

The complaint

Mr T complains that Bank of Scotland plc trading as Halifax did not stop payments he lost to an investment.

What happened

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here.

Mr T chose to invest in a company involved in overseas property redevelopment which I'll call 'D'. On 30 September 2016 and 3 October 2016, he made two payments of £25,000 from his Halifax account, having been contacted out of the blue by someone who introduced him to the investment.

D has since declared bankruptcy and is in liquidation. When Mr T complained to Halifax, he argued that it had failed to intervene when he made the transactions. His representative said he had no investment experience and if he'd been warned about the risks and been provided with additional information about the risk of fraud he wouldn't have proceeded with the payments. He said D was receiving large sums of commission which wasn't disclosed to Mr T and it was common knowledge within the industry that the investment was high-risk and not suitable for retail clients.

The representative said Halifax should have blocked the payments and that the Payment Services Regulations 2017 required it to ensure the funds weren't being appropriated. They also said the payments should be reimbursed under the Contingent Reimbursement Model ("CRM") code.

Halifax looked into the scam claim and based on what it had seen, it could not find that D had intentionally defrauded Mr T and instead felt this was a genuine, but unsuccessful, investment. Because of this, it didn't agree that it should have done more to stop the payments or issue scam warnings. It said this was a failed investment and Mr T wasn't entitled to a refund.

It explained the payments pre-dated the CRM code which was launched in May 2019 and as Mr T had paid an account held with a Financial Conduct Authority (FCA) regulated money transmission firm, the payments would have been fully automated and there were no triggers to suggest he shouldn't be making them. Finally, it said it was unable to contact the receiving bank because the payments were made seven years ago and the beneficiary had since gone into liquidation.

Mr T wasn't satisfied and so he complained to this service, but our investigator didn't think the complaint should be upheld. He didn't think the payments were out of character, so there would have been no reason for Halifax to intervene. And even if had it done so he thought Mr T would likely have gone ahead with the payments as he'd done due diligence, he was satisfied the payee details were correct, and there was no evidence or information which would have confirmed the investment was a scam. He also said that given the length of time since the payments were made, recovery wasn't an option.

Mr T has asked for his complaint to be reviewed by an Ombudsman. His representative has argued that Mr T was cold called and given advice by an unregulated company and even though it wasn't common knowledge that the investment was a scam when Mr T made the payments, Halifax should have exercised reasonable skill and care when executing the transactions and made enquiries which would have established that he was being advised by an unregulated individual. They have also argued Mr T wasn't a high net worth individual, which is evidence that he was a victim of a scam.

The representative maintains that if Halifax had spoken to Mr T before he made the payments, it could have uncovered the scam and he wouldn't have proceeded with the investment.

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.

Having done so, I've reached the same conclusion as our investigator. And for largely the same reasons. I know Mr T feels strongly about this complaint and this will come as a disappointment to him, so I'll explain why.

The Contingent Reimbursement Model ("CRM") Code requires firms to reimburse customers who have been the victims of Authorised Push Payment ('APP') scams. But Halifax has said the payments pre-dated the code which came into force in May 2019, so the code doesn't apply. I'm satisfied that's fair.

Banks and other Payment Services Providers ("PSPs") have a duty to protect customers against the risk of financial loss due to fraud, but when simply executing authorised payments, they don't have to protect customers against the risk of bad bargains or give investment advice. I don't intend to make a finding on whether the payments were made to a scam because even if Halifax had intervened, I don't think it would have made a difference. I'll explain why.

Prevention

I'm satisfied Mr T 'authorised' the payments for the purposes of the of the Payment Services Regulations 2017 ('the Regulations'), in force at the time and under the terms and conditions of his bank account, he is presumed liable for the loss in the first instance.

The principles set out in the FCA handbook state that firms such as Halifax should pay due regard to the interest of its customers and treat them fairly. So, I've considered whether Halifax have done so in relation to the payments.

I've looked over the statements for the account the payments were made from. Significantly, even though Mr T was paying a new payee, he'd made payments of £230,000 and £49,257.22 on 1 August 2016, so £25,000 wasn't out of character for the account. Additionally, even if I considered Halifax ought to have had a conversation with Mr T when he made the payments, I don't think this would have changed his mind about going ahead with the investment.

Mr T's representative has pointed out that D was not regulated by the FCA, however, as this was an overseas investment, depending on how it was set up, it may not require regulation, so this would not necessarily be a cause for concern. Based on the limited information

available, I've seen nothing to suggest there would have been significant cause for concern when Mr T made the payments, so I think it's unlikely a conversation with Halifax would have made him change his mind about carrying on with the investment.

Recovery

D had financial problems and declared bankruptcy towards the end of 2020. Mr T, via his representative, raised a complaint with Halifax in June 2023. Due to the length of time between Mr T making the payments and him raising a complaint, as well as the fact D has declared bankruptcy, he should register with the liquidator if he hasn't done so already, as Halifax will not be able to assist him further in recovering his funds.

Having carefully considered everything available to me, I don't direct Halifax to refund the transactions in question.

My final decision

For the reasons I've outlined above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 16 April 2024.

Carolyn Bonnell
Ombudsman