

Complaint

Mr R is unhappy that Bank of Scotland plc (trading as Halifax) won't refund him in full after he fell victim to a scam.

Background

The background of this complaint is well known to both parties. I don't intend to set it out in full here, but I will briefly summarise the key facts.

Mr R was looking for investment opportunities. He conducted online research into high-interest bonds. His research led him to an apparently authentic website. He filled out a form to register his interest. After doing so, he was contacted by a man who claimed to be a representative of a well-known financial business. He was offered the chance to invest in a bond that paid a return of 8.4% per annum. This offer was supported by professional looking documentation. This showed different rates depending on how long Mr R was willing to lock up his money for.

After considering his options, Mr R decided to invest for the longest possible term. He transferred £75,000 to an international currency remittance service. He gave the payment instruction in branch. Unfortunately, Mr R hadn't been dealing with a legitimate company but a scammer.

He tells us he questioned why he was being asked to make a payment to a third-party business that he'd never previously heard of. The scammer told him that it was part of a network of companies that were owned by the business he was looking to invest with.

After he made the transfer, contact with the scammer stopped. Mr R realised that it was likely he'd fallen victim to a scam and so he notified Halifax promptly. It considered the complaint under the terms of the Contingent Reimbursement Model ("CRM") Code. It didn't think it had provided an effective warning (as defined in the CRM code) and so agreed to refund 50% of the money Mr R lost to the scam.

However, it didn't think it should be obliged to refund the remaining 50%. It didn't think Mr R had a reasonable basis for believing that the investment opportunity was a legitimate one. It considered that there were multiple red flags that ought to have put him on notice of the risk that he was dealing with a scammer. It noted that Mr R had contacted the firm that was being impersonated to see whether the name of his contact was genuinely an employee of that firm. The person he spoke to said that they couldn't confirm either way.

Halifax also thinks that Mr R should've checked the website of the regulator, the Financial Conduct Authority (FCA), and if he'd done so he'd have seen a warning that scammers were impersonating this particular firm to trick people into making fake investments. It thinks that someone of Mr R's level of investment experience should've known to make these checks before proceeding.

Mr R's complaint was looked at by an Investigator. She initially upheld the complaint, but then later took a different view. She agreed with Halifax that Mr R hadn't met his requisite

level of care under the CRM code and that it was fair and reasonable for Halifax to hold him liable for half of the money he lost as part of the scam.

Mr R disagreed with the Investigator's opinion, and so the complaint has been passed to me to consider.

Findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I issued my provisional findings on this complaint on 24 August 2022. I said:

The starting point in law is that Mr R is presumed liable for any transaction he authorised. He did authorise the payment that is the subject of this complaint, albeit only because he'd been tricked into thinking he was paying into a legitimate investment. That's not the end of the story. Halifax is a signatory to the CRM code. This code says that firms should refund its customers where they fall victim to a scam like this one, except in a small number of circumstances.

In this instance, Halifax has accepted that it didn't provide an effective warning and so has agreed to refund half of Mr R's losses. However, it thinks he should be liable for the remainder on the grounds that he failed to meet his requisite level of care because he made this payment "without a reasonable basis for believing that ... the person with whom [he] transacted was legitimate."

However, I also consider Halifax should fairly and reasonably:

- *Have been monitoring accounts and any payments made or received to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams.*
- *Have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer.*
- *In some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.*

I'm satisfied that this payment was unusual and out of character and that Halifax shouldn't have processed it without first satisfying itself that Mr R wasn't at risk of financial harm due to fraud.

Halifax has said that Mr R was well known in his local branch because he often visited to ask for international payments to be made. However, I've looked at the statements for his account and I can see that, in the preceding twelve months, he sent four international payments from his account and that the largest of these was for around £3,000. The other large payments made from this account were to HMRC to settle Mr R's tax liabilities.

Overall, I think that when he made a first payment to an international money remittance company for £75,000, the risk that he'd been targeted by a scam should've been clear. As he'd made the payment in branch, there was ample opportunity for staff to have asked him some basic questions to ensure that he wasn't at risk of a scam. If a bank employee had recommended that he check the FCA register, then I think it's likely he'd have done it and the scam would've been prevented.

I've considered whether Mr R can be considered partially responsible for his losses here. In doing so, I've considered what the law says about contributory negligence but also borne in mind the fact that I have to reach a decision based on what I consider to be fair and reasonable. And having done so, I'm satisfied that he shouldn't be considered partially responsible.

All the communications from the scammer were professional and credibly those of a legitimate investment company. In particular, the information he was given regarding the bond had the appearance of an authentic piece of promotional material for a financial product like this one. In addition, the scammers took several steps to create the impression that they were carrying out legally required compliance tasks, such as checking Mr R's identification documents.

The promised rate of return was significantly out of line with what was typically on offer to retail customers. However, I'm mindful of the fact that the details of the bond appear to have been selected to match those of a genuine bond issued by the impersonated firm (albeit one that was issued only to institutional investors). The rate of return would've been a generous one. But it was not so outlandish that it would've been an obvious scam, except to an individual with more investment experience than Mr R.

From what Mr R has told us, he had a rudimentary knowledge of investment products. This was the first time he'd looked into the possibility of investing in high-interest bonds. Halifax has argued that Mr R should've carried out more detailed checks and that, given his investment experience, he should've known what checks to carry out. It's said that he should've known to check the FCA website for any warnings. I asked Halifax if it could show me any evidence to demonstrate Mr R's history of making investments, but it hasn't been able to provide anything. I also wouldn't have expected him to know to check the FCA website for warnings.

Halifax has attached a lot of significance to the fact that Mr R called the impersonated firm and asked whether they had any employee with the name the scammer had given. He was told that, due to the impact of the pandemic and widespread homeworking, it wasn't possible to confirm either way whether he was a genuine employee. They've also observed that Mr R's calls to the scammer sometimes didn't connect and that he received emails from someone claiming to be that person's secretary and office manager. While these things appear suspicious with the benefit of hindsight, I'm not persuaded that Mr R was careless in taking them at face value.

It's also been pointed out that the scammer seemed to be unhappy when Mr R insisted on making the payment in branch because he's distrustful of online payments. Halifax has suggested that he should've found it strange that a legitimate business would be resistant to him making online payments.

I've considered this point carefully, but I'm not persuaded by it. Mr R had been told that there was a deadline he needed to meet if he wanted to participate in this investment opportunity. The scammer told him that making the payment in branch

would slow things down. In addition, I think Mr R simply thought he was being careful by insisting on making the payment in branch because he assumed that he'd be generally less vulnerable to scams by making payments in branch.

Overall, I'm satisfied that Mr R was the victim of a manipulative and cynical scam and can't be said to be partially at fault here.

Both parties responded to agree with the findings I reached in my provisional decision, so I don't see any reason to depart from them.

Final decision

For the reasons I've explained, I uphold this complaint. Bank of Scotland plc trading as Halifax now needs to pay Mr M

- The remaining 50% of his losses to the scam.
- Interest calculated using the monthly average rate for a fixed-rate bond as published by the Bank of England for the month of November 2020. This calculation should be based on the entire sum he lost to the scam and up to the date any settlement is paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 24 October 2022.

James Kimmitt
Ombudsman