

The complaint

Miss S complains that Bank of Scotland plc trading as Halifax hasn't refunded her after she fell victim to a scam.

Her complaint is brought to our service on her behalf by a professional representative I'll refer to as R.

What happened

Miss S became interested in learning more about investing. She found a business online – I'll call it F – which offered training courses. Miss S signed up, paid for a course, and was happy with what she received. She wanted to learn more, but the cost of further instruction was very high.

Miss S met someone that worked at F through her engagement with the course. I'll call him Mr L. He worked for F as one of its investors and trainers. Mr L offered to provide Miss S with one-to-one coaching at a lower cost than was being offered by F. He said he'd charge £5,000 for a year of tutoring and mentorship. Miss S was keen but couldn't afford that much upfront. She struck a deal with Mr L to pay £1,000 upfront followed by a weekly payment of £77. This arrangement began in February 2022.

Mr L and Miss S met in person for their one-to-one sessions and things were going well. After a while, Mr L moved to a different location in the UK, but the sessions continued through video calls.

On 28 April 2022 Mr L said he had an investment opportunity Miss S could get involved with. Miss S was keen and discussed the details with Mr L. He said that the minimum amount that could be invested was £250,000. Miss S had £25,000 to invest and so Mr L said he'd combine her funds with his own so she could be involved. He told her she could make a return of around 35% within three months.

Miss S decided to go ahead and so sent the £25,000 to Mr L by bank transfer (faster payment). She used the same account details she'd used to send the money for the one-to-one coaching and split the total sum into three lots of £5,000 and one payment of £10,000.

Miss S and Mr L continued their coaching sessions, with the weekly payments still being made. And they kept in touch through voice notes, messaging, and phone calls. But Miss S didn't get her money back, or any returns on her investment, in the expected timeframe. She kept asking Mr L what was happening but was only given excuses about why the money wasn't being paid. Mr L gave many different, often vague, reasons which included payments being blocked and delays in contracts being drafted.

In September 2022 Mr L sent Miss S £2,000 which he said was out of his own pocket as he felt bad for letting her down. Other than that Miss S received nothing back from Mr L and, by November 2022, she believed he scammed her.

Miss S complained to Halifax through R. It contacted the bank she'd sent her money to, explaining what had happened and asking for the return of any available funds. But it didn't receive a response.

Halifax went on to consider whether it ought to reimburse Miss S for her loss. In doing so, it applied the provisions of the Lending Standards Board's Contingent Reimbursement Model

(CRM) Code. But it said it wouldn't provide a refund. It felt the account activity – the sending of the £25,000 – wasn't unusual for Miss S and so it hadn't needed to intervene or question the payments, particularly as Mr L was an existing payee on her account.

It also said that Miss S hadn't done enough to ensure the investment opportunity was legitimate. It noted that Miss S didn't appear to have known any detail about the investment or how returns were to be generated. And she'd not seen any paperwork or contracts connected to the investment.

Miss S' complaint was referred to our service by R as she wasn't happy with Halifax's answer. One of our investigators considered the complaint and said it ought to be upheld in part.

He agreed that Miss S hadn't acted reasonably and so should bear some responsibility for her loss. But he felt the payments had become sufficiently unusual once Miss S had sent a total of £10,000 in two payments and was then attempting to make a third payment of £10,000.

He considered the pop-up warning presented to Miss S at the time and didn't believe it met the CRM Code's definition of an effective warning. And he also felt the activity represented a significant enough scam risk that Halifax ought to have blocked the payment until it could be discussed with a member of staff.

On that basis he said Halifax ought to share responsibility for Miss S' loss from the point it ought to have stepped in. The recommendation was that it refund her £7,500 plus interest on that sum at 8% simple per year, calculated from the date of debit to the date of settlement.

Halifax agreed with the outcome and agreed to pay the recommended redress. But R said the settlement wasn't fair and that Halifax ought to repay the loss in full.

As an agreement hasn't been 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.

I'm reaching the same outcome as our investigator and for broadly the same reasons.

I'm sorry to hear that Miss S has fallen victim to a scam. I don't doubt the significant financial and emotional impact these events have had on her. And I can completely accept she trusted Mr L implicitly at the time she gave him her money in good faith. But I'm unable to say Halifax ought to refund her in full.

Relevant considerations

The starting point at law is that Miss S is responsible for any transactions which she authorises. This is set out in the Payment Service Regulations (2017) and confirmed in her account terms and conditions. It isn't in dispute that Miss S authorised the payments that are the subject of this complaint, even though she did so under false pretences. That she was deceived doesn't change the position on authorisation or liability under the PSRs.

Halifax is however a signatory to the CRM Code. Broadly speaking, the Code states that the victims of scams should be reimbursed by their bank in most circumstances. But there are exceptions to reimbursement that a firm can rely on to deny a refund. Halifax's position has always been that one such exception applies here. The exception states:

R2(1)(c) In all the circumstances at the time of the payment, in particular the characteristics of the Customer and the complexity and sophistication of the APP scam, the Customer made the payment without a reasonable basis for believing that:

- (i) the payee was the person the Customer was expecting to pay;*
- (ii) the payment was for genuine goods or services; and/or*
- (iii) the person or business with whom they transacted was legitimate.*

I'll then need to address whether I believe Miss S held a reasonable basis for believing the investment opportunity presented to her by Mr L was legitimate.

