

The complaint

Mr B complains that Bank of Scotland plc (trading as Halifax) did not refund a series of payments he says he lost to a scam.

What happened

Mr B had previously invested with an individual who I'll call 'X' and was contacted by him again in June 2019. At that point he had no issues with the previous investment he made with X. Mr B says the new opportunity was related to the sale of promissory notes but has also said it related to a bond and to an investment related to rental properties that were backed by the government. He made the following payments:

- 12/7/19 - £2,500
- 12/8/19 - £2,500

These were to a group I'll call 'G' who Mr B signed a loan agreement with, where he agreed to loan them £5,000, split across two 'loans' of £2,500. This stated he would receive 10% interest compounded yearly and he was due repayment in full on 3 July 2020.

Mr B says he received two payments from G but nothing further. Following this, X stopped communicating with him and he thought he had been the victim of a scam. He contacted Halifax about this, but having reviewed the evidence, they felt this was more likely a civil dispute as they couldn't see any evidence of a scam. Mr B disagreed with this and referred the complaint to our service.

Our Investigator looked into the complaint and felt that they had not seen any convincing evidence to substantiate Mr B had been the victim of a scam. They saw promissory notes between Mr B and G, but these did not show he was making an investment and instead appeared to be loan agreements. Because of this, they thought Halifax had acted reasonably when it treated the case as a civil dispute.

Mr B disagreed with the findings as he did not think it should be treated as a civil dispute. 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.

It isn't in dispute that Mr B authorised the payments totalling £5,000. Because of this the starting position – in line with the Payment Services Regulations 2017 – is that he's liable for the transactions. But he says that he has been the victim of a scam.

Halifax has signed up to the voluntary Lending Standards Board's Contingent Reimbursement Model ("CRM") code, which provides protection to scam victims. Under the CRM Code, the starting principle is that a firm should reimburse a customer who is the victim

of an authorised push payment (“APP”) scam (except in limited circumstances). But the CRM Code only applies if the definition of an APP scam, as set out in it, is met. I have set this definition out below:

...a transfer of funds executed across Faster Payments...where:

(i) The Customer intended to transfer funds to another person, but was instead deceived into transferring the funds to a different person; or

(ii) The Customer transferred funds to another person for what they believed were legitimate purposes but which were in fact fraudulent.

So, I’ve considered whether or not the transactions fall under the scope of an APP scam as set out above. Having done so, I haven’t seen enough to agree that it does. I’ll explain why in more detail.

Mr B has said in his complaint form that the investment was related to a bond, however his initial representative said X was selling promissory notes as an investment opportunity and this is how Mr B lost the funds. To Halifax, Mr B said that the payments were for a loan to help pay for rental accommodation, and the scheme was backed by a government guarantee. However, apart from an e-mail from X saying they had new investment opportunities and the promissory note, there is nothing else that I’ve seen that shows what Mr B was paying for or how X presented the investment to him.

The agreement is between Mr B and G, and the signee for G appears to be the director listed on Companies House. And I can see the initial interest payment of £19 was paid to Mr B as per the agreement, with a payment of £30.12 following month. On balance, I’ve not seen enough for me to be satisfied Mr B was the victim of a scam as set out in the code above. I think the funds went to the individual intended, and I’ve not been persuaded that the funds were not used for legitimate purposes. Mr B agreed to loan G money and it seems G did not meet the repayments as agreed. But nothing I’ve seen convinces me that this was a result of a targeted scam.

With this in mind, I think it was reasonable for Halifax to treat the complaint as a civil dispute, so I don’t think they have made an error in the circumstances. It follows that I do not think Halifax needs to refund Mr B.

My final decision

I do not uphold Mr B’s complaint against Bank of Scotland plc.

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

Rebecca Norris

Ombudsman