DRN-4623080

Complaint

Mr P 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 July 2023, Mr P fell victim to a scam after he invested his money with a company I'll refer to as B. He says he heard about the investment when he received a text message from someone he hadn't seen in years. This individual had previously been a customer at the restaurant where Mr P worked as a chef.

He contacted B. One of its representatives explained how to set up an e-wallet to buy and sell cryptocurrency. I understand he used his Halifax account to make payments to his e-wallet. Those deposits were then converted into cryptocurrency and transferred into the control of the fraudsters. Mr P did so because he believed he was putting his cryptoassets under the control of someone who would manage them on his behalf. B gave him access to a professional-looking online portal to monitor his investments and deposits in real time. According to Mr P, the representative appeared knowledgeable and professional. Mr P was promised *"life-changing"* returns and that he could double his money. Unfortunately, this wasn't a legitimate investment opportunity but a scam.

He realised that it wasn't legitimate when he wanted to withdraw funds from his account. He was told that he'd need to pay a fee of £10,000 to do so. He notified Halifax, but it didn't agree to refund him.

Mr P wasn't happy with that response and so he referred his complaint to this service. It was looked at by an Investigator who upheld it in part. The Investigator concluded that the bank should have identified the fraud risk at the point of the second payment (£7,000). She noted that this payment was larger than Mr P's recent transactions, was made to a new payee, and was linked to a well-known cryptocurrency exchange—factors that should have raised concerns. She felt the bank ought to have intervened and questioned Mr P about the payment, which could have prevented further losses.

However, the Investigator also found Mr P partially responsible for his losses, as she felt he should have exercised more caution. She recommended that the bank refund 50% of his losses from the second payment onwards. Neither Mr P nor the bank agreed with this outcome, so the complaint has been referred 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. Good industry practice required that Halifax be on the lookout for account activity or payments that were unusual or out of character to the extent that they might indicate a fraud risk. On spotting such a payment, I'd expect it to make enquiries with the customer to satisfy itself that they weren't at risk of financial harm due to fraud.

The Investigator concluded that the bank should have intervened before processing the second payment of £7,000. I'd agree with that conclusion. This payment was larger than Mr P's usual transactions and was sent to a new payee with a known connection to a cryptocurrency exchange. These factors should have prompted the bank to make enquiries about the payment's purpose and the circumstances surrounding it. If the bank had questioned Mr P, I believe he would have been honest about the nature of the transaction. I've seen no evidence to suggest he was instructed to mislead the bank. If the bank had made appropriate enquiries, it is likely the fraud risks would have become apparent, and Mr P could have been persuaded not to proceed.

However, I've also considered whether it would be fair and reasonable for Mr P to bear some responsibility for his own losses. In doing so, I've taken into account what the law says about contributory negligence while keeping in mind that I must decide this case based on what I consider to be fair and reasonable in all the circumstances. I accept that Mr P did sincerely believe this was a genuine investment opportunity, but I'm not persuaded that it was reasonable for him to have done so. He received the investment recommendation via a text message from someone he hadn't spoken to in years and with whom he didn't have a particularly close connection. I don't think it was reasonable for him to have taken at face value the unsolicited advice from this person about a significant financial investment.

Furthermore, the promise of *"life-changing"* returns and claims that he could double his money were clear red flags. While I accept that there has been media coverage of individuals earning extremely large returns from investments in cryptocurrency, I think it would be reasonable to have expected Mr P to wonder about the risk to his investment. From what I've been told, there was no discussion about the possibility of the market in cryptocurrency declining and Mr P losing his money. While the media narrative about large returns on crypto investments might have made this offering seem initially more plausible, I think he ought to have been more sceptical about someone generating these returns for him for free and with no risk to his initial investment. In my view, he should have proceeded with greater caution here. For that reason, I think it's fair and reasonable for Halifax to make a 50% deduction from the compensation payable to him.

I've taken on board what Mr P's representatives have said about his vulnerability at the time. It's pointed out that English isn't Mr P's first language and that he was unfamiliar with lots of the technical language surrounding investments. I'm not persuaded that those facts alone meant he couldn't have protected himself from this scam.

I don't say any of this to downplay or diminish the fact that Mr P has fallen victim to a cruel and cynical scam. I have a great deal of sympathy for him and the position he's found himself in. However, my role is limited to looking at the actions and inactions of the bank and I'm satisfied that this represents a fair outcome in all the circumstances.

Final decision

For the reasons I've explained above, I uphold this complaint in part.

If Mr P accepts my final decision, Bank of Scotland plc needs to pay him 50% of the money he lost to the scam from the second payment onwards. It also needs to add 8% simple interest per annum to those payments calculated to run from the date they left his account until the date any settlement is paid.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr P to accept or reject my decision before 24 December 2024.

James Kimmitt
Ombudsman