Halifax considered it had done enough in terms of preventing the scam in the circumstances, particularly given payments were made to an existing payee. It also referred to some other large payments from Miss S' account, as well as a large incoming credit which was then dispersed to Mr L. This is important for two reasons.

There is a further exception to reimbursement under the Code. In summary, this states that if a customer ignores an effective warning given by Halifax then it can choose to deny reimbursement. But Halifax hasn't relied on this exception.

The need to provide an effective warning – and how one is defined – is set out in a separate section of the Code, known as Standards for Firms (SF). Our investigator found that Halifax hadn't met its requirements under SF. He said as much because it hadn't delivered an effective warning when there was an identifiable scam risk, at the point Miss S was making the third payment to Mr L.

He acknowledged a warning had been provided but didn't believe it met the definition of an effective warning. Halifax accepted that position.

I'll then also address the application of SF as part of my findings, and the implications of Halifax not meeting those standards.

Did Miss S have a reasonable basis for believing the investment opportunity was legitimate?

I'm satisfied that Miss S didn't hold a reasonable basis for belief. In making that finding I'm aware that Miss S had been interacting with Mr L for some time when the investment opportunity was presented to her. She'd met him through a legitimate business and had been happy with the services he'd been providing. I've no doubt that a trusting relationship had been established and that Miss S respected Mr L's apparent expertise.

However, it seems she knew nothing about what her money was to be invested in and doesn't appear to have asked many questions at all about it. She's been unable to provide any detail to either Halifax or this service throughout the investigations into her complaint. And it's true she was presented with no paperwork at all, whether that be an investment prospectus or a contract.

So whilst I can understand Miss S trusted Mr L, it seems she took no steps to verify the legitimacy of the supposed investment, what was to happen with her money, or to understand how it was the returns were to be generated. And it appears she decided to go ahead with the investment almost immediately as it was presented, given it was introduced to her on 28 April 2022 and she made the payments to Mr L the same day.

That such significant returns – at 35% in just three months – were promised ought to have led to at least some questioning as to how that would be achieved. Those are big numbers in a short space of time, and ought fairly and reasonably to have been viewed with some scepticism. But no questions seem to have been asked.

I don't find those actions to be reasonable in the circumstances, especially considering the large sums of money involved.

I find Halifax's reliance on the reasonable basis for belief exception to be fair and reasonable in the circumstances.

Did Halifax do all it needed to under the Code?

I've explained above that Halifax's responsibilities under the Code are set out as the Standards for Firms.

Our investigator found that Halifax hadn't met SF in that the warning it delivered didn't meet the definition of an effective warning and where it needed to provide one at payment three. Halifax hadn't sought to rely on any exception to reimbursement on the basis of providing an effective warning, but it did think it had done enough.

Where our investigator found Halifax hadn't met SF, he considered a liability position was established on its part. That meant it becoming responsible for 50% of the losses from the point it breached SF.

Halifax accepted this and I'm in agreement with the position. I accept what R has said, in that the first two payment made to Mr L as part of the scam did represent a sharp uptick in spending on Miss S' account. But I don't find that either payment – individually or cumulatively – presented such a clear scam risk to Halifax that it needed to provide an effective warning.

There hadn't been much in the way of similar spending. But Mr L was by this time a long-established payee to whom Miss S had regularly sent funds without issue or dispute. And so it would have fairly and reasonably have appeared as a trusted and genuine payee to the bank.

I'm also persuaded that the next payment in the series – that of £10,000 – does then mark a further shift. It can't be denied that this is a significant escalation in outgoings and the risk of financial harm through fraud had become heightened to the extent that Halifax needed to provide an effective warning (which it didn't) and it fairly and reasonably ought to have spoken to Miss S about the payment. And so, at the point of that payment being made, Halifax became in breach of SF.

The Code sets out the refund a customer ought to receive when there has been a breach of SF and where an exception to reimbursement (here R2(1)(c)) applies.

ALL2(2) Where the exceptions under R2(1) or R2(2)(b) apply; and one or more Firm has failed to meet a standard(s); the Customer is not considered vulnerable; and R2(2)(a) does not apply, Firms should use the following allocation principles;

(b) Where one Firm only has breached the SF and an exception under R2(1) or R2(2)(b) applies, the Customer will receive a 50% reimbursement from the Firm that breached the SF.

Applied to Miss S' circumstances, the Code clearly sets out that Miss S will receive a 50% reimbursement from Halifax. Halifax ought to have provided that reimbursement at the time Miss S raised the claim, and so it's fair and reasonable it now provide redress to that effect.

Halifax didn't breach SF for the first two payments, but the exception to reimbursement did apply. And so there is no refund due on those payments. It wouldn't be fair and reasonable to say a later breach of SF in the series of payments ought to apply to earlier payments where effective warnings weren't required and SF was met.

I'll note here that I haven't considered the actions of the receiving firm as it isn't a party to this complaint. It might be that Miss S could pursue a complaint against it separately. I can see Halifax did contact the receiving bank both for an answer on its liability under the Code and to see if any funds remained. But I'm of the understanding there's still been no response to date. There's little Halifax can do about that, and I can't say it should be accountable for the receiving bank's actions.

Putting things right

On Miss S' acceptance Halifax should:

- Pay Miss S £7,500, representing reimbursement of 50% of her losses from payment

three onward; *and*

- Pay interest on that sum at 8% simple per year, calculated from the date the funds debited her account to the date of settlement.

My final decision

I uphold this complaint against Bank of Scotland plc trading as Halifax.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 5 July 2024.

Ben Murray
Ombudsman