

The complaint

Mr S complains that Bank of Scotland plc trading as Halifax will not refund him the money he lost due to him falling victim to an investment 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 contacted by a binary options broker called Ivory Options (X) in August 2016. X persuaded Mr S to start investing with it and Mr S started making payments to X on 15 August 2016.

Mr S continued to make payments into the investment, making a final payment to X in February 2017. While Mr S was investing with X he was able to see what appeared to be a legitimate trading platform and he was also able to make substantial withdrawals.

Mr S made the following payments to X via his debit card:

Date	Payee	Amount	Payment Method
15 August 2016	Ivory Options	£500.00	Debit Card
19 August 2016	Ivory Options	£5,000.00	Debit Card
21 September 2016	Ivory Options	£10,000.00	Debit Card
21 September 2016	Ivory Options	£10,000.00	Debit Card
29 September 2016	Ivory Options	-£4,000.00	Refund
30 September 2016	Ivory Options	£5,000.00	Debit Card
30 September 2016	Ivory Options	£7,000.00	Debit Card
30 September 2016	Ivory Options	£10,000.00	Debit Card
30 September 2016	Ivory Options	£15,000.00	Debit Card
03 October 2016	Ivory Options	£6,500.00	Debit Card
03 October 2016	Ivory Options	£6,500.00	Debit Card
26 November 2016	Ivory Options	-£7,000.00	Refund
26 November 2016	Ivory Options	-£8,000.00	Refund
11 November 2016	Ivory Options	£10,000.00	Debit Card
11 November 2016	Ivory Options	£15,000.00	Debit Card
15 November 2016	Ivory Options	£10,000.00	Debit Card
05 December 2016	Ivory Options	-£5,000.00	Refund
05 December 2016	Ivory Options	-£10,000.00	Refund
09 January 2017	Ivory Options	£5,000.00	Debit Card
09 January 2017	Ivory Options	£5,000.00	Debit Card
10 January 2017	Ivory Options	£5,000.00	Debit Card
13 January 2017	Ivory Options	-£5,000.00	Refund
13 January 2017	Ivory Options	-£5,000.00	Refund
19 January 2017	Ivory Options	£10,000.00	Debit Card
19 January 2017	Ivory Options	£10,000.00	Debit Card
16 February 2017	Ivory Options	£5,000.00	Debit Card

16 February 2017	Ivory Options	£5,000.00	Debit Card
16 February 2017	Ivory Options	£5,000.00	Debit Card
16 February 2017	Ivory Options	£5,000.00	Debit Card
17 February 2017	Ivory Options	£10,003.85	Debit Card
17 February 2017	Ivory Options	£10,003.85	Debit Card
27 March 2017	Ivory Options	-£5,000.00	Refund
31 March 2017	Ivory Options	-£2,500.00	Refund

Other than the withdrawals listed above Mr S has been unable to recover any of the money he paid into the investment.

Our Investigator considered Mr S's complaint and thought it should be upheld in part. Halifax disagreed so 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.

It's clear from the information available that Mr S has fallen victim to a cruel scam. The evidence provided by both Mr S and Halifax sets out what happened. What is in dispute is whether Halifax should refund the funds Mr S lost due to the scam.

Recovering the payments Mr S made

Mr S made the payments into the scam via his debit card. When payments are made by card the only recovery option available to Halifax is to request a chargeback.

Chargeback is a voluntary scheme run by Visa whereby it will ultimately arbitrate on a dispute between the merchant and customer if it cannot be resolved between them after two 'presentments'. Such arbitration is subject to the rules of the scheme — so there are limited grounds on which a chargeback can succeed. Our role in such cases is not to second-guess Visa's arbitration decision or scheme rules, but to determine whether the regulated card issuer (i.e. Halifax) acted fairly and reasonably when presenting (or choosing not to present) a chargeback on behalf of its cardholder (Mr S).

Halifax has told us that by the time Mr S contacted it about the payments, he was outside the required time limits (120 days) for Halifax to have attempted chargeback claims. Mr S told us he spoke to Halifax about the scam before this time limit had passed but neither Halifax nor Mr S have been able to show evidence this communication took place.

