

The complaint

Mr A is unhappy that Bank of Scotland Plc (trading as “Halifax”) hasn’t reimbursed him after he was the victim of a scam.

What happened

Mr A has explained that in 2019 he was looking for a loan for his business. He looked at several different companies and provided his details and the amount he wanted to borrow to an online broker that could source potential loans for him.

Soon after, Mr A was contacted by a series of individuals who said they were contacting him about the loans he had applied for. Mr A has said he was offered more than one loan at different times, seemingly from different lenders. The individuals Mr A was contacted by, both via linked in and other means, turned out to be scammers.

In the case of one loan Mr A believed he had been offered, he was asked to pay a deposit upfront in the form of retail vouchers. Another, which was for considerably more money (over £100,000) required him to pay numerous fees and charges to secure the loan. He’d been contacted about this loan via an individual on LinkedIn who said they worked for a major European bank.

Mr A made the following payments to scammers from his Halifax account:

21 August 2019	£1,277.88
30 August 2019	£2,004.87
18 September 2019	£650 debit card payment (Mr A has been unable to recall how this payment related to the scam)
15 October 2019	£2,695.90 (returned to Mr A’s account on 19 November 2019)
22 November 2019	£1,319.90 (return by the money transfer service on 25 November 2019)
26 November 2019	£1323.80
9 December 2019	£2,110
23 December 2019	£1,818.50
17 January 2020	£1,037.44
2 March 2020	£360.69

6 March 2020	£1,805.58
31 March 2020	£367.55
28 April 2020	£451.30

In November 2019 Mr A contacted Halifax to report he'd been the victim of a scam. He explained the individual he'd tried to pay had told him the payment of £2,695.90 made on 15 October 2019 hadn't been received by them. As Mr A could see it had left his account he was concerned. He then discovered from the beneficiary's bank that there had been a delay at its end. The money had been received by the bank, but not credited to the individual. So although he reported the matter as fraud and arranged for the funds to be returned to him, the scam wasn't uncovered for him at that point because he thought the situation was a genuine mistake.

Mr A reported the scam again to Halifax in March 2021 after it became clear he wasn't going to receive the loan as expected. It explained to Mr A that it couldn't try and recall or otherwise refund the gift vouchers as these were legitimate purchases he'd authorised but it could look into the other payments. Ultimately Halifax didn't feel it was liable for Mr A's loss.

I issued a provisional decision on 5 August 2022. In summary I said that:

- Under the Payment Services Regulations (PSRs) Mr A authorised the payments to the scammers and as a starting point was liable for them. But taking into account the law, regulators rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time I thought Halifax should fairly and reasonably have measures in place to look for and identify transactions that are significantly unusual, out of character or otherwise might indicate someone had been the victim of a scam. And, where it reasonably ought to have identified such a transaction, it might be appropriate for it to carry out further checks to satisfy itself its customer isn't at risk.
- Based on Mr A's general account activity, I thought the payments he made to scammers were in line with his general use of the account overall. So I didn't think Halifax reasonably ought to have intervened when he made the payments based on the transactions alone.
- But, on 8 November 2019 Mr A contacted Halifax to tell it he'd been the victim of a scam because the beneficiary he'd intended to pay said they hadn't received the payment he'd sent. And whilst he later thought he was mistaken about this and continued to pay the scammers, I think when he called Halifax it ought to have done more to discuss the payment with him and get to the bottom of the situation. Halifax hadn't been able to provide any evidence to suggest it had done this.
- Had Halifax had a meaningful discussion with Mr A about the payment at this time, given he hadn't been told to provide a cover story I couldn't see any reason he wouldn't have told it what he understood to be the truth – that he was sending large amounts of money to someone claiming to be from a legitimate bank in order to obtain a business loan. And I think Halifax reasonably ought to have identified he was the victim of a scam.

- However, I also felt Mr A shared liability for his loss. I didn't think it was reasonable he'd accepted that legitimate banks wanted him to send multiple payments of thousands of pounds or pay them in retail vouchers across a period of several months in order to obtain a loan. I also didn't think he'd done enough to try and verify the scammers, who contacted him online, actually worked for the banks they said they did.
- I didn't think Halifax had acted promptly in trying to retrieve the funds when Mr A reported the scam. But given Mr A was reporting the matter between one and two years after the payments were made I didn't think it was likely this delay prevented the successful return of the funds.
- Overall, I felt Halifax ought to refund Mr A for 50% of his loss from 8 November 2019 – when I think it reasonably ought to have identified and prevented the scam.

