

## The complaint

Mr G complains that Bank of Scotland plc trading as Halifax did not refund a series of payments he lost as part of a scam.

## What happened

Mr G's broker was approached by an overseas investor that I'll call GC. Mr G had known his broker for around 13 years and had worked with him successfully on numerous projects, so trusted his judgement. GC was looking to invest in projects in the United Kingdom, so Mr G's broker let him know about the opportunity.

Mr G put forward a business plan and GC granted him a business loan totalling £900,000. However, in order to secure this, they explained Mr G needed to pay £34,000 in insurance, which he agreed to. Following this, he had to make additional payments for a funding fee. The payments were as follows:

- 31/3/22 - £34,000
- 1/4/22 - £34,000 bounced back into Mr G's account
- 1/4/22 - £34,000
- 26/4/22 - £14,000
- 1/6/22 - £33,000
- 22/7/22 - £5,000

Mr G was then asked to pay another £9,000 and at that point he became suspicious. His accountant became aware of the payments and after looking into GC, found that he had been the victim of a scam. He raised a scam claim with Halifax as a result.

Halifax attempted to recover the funds from the international receiving bank but unfortunately this was unsuccessful. They issued a final response letter on 28 March 2023 in which they explained the payments do not fall under the protection of the voluntary Contingent Reimbursement Model ("CRM") code because they are international payments. However, if they were to review the claim under the code, they did not think Mr G had a reasonable basis to believe the scam was genuine. They said all payments had been made in branch and the staff recalled providing scam warnings and asking Mr G about the payments. Because of this, they didn't think they had missed an opportunity to reveal the scam.

Mr G referred the complaint to our service, via a representative. Our Investigator looked into it and felt that as the payments had been discussed in branch and Mr G had been given warnings but still went ahead with the payments, there wasn't much more they would expect Halifax to do in the circumstances. In addition, they pointed out that Mr G was introduced to the scam by his own broker who he trusted, and that Mr G was a director of a number of construction and real estate businesses, so the scam was related to his area of expertise.

Mr G's representative responded and said that when the first payment bounced back, he telephoned the scammer while in the branch, so Halifax should have seen that he was being coached at the time and therefore invoked the banking protocol. And they pointed out that paying up front fees for a loan is highly suspicious, so the payment should have been

referred to the bank's fraud team.

As an informal agreement could not be reached, the complaint has been passed to me for a final 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.

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to be good industry practice at the time.

Broadly speaking, the starting position in law is that an account provider is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the terms and conditions of the account. And a customer will then be responsible for the transactions that they have authorised.

It's not in dispute here that Mr G authorised the payments as he believed they were part of a legitimate investment. So, while I recognise that he didn't intend the money to go to scammers, the starting position in law is that Halifax was obliged to follow Mr G's instruction and process the payments. Because of this, he is not automatically entitled to a refund.

The regulatory landscape, along with good industry practice, also sets out a requirement for account providers to protect their customers from fraud and financial harm. And this includes monitoring accounts to look out for activity that might suggest a customer was at risk of financial harm, intervening in unusual or out of character transactions and trying to prevent customers falling victims to scams. So, I've also thought about whether Halifax did enough to try to keep Mr G's account safe.

As has already been mentioned, Mr G made all of the payments in branch. So there was face-to-face interaction between Mr G and Halifax prior to the payments being processed. What's left to determine is whether Halifax did enough to ensure Mr G was not at risk of financial harm. And if I think more should have been done, whether any further questions or warnings would have 'broken the spell' and revealed the scam.

Unfortunately, there is no way for me to know exactly what happened in branch, but I do have recollections from both Mr G and Halifax. Mr G says that he was asked what the purpose of the payment was and if he'd met the payee, but wasn't asked much more. The branch staff from Halifax had a clear recollection of Mr G and the payments, and were able to give a relatively detailed recounting of what happened. They confirmed Mr G was very knowledgeable and confident about the payments, that he was the director of businesses in the property field and that the initial payment was for insurance to protect the loans he was taking out. And that they went through their general fraud leaflet with him and read through the fraud script they would run through with any payment over £5,000.

I can understand that Mr G would have appeared confident about the payments, as he had no reason at that stage to believe there was anything suspicious about GC. While I appreciate that they gave Mr G general scam warnings at the time, Halifax should still have asked questions about the payments to satisfy themselves he was not at risk of financial harm. Most of the payments were relatively high value and Mr G had said the initial payment was insurance for a loan, which has the hallmarks of an advance fee scam. However, on balance, I think it's unlikely that further questions would have revealed the scam or

dissuaded Mr G from carrying on with the payments. I'll explain why.

While there isn't a set list of questions to be asked, I would have expected the staff to have asked Mr G how he came across the company and the investment, and what due diligence had been carried out. And if this had happened, I think it's more likely he would have confirmed that his long-standing broker had introduced him to the company and that he was satisfied due diligence had been carried out prior to him making contact with them. And his broker also had other clients who were already using GC, which made them seem even more genuine.

Considering the way Mr G was introduced to the scam, and the fact his own trusted broker felt it was genuine, it is difficult for me to agree that more proportionate questions or a tailored scam warning from Halifax would have broken the spell that Mr G and his broker were under. Even after the final payment, it took more funds being requested and Mr G's accountant looking into the company for the scam to be revealed. Because of this, I can't agree that Halifax missed an opportunity to meaningfully reveal the scam and avoid the transfers being made.

Mr G's representative has said that the incorrect payment details being used and Mr G being on the phone to the scammer in the branch should have been cause enough for Halifax to invoke the Banking Protocol and call the police to the branch. I've thought about this carefully, but I don't agree this would have been a reasonable response to the situation. Halifax has confirmed only the initial two letters of the IBAN were missing from the payment, so the payment was re-sent to the same intended initial account. Also, Mr G stated that the only contact he had with the scammer was via his broker, so I think it's more likely he was speaking with the broker while he was in the branch. On balance, I don't think it would have been reasonable for Halifax to telephone the police to speak with Mr G because he was calling to confirm an account number for a payee.

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

### **My final decision**

I do not uphold Mr G's complaint against Bank of Scotland plc trading as Halifax.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 15 March 2024.

Rebecca Norris  
**Ombudsman**