

The complaint

Mr and Mrs T complain that Bank of Scotland plc trading as Halifax (“Halifax”) failed to refund £100,000 they say they lost to 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 focus on giving the reasons for my decision.

I note that the account that the transaction was made from was in the name of Mr and Mrs T, but as Mr T was the one that interacted with the scammer and is the driver of this matter I will in the most part just refer to him.

In summary, Mr T sent £100,000 to a Danish Bank (København's Andelskasse Bank) the funds were intended to be used for forex trading with Swisspro Asset Management AG (“Swisspro”). Mr T was promised payments from Swisspro but after the first payment he did not receive anything further. Swisspro entered liquidation in 2019. Mr T did not receive his £100,000 back.

Mr T raised a complaint with Halifax in 2021 as he believes that it should have stopped the payment. He therefore requested that Halifax refund him. Halifax declined to do this.

One of our investigators looked into this matter and they did not think that Halifax had done anything wrong. Mr T disagreed and therefore his complaint has been passed to me to issue a 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.

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; meaning that Halifax could have delayed the payment(s) while concerns about the payee were discussed with Mr T.

So, I would need to be satisfied that there were concerns that Swisspro Asset Management AG (“Swisspro”) was operating a scam when Mr T made the payment of £100,000 in his Halifax branch on 27 October 2017 in order to expect Halifax to have done anything further here. I've consulted the official organisations that publish warnings about merchants that operate in the UK and abroad, including the Investor Alerts Portal of the International Organization of Securities Commissions (“IOSCO”), as well as the FCA's own warning list. These watchlists, along with other reputable sources, lead me to believe that there were no warnings about Swisspro at the time Mr T made his payment in October 2017.

At the time Mr T made his payment, Swisspro was a legitimate fund management company that was authorised by the Swiss Financial Market Supervisory Authority (FINMA). I appreciate it later filed for bankruptcy in 2019 and that comments made during this process suggest that it may have been operating as a Ponzi scheme, but that does not mean that Halifax should have been aware that it was operating fraudulently when the payment was made. Rather, Halifax at the time would only have known that Mr T's money went to a business that was operating legitimately in another jurisdiction at the time.

Overall I'm not persuaded that there was any reason for Halifax to have been aware that Swisspro was fraudulent or operating a scam at the time of the payment. As a result, Halifax's duty to intervene wasn't triggered. Therefore, I don't consider the bank acted unfairly by preventing or failing to intervene in the payment being made.

Mr T has further raised concerns that Halifax ought to have done more in terms of anti-money laundering checks due to the money being transferred to a Danish bank that was under investigation. I'd like to assure Mr T that I have considered all the relevant law, regulations and good industry practice when considering his complaint. This includes anti-money laundering regulations, because although non-compliance with these regulations is more a wider matter for the regulator rather than our service, it is still something we consider when looking at whether a business could have prevented a fraud or scam.

Ultimately, I'm not persuaded there was anything suspicious at the time that ought reasonably to have concerned Halifax, or that it had any reason to suspect that Mr T was attempting to launder money himself. I understand the Danish bank may have been under investigation from the Danish authorities at the time. But I wouldn't have expected Halifax to have known this, or to have prevented a payment being made to the bank as a result, given it was going to a seemingly legitimate company. So, I don't consider there to be any basis in which the bank can fairly or reasonably be held liable for his loss on this basis either.

I've also thought about whether Halifax ought to have done anything to recover the funds after Mr T reported his loss. Mr T didn't dispute the payment with Halifax until October 2021. Given the investment company has since become insolvent, it would be highly unlikely that the bank could have recovered any funds, particularly given it was around four years after the payment had been made. Halifax also wouldn't have been under any obligation to consider refunding the payment under the Contingent Reimbursement Model (CRM) Code either, given the payment was made before the Code came into force.

Finally I note Mr T's concerns with documentation that he had requested as part of the complaint process which Halifax did not send him. He says that this documentation might show that Halifax did not follow its own procedures correctly in carrying out the transfer. I have looked at the documents from the time of the transaction and nothing to me suggests that Halifax did anything wrong in sending funds to the Danish bank. So, I don't think it did anything wrong in relation to this.

I appreciate this will likely come as a disappointment to Mr and Mrs T, and I'm sorry to hear they have lost a significant amount of money. However, in the circumstances, I do not 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 Mrs T and Mr T to accept or reject my decision before 3 November 2023.

Charlie Newton
Ombudsman