

The complaint

Mr S complains that his bank, Bank of Scotland plc trading as Halifax (Halifax) has refused to refund the money he has lost following him falling victim to a scam

What happened

The background of this complaint is well known to all parties, so I won't repeat what happened in detail.

In summary Mr S was looking to make an investment and found an advert for a business called Trade Solid (TS) on Facebook. The advert included a video with instructions on how to open an account with TS. Mr S tells us the advert was very professional, he clicked on the link to open an account and as requested made an initial deposit of £175 via his debit card.

Within a couple of days Mr S was contacted by a representative of TS claiming to be Mr S's account manager. TS explained an option to Mr S of taking out a gold membership at a cost of £5,000 which would be beneficial to him considering he was new to investing and this option offered guidance.

Mr S took some time to consider the gold membership option but eventually decided to go ahead with it and having seen his investment grow on the TS platform Mr S was persuaded to make further investments.

When Mr S later tried to withdraw some funds from his investment, he was told he would have to carry out further trades first and it became apparent he had fallen victim to a scam. Shortly after all communication from TS stopped.

Mr S made the following payments directly to TS using his debit card:

1. 6 May 2016 - £175
2. 23 May 2016 - £1,000
3. 23 May 2016 - £4,000
4. 27 May 2016 - £1,000
5. 27 May 2016 - £1,000
6. 27 May 2016 - £4,000
7. 27 May 2016 - £4,000
8. 9 June 2016 - £4,000
9. 9 June 2016 - £4,000
10. 22 June 2016 - £1,000
11. 22 June 2016 - £4,000

A total of £28,175 was paid into the scam and Mr S has not been able to recover any of his funds.

Our Investigator considered Mr S's complaint and thought it should be upheld. She said that there were warnings about TS on the International Organization of Securities Commissions' (IOSCO) investor alert portal some time before Mr S made his first payment to TS, and

because of this Halifax should have been aware of the potential fraud and stopped any payments being processed.

Our Investigator said Halifax should have had a conversation with Mr S about the likelihood of the payments being related to a scam. If it had this conversation and asked appropriate questions it would have likely discovered the scam and prevented any loss. However, she did accept that Mr S could also have done more to prevent the scam. She said Halifax should refund Mr S for all the payments he made in relation to the scam less 20%.

Halifax disagreed, in summary it said that Mr S should have carried out research before investing such a large sum. Halifax also said the information recorded on the IOSCO portal would not have automatically prompted its systems to stop the payments Mr S was making and there were several factors that are considered before payments are referred. It said TS were not on the FCA warning list when Mr S was making payments.

Halifax also said that no warnings were presented to Mr S when he made the payments to TS as they were not unusual when considering his usual spending habits.

As Halifax disagreed this complaint has been passed to me to decide.

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 circumstances of this complaint are not in dispute and the evidence provided by both Mr S and Halifax set out what happened well. What is in dispute is whether Halifax should refund the money Mr S has lost because of this scam.

Halifax was unable to process chargeback claims for the payments Mr S made in relation to this scam to TS. This is understandable as there are time limits in place for the chargeback process and Mr S made his complaint to Halifax several years after he made the payments and so I'm satisfied Mr S approached Halifax outside of Visa's required timescales for chargeback to have been an option for him.

I've also thought about whether Halifax could have prevented some or all the payments in dispute. Mr S has accepted he authorised the payments that were made, albeit with assistance from TS. So, the starting point here is that Mr S is responsible. However, banks and other Payment Services Providers (PSPs) do have a duty to protect against the risk of financial loss due to fraud and/or to undertake due diligence on large transactions to guard against money laundering.

The question here is whether Halifax should have been aware of the scam and stepped in to prevent the payments from being made.

I have considered what Halifax has said about the payments Mr S was making not triggering its fraud prevention systems as they were not significantly different to the way Mr S usually managed his account. I don't think this is necessarily fair. Mr S made four separate payments to TS in one day, on 27 May 2017 totalling £10,000, while Mr S had previously made larger payments from his account and several in one day, I don't think it would be unreasonable to say that by the third or fourth payment Halifax's fraud prevention systems should have been triggered.

But even if I accept that the value of the payments shouldn't have triggered Halifax's fraud prevention systems it's clear that there were warnings about TS on the IOSCO investor alert

portal some time before Mr S made the first payment to TS. I think it's reasonable to say Halifax should have been aware of updates made to the portal and updated its systems accordingly, particularly as a warning had been published at least six months prior to Mr S' first payment.

If Halifax had updated its systems to stop payments being made to TS (as I think it ought reasonably to have done), I think it would have likely been concerned that Mr S may be at risk of financial harm. I think Mr S would have answered Halifax's questions honestly as he didn't suspect anything untoward at the time. In light of the credible adverse information available to Halifax as the financial professional, I think it would have dissuaded Mr S from sending TS any payments. In other words, but for Halifax's failing, I don't think Mr S would have lost any money.

With the above in mind, I think Halifax should refund Mr S for all payments that were made from his account as part of the scam.

Despite regulatory safeguards, there is a general principle that consumers must still take responsibility for their decisions (see s.1C(d) of our enabling statute, the Financial Services and Markets Act 2000).

Our Investigator suggested that Mr S should bear some responsibility for his loss as he didn't carry out enough due diligence checks prior to investing with the scammer. I agree, although the scam was convincing, Mr S could and should have carried out more checks before making his payments. Although Halifax has stated a higher contribution should be made by Mr S I think, in the circumstances a 20% reduction is fair.

Putting things right

Bank of Scotland plc trading as Halifax should have stepped in following the first payment Mr S made to TS if it had done, I think this scam would have been avoided. So, Bank of Scotland plc trading as Halifax should refund Mr S for the payments he made to TS.

Bank of Scotland plc trading as Halifax should deduct 20% from the payments it refunds to Mr S. Given the time Mr S took to make his complaint I don't think it would be reasonable for me to ask Bank of Scotland plc trading as Halifax to add interest to the amount it pays Mr S.

My final decision

I uphold this complaint and require Bank of Scotland plc trading as Halifax to refund Mr S as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 19 April 2023.

Terry Woodham
Ombudsman