

The complaint

Mr H is unhappy about a £10,000 payment he made in 2017. The company he invested in has since gone into liquidation and he thinks Bank of Scotland trading as Halifax ought to refund him.

What happened

In 2017 Mr H was contacted by an IFA with an investment opportunity. Mr H made a payment of £10,000 to a company I'll refer to as A, with payments being made on to an investment company – which I'll refer to as W.

Mr H received returns throughout 2018 and 2019. Mr H was contacted in 2020 to say W had gone into liquidation. In 2023 Mr H raised a complaint with his bank saying it should have done more at the time he made the payment. Halifax considered Mr H's complaint but said the payment on Mr H's account was not unusual and the company Mr H was dealing with, at the time appeared genuine and the claim therefore was not covered by the Contingent Reimbursement Model (CRM).

One of our investigators looked into things. She said Halifax ought to have considered the payment as unusual – the payment was higher in value than other payments on Mr H's account. And she thought Halifax ought to have intervened and contacted Mr H before processing the payment. But she didn't think this would have made a difference. W gave the appearance of looking legitimate at the time of the payment. And Mr H had been advised by an IFA about the investment opportunity and he was paying A direct which was a legitimate company, and this would have reassured Mr H that he was likely making a legitimate payment at the time.

Halifax didn't make attempts to recover Mr H's money but by the time the claim was raised W had been dissolved for a number of years. The investigator thought Halifax's actions here wouldn't have prevented Mr H's losses, so she didn't think it needed to do anything further to recover Mr H's funds.

Mr H and his representatives disagreed with the findings. In summary they said:

- It provided details on why it thought W had operated as a scam:
- It explained why it thought Halifax owed Mr H a duty of care when he made this payment
- It said if Halifax had spoken to Mr H, the scam would have been exposed

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.

Mr H and his representatives have provided very little evidence to support their claim here. There isn't any contractual agreement between Mr H and W or A, or any correspondence between all the parties involved. However, I have seen the evidence Mr H's

representatives have provided which it says supports the claim that Halifax ought to have intervened and this would have exposed W, as being a scam.

I have carefully noted the representations made by all the parties, but I won't be addressing every single point that's been raised. No disrespect is intended, and it doesn't follow that the points haven't been considered, simply that I don't need to particularise every point in reaching an outcome, I consider to be fair and reasonable in all the circumstances. I've instead concentrated on the issues I think are central to the outcome of this complaint.

The Contingent Reimbursement Model (CRM) code does not apply here as the payment was made before the code was in force. But in broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the terms and conditions of the customer's account. So, under the Payment Services Regulations 2017 (PSRs) and the terms of the account, Mr H is presumed liable for the loss in the first instance.

However, taking into account the law, regulatory rules and guidance, relevant codes of practice and good industry practice, there are circumstances where it might be appropriate for a bank to take additional steps or make additional checks before processing a payment in order to help protect customers from the possibility of financial harm from fraud.

Halifax says this isn't a scam and W was a legitimate company when Mr H made his payment. I note W has since been dissolved. I also note Mr H received returns for two years in 2018 and 2019. However, it seems that Mr H's representatives have shared information about the status of W, and detail, about how W conducted its business, which have only come to light some-time after Mr H made his payment. The decision I have to make, is not about what Halifax ought to now know, with hindsight, but what was reasonable for it and indeed Mr H to have known at the time he made the payment.

And I'm satisfied that if Halifax had intervened with Mr H's payment, I don't think it would have made a difference in this case, broadly for the reasons the investigator previously outlined – which I have expanded on below.

Causation is a critical determination factor in every fraud case. I need to be satisfied that suitable intervention would have made a difference to Mr H's decision making or that Halifax could have reasonably prevented the loss. In doing so, I reach my decision on the balance of probabilities – so what I consider more likely than not based on the evidence and wider circumstances of the case.

Mr H says he received independent advice from an IFA about the investment. If questions had been asked about the nature and purpose of the payment Mr H was proposing to make, I think it's more likely than not, that Mr H would have explained he was investing in W and he'd received advice from an IFA before doing so. Whilst I appreciate Mr H might have carried out more research if he'd discussed the investment with Halifax, I don't think Mr H would have had any cause for concern that the payment he was making wasn't legitimate at the time. I'm not persuaded sufficient information was readily available at the time which would have caused Mr H or Halifax concerns.

In short, while I've carefully reviewed all of Mr H's and his representatives' submissions, I don't find that significant concerns would (or could) have been readily uncovered by either Halifax or Mr H at the relevant time. I can only reasonably expect any enquiries by Halifax to have been proportionate to the perceived level of risk. All considered, I don't think it likely that Halifax could have prevented this payment from being made, or otherwise caused Mr H not to proceed.

Given that W had long been dissolved by the time Mr H reported the issue, there was no prospect for recovery of his funds. So even had Halifax determined this to have been a scam and attempted to recover the payment, at this point it would have made no difference.

Having carefully considered everything Mr H and Halifax have submitted, I don't find Halifax could have reasonably prevented Mr H's loss here. Neither do I find it materially at fault otherwise

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 27 February 2024.

Sophia Smith
Ombudsman