DRN-3613872

The complaint

Ms P complains that Bank of Scotland plc, trading as Halifax, won't refund the money she lost when she was the victim of a scam.

What happened

Ms P and her family were looking for ways to grow their money and were told by a family friend about an investment company the friend had been using, which offered good monthly returns. Ms P says the investment company seemed like a good opportunity, so she got in touch with them through the family friend and was sent a brochure and reports showing returns other investors had made. Her and her family also met with someone from the investment company and, after being sent contracts to sign, decided to go ahead and invest. Ms P then sent £20,000 from her Halifax account to the bank details the investment company gave her. Other members of her family also sent money to the investment company. But, unfortunately, we now know the investment company was a scam.

For the first two months after making the investment, Ms P was sent monthly returns in line with what she'd been told she would receive. But she didn't receive any returns in the third month. She and her family tried to contact the investment company, and went to the address of the person they had met, but didn't get any response. Ms P then reported the scam to Halifax and asked it to refund the money she had lost.

Halifax investigated but didn't think the information the investment company had given Ms P was convincing and said Ms P had been dishonest about the reasons for the payment when it called to ask about it. So it didn't think Ms P had a reasonable basis for believing that the investment she was making was genuine and didn't agree to refund the money she lost. Ms P wasn't satisfied with Halifax's response, so referred her complaint to our service.

One of our investigators looked at the complaint. They didn't think Halifax had established that Ms P didn't have a reasonable basis for believing the investment was genuine. So they felt Halifax should refund the money Ms P lost. Halifax disagreed with our investigator, so the complaint has been passed to me.

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.

In deciding what's fair and reasonable in all the circumstances of a 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.

In broad terms, the starting position at law is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. However, where the consumer made the payment as a consequence of the actions of a fraudster, it may sometimes be fair and reasonable for the bank to reimburse the consumer even though they authorised the payment.

Halifax is a signatory of the Lending Standards Boards Contingent Reimbursement Model (the CRM code). This code requires firms to reimburse customers who have been the victim of authorised push payment scams, like the one Ms P fell victim to, in all but a limited number of circumstances. And it is for the firm to establish that one of those exceptions to reimbursement applies.

Under the CRM code, a firm may choose not to reimburse a customer if it can establish that:

- The customer ignored an effective warning in relation to the payment being made
- The customer made the payment without a reasonable basis for believing that:
    - the payee was the person the customer was expecting to pay;
    - the payment was for genuine goods or services; and/or
    - the person or business with whom they transacted was legitimate

There are further exceptions within the CRM code, but these don't apply here.

Did Ms P have a reasonable basis for belief when making the payment?

Ms P has said the investment company was recommended to her and her family by a family friend who had used them for some time and received monthly returns. And I think this kind of personal recommended from a trusted friend will have been very convincing to Ms P and made the investment company seem legitimate.

I've also seen copies of the promotional brochure and reports Ms P was sent by the investment company before investing, and the contract she was sent to sign when she agreed to invest. And I think these documents all look relatively professional, and so will also have helped convince Ms P the investment company was legitimate.

Ms P also met someone from the investment company at an office, where she says they came across as professional and honest and were able to answer all the questions her and her family had. And I think it's reasonable that this kind of personal, face-to-face interaction will have been convincing to Ms P.

Halifax has said that Ms P should have done more checks into the company and the person she met, that the rate of return she was told she would receive was too good to be true and that she should have been concerned when she was asked to lie to it about the purpose of the payment. And while Ms P was told to tell Halifax the payment was for a loan to a friend rather than an investment, she was given a logical explanation for why to do this – that telling her bank she was making an investment would cause delays and that the sooner the money was sent, the sooner she would start making returns. I don't think the rate of return was so high as to be obviously too good to be true to someone with no investment experience. And I don't think it was unreasonable for Ms P not to carry out further checks into the investment company or the person she met – particularly as she's not an experienced investor.

The issues Halifax has raised should have caused Ms P some concern. But I think it's reasonable that these concerns didn't overcome the trust in the investment company that had already been built up by the personal recommendation she received, the meeting she had with someone from the company and the professional-looking documents she was sent. So I think Ms P did have a reasonable basis for belief that the investment company was legitimate when she made the payment.

Did Ms P ignore an effective warning?

The CRM code says that, where firms identify APP scam risks, they should provide effective warnings to their customers. It sets out that an effective warning should enable a customer to understand what actions they need to take to address a risk and the consequences of not doing so. And it says that, as a minimum, an effective warning should be understandable, clear, impactful, timely and specific.

As the payment Ms P made was for a large amount, I think Halifax should have identified a scam risk and so should have provided an effective warning to her.

Halifax has sent us a copy of the warning Ms P was shown when making the payment on her mobile banking app, as well as a copy of the phone call it had with Ms P before it allowed the payment to go through.

The mobile banking app warning is mostly warning against scammers asking customers to move their money to another account, or copying Halifax's phone number to make it look as though they are calling from Halifax. So I don't think it was specific enough to the investment scam Ms P was falling victim to, to be effective in these circumstances.

And in the phone call, Halifax mostly wants to make sure Ms P knows the person she's sending money to, has checked the bank details with them and isn't being pressured into making the payment. So, again, I don't think this was specific enough to be an effective warning in these circumstances.

I appreciate that Ms P was dishonest and told Halifax the payment was a loan to a friend to help them buy a house, rather than an investment. And that Halifax asked if she had been told to lie to it. But, for the same reasons I mentioned above, I think Ms P was given a logical reason why she should say the payment was for a loan. And Halifax didn't explain why it asked about whether she was told to lie or why this was important. So I still don't think its warnings were effective.

It therefore follows that I don't think Ms P ignored an effective warning in relation to the payment.

Overall then, I don't think Halifax has established that Ms P made the payment without a reasonable basis for belief or that she ignored an effective warning in relation to the payment. I therefore think Halifax should refund the money Ms P lost in full, under the terms of the CRM code.

My final decision

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

- Refund the £18,000 Ms P lost as a result of this scam

- Pay the account interest rate on this refund from the date it initially rejected Ms P's claim until the date of settlement

Under the rules of the Financial Ombudsman Service, I’m required to ask Ms P to accept or reject my decision before 10 November 2022.
Alan Millward
Ombudsman