DRN-4703110

The complaint

Mr E complains that Bank of Scotland plc, trading as Halifax, won't refund the money he lost when he was the victim of what he feels was a scam.

What happened

In early 2018, Mr E was looking to invest some inheritance he had received and was contacted by a broker who introduced him to a bond being offered by an investment company. After speaking with the broker and being sent information and documents about the bond, Mr E decided to invest. And so he made a payment from his Halifax account to the investment company of £5,000 on 20 February 2018.

Mr E received a bond certificate confirming his investment, as well as the scheduled monthly interest payments he was told he would receive. And so he then decided to invest further, and made another payment from his Halifax account to the investment company of £15,000 on 5 September 2018.

Mr E continued to receive the scheduled monthly interest payments he was told he would receive until early 2020, when the investment company said it had to stop the payments due to the global pandemic. The payments then never restarted, and Mr E later found out the investment company had gone into administration. He then contacted Halifax to report the payments he had made as a scam and ask it to refund the money he had lost.

Halifax investigated but said the investment company was genuine at the time Mr E made the payments, as it was still trading and was registered on the government's register of limited companies. It also said the payments Mr E made were in line with the usual activity on his account, so it had no reason to intervene. And so it said it felt this was a civil dispute between Mr E and the investment company, and didn't agree to refund the money he had lost. Mr E wasn't satisfied with Halifax's response, so referred a complaint to our service.

One of our investigators looked at the complaint. They didn't think Halifax should reasonably have been expected to prevent the payments, as they weren't unusual or suspicious based on Mr E's usual account activity. And they said that, even if Halifax had intervened when Mr E made the payments, they didn't think the scam would have been uncovered as the information Mr E had about the investment wouldn't have caused any concern. So they didn't think Halifax should have to refund the money Mr E lost. Mr E disagreed with our investigator, so the complaint has been passed to me.

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.

Halifax has argued that the investment company Mr E made the payments to wasn't operating a scam, and so it isn't responsible for refunding the money he lost. But, even if this was a scam, I don't think it would be fair and reasonable to require Halifax to refund the payments Mr E made here. I'll explain why below.

Banks are expected to make payments in line with their customers' instructions. And Mr E accepts he made the payments here. So while I recognise he now feels he has been the victim of a scam, he did authorise the payments. And so the starting position in law is that Halifax was obliged to follow his instructions and make the payments. So Mr E isn't automatically entitled to a refund.

However, the regulatory landscape, along with good industry practice, sets out requirements for banks to protect their customers from fraud and financial harm. So, in line with this, I think Halifax should fairly and reasonably:

- Have been monitoring accounts and any payments made or received to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams.

- Have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer.

- In some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

But even if Halifax had identified that Mr E was potentially at risk of financial harm as a result of the payments he made to the investment company, and carried out the level of checks we would expect it to have done to address this risk, I don't think it would have uncovered significant concerns.

In these circumstances and given the size of the payments Mr E was making, I think it would be reasonable to expect Halifax's checks to include questions about the purpose of the payment and then relevant follow-up questions about the investment Mr E thought he was making and what checks he had done to satisfy himself it was genuine.

Mr E thought he was investing in a bond with the investment company, where he would provide capital and the company would pay him interest each month and return his capital at the end of the agreed term. And as this is a fairly standard format of investment, I don't think this will have seemed particularly suspicious to Halifax.

At the time Mr E made the payments, the investment company had been listed on the government's register of limited companies and filed accounts for a number of years. And I wouldn't necessarily expect this of a company intending to operate a scam. So if Halifax had suggested Mr E check this when it asked about the payments, I think this would have reassured both Mr E and Halifax that the investment company was genuine.

Mr E had been told he would receive interest of 12% per annum on the amount he invested, which I don't think is such a high rate for this kind of investment that it should have caused Halifax significant concern that what Mr E was being told was too good to be true. And by the time Mr E made the second payment, he had been receiving the monthly interest payments he was told he would receive from his first investment for a number of months. So I think this will also have reassured Halifax that the company Mr E was investing in was genuine.

I've also seen copies of the communication Mr E had from both the broker and the investment company, as well as copies of the various marketing material, application forms and bond certificates he was sent. And I think this all looked relatively professional and legitimate. So, if Halifax had asked to see any paperwork associated with the investment, Mr E would have been able to provide this and I don't think this would have caused Halifax any concern.

And so if Halifax had carried out the checks I would've expected when Mr E tried to make these payments, I think it would have been satisfied with the information it was given and I don't think anything it was told or shown would've caused it significant concern. Based on the information I would have expected it to uncover at the time, I think this would have looked like a genuine investment to Halifax. And so I wouldn't have expected it to stop Mr E making the payments.

During this complaint, Mr E has referred to information about the investment company uncovered by him or the administrators of the company, which he feels shows the company was clearly not viable and operating a scam from the beginning. But some of this information has only come to light since the payments he made, and wouldn't have been available to either him or Halifax at the time. I also wouldn't have expected Halifax's checks to go into the level of detail necessary to uncover this kind of information, as the information it would've been given from the checks I would've expected it to do wouldn't have uncovered any significant concerns. So I don't think this information Mr E has referred to means Halifax acted unreasonably in allowing the payments to go through.

I appreciate that these payments are a significant amount of money for Mr E and I sympathise with the position he has found himself in. I'm also in no way saying he did anything wrong himself or that he doesn't have a legitimate grievance against the investment company. But I can only look at Halifax's responsibilities and, for the reasons I've set out above, I don't think Halifax acted unreasonably in allowing the payments Mr E made to go through or that anything I would reasonably have expected it to have done would have stopped him sending money to the investment company.

I therefore don't think it would be fair to require Halifax to refund the payments Mr E made.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 25 April 2024.

Alan Millward
Ombudsman