Mr A responded to my provisional decision. He said that:

- He did carry out due diligence when making the payments because he made several of the transactions in branch and explained the nature of the transactions to staff he spoke to there, providing paperwork from the bank he believed he was dealing with. He said he was told by staff they had no way of knowing if the transactions were fraudulent.
- He tried to call the bank he thought he was dealing with several times and also wrote to them but received no response.
- He asked the scammer to video call with him which they did. He's said the person he video called with matched the LinkedIn profile they contacted him under which reassured him.
- He felt as an inexperienced person it was very difficult for him to try and distinguish whether or not he was the victim of a scam.
- He believed paying a bank upfront for a loan in order to cover insurance costs was common practice and provided a link to the website of a broker in Switzerland he felt supported this.

Halifax didn't respond to my provisional decision by the deadline provided.

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've thought very carefully about what Mr A has said, and I have considered everything again. But I haven't reached a different conclusion to the one set out in my provisional decision. I won't repeat everything I said in the provisional decision (that I've summarised above). But I would like to address his ongoing concerns and hopefully clarify why I've reached the conclusion I have.

It seems odd that Mr A hasn't previously mentioned at any point that he spoke to branch staff about the payments he was making to scammers. And I've checked the records Halifax has provided and according to these all the payments made prior to 8 November 2019, when I've agreed Halifax ought to have intervened and prevented the scam, were carried out online, not in branch. It may be that Mr A did carry out some transactions in branch after this date, but I've already said I think Halifax ought to have stopped the scam by then.

Overall I don't feel I have seen sufficient evidence based on Mr A's recent testimony that Halifax could've stopped the scam sooner than the call in which Mr A suggests he'd been the victim of fraud.

Mr A has said he carried out due diligence because he tried to contact the bank he thought he was dealing with directly and received no responses to any contact. In my view, this ought to have concerned Mr A as the bank he thought he was dealing with didn't respond to confirm to him the payments or the individual he was speaking to were genuine.

He's said a video call with the scammer reassured him, but it's not clear to me why this would be the case. He hadn't verified who this person was or who they worked for. This video call only seems to have confirmed they appeared to be the same person as the person in the LinkedIn profile. And I don't think this alone, when considered alongside the other unusual elements of what they were asking Mr A to do, ought to have reassured him.

Mr A has said that paying insurance up front directly to a bank is common practice in Europe. But when contacted by a stranger online who asked him to start paying for the loan in retail vouchers, I think it would've been reasonable for Mr A to try and verify things further before proceeding. Especially since he's said he received no response from the bank they said they worked for. An online search would've highlighted to Mr A that this is a known scam in the UK. The Financial Conduct Authority (FCA) provides more detail about how this scam tends to operate, and describes the exact situation Mr A found himself in.

I'd also add that the link Mr A has sent me which he feels evidences paying up front large amounts for a loan is common practice in other countries, doesn't appear to demonstrate this. But in any event, even if there are some banks in other countries that require this, I don't think this means Mr A didn't have to carry out any checks before starting to send large amounts of money to the scammers. I'd also note that he sent multiple payments to the scammers across a long period by bank transfer, using money transfer services and in retail vouchers. I don't think it was reasonable he accepted this was how a legitimate bank would operate.

I do understand it can be initially difficult to try and uncover certain scams and I have taken into account here that Mr A may well be inexperienced in these matters. That's why I've held him to the standard of what a reasonable person might do in the circumstances. But overall, although I have considered his most recent comments carefully, I remain of the opinion that he shares liability for his loss from the point Halifax reasonable could've prevented the scam.

Redress

Halifax should refund Mr A £4,637.43 – 50% of the payments he made after his call on 8 November 2019 and after Halifax reasonably ought to have uncovered the scam.

It appears these payments were made from Mr A's current account and used his overdraft for which he was charged a daily fee. According to the account terms and conditions this daily fee relates to the account balance. Halifax should restructure the account as if 50% of each payment after 8 November 2012 wasn't made and refund him any amount he has overpaid in fees.

My final decision

I uphold this complaint and direct Bank of Scotland Plc trading as Halifax to pay Mr A the redress outlined above. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 22 September 2022.

Faye Brownhill
Ombudsman