DRN-4480881

Complaint

Mr F is unhappy that Bank of Scotland plc trading as Halifax didn't reimburse him after he told it he'd fallen victim to a scam.

Background

In 2020, Mr F was actively seeking investment opportunities and came across a company offering bonds. I'll refer to that company as K. The idea behind the investment was that the funds would be used to provide short-term bridging loans to retail customers. The offer was particularly appealing because the returns were generous (over 9% per year) especially during a time when interest rates were historically low.

Mr F invested £25,000 in one of K's bonds, expecting the investment to last for three years. He made the investment by authorising a payment from his Halifax account. Initially, he was told that interest would be paid quarterly, but later, K informed him that the interest would only be paid when the bond matured. He thought he must have fallen victim to a scam when he wasn't able to contact anyone at K. Insolvency proceedings involving K began in 2023 and in July 2023, its creditors successfully applied to liquidate the company.

Mr F contacted Halifax in late 2022 and requested a refund. While it did not agree to refund him in full, it acknowledged that it could have done more to protect him. Halifax argued that Mr F should have conducted independent checks on the legitimacy of the investment, especially given the unusually high returns on offer, which it considered suspicious. Nevertheless, Halifax admitted it had not provided Mr F with an effective warning about the risks of fraud at the time of the payment and agreed to refund 50% of his losses.

Mr F wasn't happy with that response and so he referred his complaint to this service. After that happened, Halifax altered its stance. Despite issuing a partial refund, the bank now argued that Mr F was not a victim of fraud but had simply invested in a legitimate company that had failed. Halifax maintained that Mr F simply had a civil dispute with K, the company that had purported to provide the investment.

However, on 9 May 2023, the Insolvency Service wrote to creditors of K. Its letter said:

> *The Official Receiver as a liquidator has a duty to investigate the company's trading and directors' conduct and secure any assets for the benefit of the company's creditors … The company was unregulated by the Financial Conduct Authority (FCA) but provided investment bonds with high interest returns. Investors have been led to believe their investment was to be used to provide UK short term bridging loans. There has been no evidence of any bridging loans made by the company to date, but the Official Receiver's investigation is on-going …"*

By this point, the case had been allocated to one of our Investigators. He reviewed the case and concluded that Mr F had fallen victim to a scam. He did so in reliance on the Insolvency Service's findings. He then considered the case under the terms of the Contingent Reimbursement Model (CRM) Code, which requires firms to reimburse victims of authorised push payment (APP) scams. In the Investigator's view, Mr F had made his payments with a reasonable basis for believing that the investment was legitimate. As a result, the Investigator recommended that Halifax reimburse him in full.

Halifax disagreed with the Investigator's assessment. It didn't agree that Mr F had fallen victim to a scam. It pointed out that the investigation into K was still ongoing. Fraud had not been definitively confirmed. Additionally, the local police told Halifax that there was no active investigation into K, leaving the matter in the hands of the Insolvency Service. Halifax also noted that no warnings about K had been posted on the FCA's website, which would typically occur once an investment scam came to light. It also observed that K's investment brochure included a disclaimer, warning potential investors that the bonds were non-transferable and unregulated. It argued that such disclaimers were unusual in investment scams. Finally, Halifax pointed to reviews on a third-party website that appeared to be from verified customers who had arranged bridging loans with K. The bank believed these reviews suggested that K was a legitimate business, rather than a scam.

Halifax also argued that, even if Mr F had been the victim of a scam, it didn't think it should be expected to reimburse him under the terms of the CRM Code. In its view, a return of 9% per year was unrealistically high. It believed that he should have been more sceptical of such returns, particularly given the low interest rates available to retail investors at the time. Halifax also felt that Mr F had not carried out adequate checks before making the investment.

As Halifax did not accept the Investigator's decision, the complaint was passed to me for a final decision.

Findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

In broad terms, the starting position at law is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations (in this case, the 2017 regulations) and the terms and conditions of the customer's account. However, that isn't the end of the story. Halifax is a signatory to the Lending Standards Board's Contingent Reimbursement Model Code ("the CRM code"). This code requires firms to reimburse customers who have been the victim of authorised push payment ("APP") scams, in all but a limited number of circumstances.

<u>Does the CRM Code apply here?</u>

The CRM Code doesn't apply to all payments. It only offers protection to customers if they're victim of an authorised push payment (APP) scam. The Code defines that as being where a customer *"transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent."*

It also specifically states that it doesn't cover *"private civil disputes, such as where a customer has paid a legitimate supplier for goods, services, or digital content but has not received them, they are defective in some way, or the customer is otherwise dissatisfied with the supplier"*

Halifax says Mr F isn't the victim of a scam and so the CRM Code isn't applicable to this payment. I'm not persuaded by that. He believed his investment was being used to fund short-term bridging loans for property development, with the expectation of receiving regular returns. However, it does not appear that there is much evidence that K ever provided bridging loans to borrowers. The Insolvency Service also noted concerns that K may have been operating as a Ponzi scheme and that the directors had been failing to cooperate with its investigation.

I’ve considered the reviews on the third-party website which appear to show feedback left by K’s borrowers. I’m afraid I’m not convinced that the evidence shows that the verification process for that site was robust enough to prevent manipulation by a company like K, which may have sought to use it to build false credibility. It's also significant that, despite extensive investigation by the Insolvency Service, no evidence of a single loan has been found. Its investigation includes the period in which Mr F’s bond was still active. It seems improbable that those reviews were left by genuine borrowers.

Finally, I considered Halifax’s argument that no warning about K has been posted on the FCA warnings list. But that doesn’t, in my view, outweigh all the other evidence supporting the claim that this was a scam.

<u>Should Halifax have reimbursed Mr F under the CRM Code?</u>

The starting principle is that a firm should reimburse a customer who is the victim of an APP scam. The circumstances where a firm may choose not to reimburse are limited and it is for the firm to establish those exceptions apply. R2(1) of the CRM Code outlines those exceptions. One exception is where the customer ignored an effective warning. Another is where the business can demonstrate that the customer made the payment without a reasonable basis for believing that it was for genuine services or that the business they transacted with was legitimate.

Halifax acknowledged that it had not provided Mr F with an effective warning, which is why it refunded 50% of his losses. The remaining question is whether Mr F had a reasonable basis for believing the investment was legitimate. The Investigator concluded that Mr F had a reasonable basis of belief here and I’d agree with that conclusion. The investment company had a professional-looking website and supporting literature, which would have reassured Mr F. While a return of 9% per annum was out of keeping with the typical rates available at the time, I must consider that alongside all the other factors here. For example, K didn’t present this investment as guaranteed. The brochure supporting the bond said that investor capital is at risk and that *"… all investment is speculative and involves risk."* While the promised returns were very high, I do not believe they were so extraordinary that it should have raised immediate suspicion, particularly when combined with other factors that suggested it may be legitimate.

For these reasons, I’m persuaded that Halifax should have reimbursed Mr F under the CRM Code.

Final decision

For the reasons I’ve set out above, I uphold this complaint.

If Mr F accepts my final decision, Bank of Scotland plc trading as Halifax should refund the money Mr F lost to the scam, less any refund it has already paid.

It should also add 8% simple interest per annum to that sum calculated to run from the date it considered his claim under the CRM Code until the date any refund is paid.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr F to accept or reject my decision before 1 November 2024.

James Kimmitt
Ombudsman