Without evidence to support Mr S's claim that he contacted Halifax within the allowed timescales, I don't have enough to say Halifax could have attempted chargeback claims on his behalf.

Should Halifax have reasonably prevented the payments Mr S made?

The payments Mr S was making into the scam were substantial. The third and fourth payments were made on the same day (21 September 2016) for the value of £10,000 each, a total of £20,000 on the same day to a relatively new payee. With this information alone I would have expected Halifax's fraud prevention systems to have been triggered and for Halifax to have had a conversation with Mr S about what the payments were for.

In addition to the above, at the time Mr S made the payments to X alerts had been published on the International Organization of Securities Commissions (IOSCO) Investor alert portal, and this had been available for several months.

The IOSCO is a well-recognised source, and we would expect firms like Halifax to have updated its internal watchlist within one month of the publication of the alert. And because of this, I think Halifax should have intervened when Mr S attempted the first payment to X.

Had Halifax updated its internal watchlists it would have seen that X was providing services in a region without the correct permissions, something you would not expect to see a legitimate business do and therefore it ought to reasonably have suspected it as a fraudster.

I think if Halifax had made this clear to Mr S, he would have at least carried out some research on X before continuing with his investment. For example, Halifax could have directed Mr S to check whether X was regulated by the UK Gambling Commission which was a requirement at the time, and Mr S would have found X was not, and likely operating illegally.

So, I think Halifax should have stepped in and had a meaningful conversation with Mr S from the first payment he made, and if it had I think it's unlikely Mr S would have made any payments to X. So, Halifax is responsible for Mr S's loss.

Halifax has argued that the IOSCO warning is not detailed enough and does not carry as much weight as I have placed on it. It has also said that the FCA did not distribute a notice about X until after Mr S stopped making payments to it. But it's our long-established approach that banks in the UK ought to have updated their watch lists based on international warning lists, such as the IOSCO, so I'm unsure why Halifax feels it only needs to focus on UK warnings from the FCA given our past final decisions on this subject that have always mentioned international warning lists too. So, these comments don't change my decision.

Halifax has also argued that the payment journey does not match that seen in scams that it sees usually, with multiple credits. Again, I don't think this makes a difference as scammers often allow withdrawals from scam investments as a way of gaining trust with their victims and to encourage them to invest more. I don't think this would be considered unusual in relation to an investment scam, or that it should have prevented Halifax from stepping in when Mr S made the first payment.

None of the arguments Halifax has raised change my decision that Halifax should have stepped in and warned Mr S about the potential scam that was taking place.

Did Mr S contribute to his loss?

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).

In the circumstances, I do think it would be fair to reduce compensation on the basis that Mr S should share blame for what happened. Mr S funded the investment with X in part by taking out two separate loans totalling £50,000. Mr S has told us that he likely gave misleading information when he took the loans as directed by X. I think this is likely as loans are not usually granted for investment purposes.

Although Mr S was under pressure to take the loans to fund the investment, I think the request by X to take out two separate loans to fund the investment should have raised red flags for him as I don't think it was reasonable for Mr S to assume this would be a request made from a legitimate broker, especially when Mr S was told to be dishonest in the

application. I think this should have prompted Mr S to do more research on X, which in turn could have uncovered the scam.

I think it would be fair to reduce compensation by 50% on the basis that Mr S should share some blame for what happened.

Putting things right

I have explained above why I think Bank of Scotland plc trading as Halifax is responsible for some of the loss Mr S incurred because of this scam.

Bank of Scotland plc trading as Halifax should refund all the payments Mr S made into the scam less the refunds he received. It can also make a 50% reduction from this amount.

Bank of Scotland plc trading as Halifax should add 8% simple interest per year to the amount it pays Mr S from the time Mr S made the payments to the time Bank of Scotland plc trading as Halifax provides the refund (less any lawfully deductible tax).

My final decision

I uphold this complaint and require Bank of Scotland plc trading as Halifax to put things right as I've outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 11 August 2023.

Terry Woodham
Ombudsman