

The complaint

Mr S complains that Bank of Scotland plc (trading as “Halifax”) have failed to refund over £35,000 he says he lost as part of an investment scam.

What happened

The details of this complaint are well known to both parties, so I will not repeat everything again here. Instead, I will briefly summarise the facts and focus on giving the reasons for my decision.

Mr S says he fell victim to an investment scam in October 2016, where collectively he made payments of over £35,000 to three merchants (“Bank De Binary”, “24Option” and “72Option”). He asked Halifax to refund the money, but the bank refused as it said Mr S had authorised the payments.

Our investigator didn’t uphold Mr S’s complaint. He didn’t think there was enough evidence to suggest that Bank De Binary and 24 Option were operating a scam at the time he made the payments, and while 72 Option did appear to be fraudulent, he didn’t think the payments were so unusual that they ought to have triggered an intervention by Halifax. Mr S disagreed, so the matter has been escalated to me to determine.

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.

I would like to reassure the parties that although I have only set out the key points, I have read and considered what’s been provided. Having done so, I agree with the conclusions reached by the investigator for the following reasons:

- The relevant regulations and industry guidance makes it clear that banks have a duty to protect consumers from the risk of financial harm, including fraud and scams. But the obligation to warn customers of the risk of such financial harm will only reasonably have been engaged if there were sufficient grounds for suspecting the payee was a fraudster.
- So, I would need to be satisfied that the merchants were all operating a scam at the time Mr S made the payments around October 2016 in order to expect Halifax to have done anything further here. However, I’m not persuaded that Banc De Binary or 24 Option can be said to have been operating a scam at this time. I appreciate that Mr S considers them to be fraudulent, and I accept that these merchants have since had their authority withdrawn by the relevant regulators. But in October 2016 there were no warnings placed on the Financial Conduct Authority (FCA) watchlist, for example, and I note they were licensed with the Cyprus Securities and Exchange Commission (CySEC) to trade in the European Union at the time.
- So, even if Halifax had issued Mr S with a scam warning and told him to undertake

further checks into these merchants in October 2016, I'm not persuaded he would have come across anything that would've made him think they were operating fraudulently, particularly as they were licensed to operate by CySEC at the time.

- In terms of 72 Option, I appreciate there is more evidence to suggest that this merchant was operating a scam at the time, albeit a warning was not published on the IOSCO investor alerts portal until 13 December 2016 – i.e. *after* Mr S had made his payments to them – so I wouldn't have expected Halifax to have automatically blocked them in October 2016.
- I've nevertheless considered whether Halifax should have taken a closer look at the payments being made to 72 Option by virtue of them appearing unusual or out of character. But I don't think there was anything particularly unusual about the payments being made that ought to have prompted an intervention. The payments Mr S made to 72 Option were not paid in one single large transaction, for example. They were spread out over separate smaller increments (of around £5,000) which, in my judgment, would not have appeared particularly unusual or out of character when compared with Mr S's spending history, such that they ought to have been regarded as suspicious or indicating that he might have been at risk of falling victim to a scam.
- For example, I can see from Mr S's statements that he had previously made payments larger than £5,000 from his Halifax debit card within 12 months prior to the disputed transactions. So, I'm not persuaded there was anything that ought reasonably to have triggered Halifax's fraud monitoring systems, or that would have indicated he was in the process of being scammed.
- I've also thought about whether Halifax could have done more to recover the funds after Mr S reported the fraud, as in some circumstances money spent on a debit card can be recovered via the bank raising a chargeback dispute. However, a chargeback is a voluntary scheme run by card providers such as Visa and Mastercard. That process is subject to the rules of the scheme and we wouldn't expect a bank to pursue matters to final arbitration if there was no prospect of success. In this instance, Mr S disputed the payments over four years after he had made them, which would have far exceeded the time limits set by the card provider for making a claim. As a result, I don't think Halifax acted unreasonably by failing to pursue a chargeback claim for Mr S.

I appreciate this will likely come as a disappointment to Mr S, and I'm sorry to hear about the money he has lost. However, in the circumstances, I don't consider it would be fair and reasonable to hold Halifax liable for his loss.

My final decision

For the reasons given above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 28 December 2022.

Jack Ferris
Ombudsman