their own research.

The advisor appears to have failed to inform Mr C that the contact details on the FCA register ought to match the ones on the website they'd been given. Neither do they appear to have given any other advice about how to establish whether a company was cloned. So, on the basis of the notes I've seen, I can't say that Mr C lacked a reasonable basis for belief after this call either.

It follows that Halifax should reimburse him in full under the provisions of the CRM Code.
In addition, it's clear that Mr C was open and frank with the bank when they spoke on 4 April 2020. As already stated, I don't think the advisor asked the right questions to identify whether Mr C was dealing with a cloned firm and also doesn't appear to have done adequate research into the investment. I think an opportunity to prevent the scam was missed and, given Mr C and his partner were clearly cautious about the investment, I'm satisfied they wouldn't have gone ahead and the loss would have been prevented. The impact of this finding is limited, but it does mean that interest should be paid from the date of loss rather than the date Halifax declined his claim under the CRM Code.

In relation to interest, Mr C has asked me to consider whether fair compensation is 8% interest, rather than the rate recommended by the investigator – the Bank of England's published rate for a two-year fixed rate bond.

It's accepted by both sides that Mr C was not looking to utilise his funds, other than to invest them. I understand that Mr C was looking to invest in bonds, but seemingly had little appetite for risk. It's difficult to know what Mr C would have done had it not been for the intervention of the fraudster. But, given that Mr C was looking for a low risk investment, I don't think it's fair for him to be awarded 8% interest in this case. I think that's likely to put him in a better position than he would have been had the fraud not taken place.
Instead, I think that it is fairer to award interest that would have been obtained had he invested in a two-year no-risk fixed-rate bond and the Bank of England rate is a reliable indicator of the average rate available at the time he invested. I've decided that the two-year rate should be used on the basis that Mr C will be deprived of his funds for around two and a half years and, I understand, was prepared to invest his money for a relatively long period of time (so, had he invested in a genuine product, it would likely still be locked away at this point).

While I accept that Mr C might have achieved a better rate than this in the open market, he's unlikely to have been able to achieve a significantly better rate without risking his capital.

Mr C has made no further representations in relation to the investigator's recommendation that the compensation already offered by Halifax is fair. In light of this, and having reviewed the points originally raised by Mr C carefully, I too think Halifax's offer in relation to compensation is fair.

My final decision

I uphold this complaint and instruct Bank of Scotland plc to pay Mr C:

- The amount lost - £235,000, less any amount already returned or recovered.
- Interest calculated using the monthly average for two-year fixed-rate bonds, as published by the Bank of England for the month of April 2020, from the date of the transactions to the date of settlement. That rate should be applied on an annually compounded basis.
- The £350 compensation offered, if this has not already been paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 12 October 2022.

Rich Drury
Ombudsman