

Complaint

Miss N is unhappy that Bank of Scotland plc trading as Halifax didn't reimburse her after she lost money in what she now believes was a scam

Background

In October 2020, Miss N came across an advert on social media from a company, referred to here as "Q," which promoted an investment opportunity in overseas land and property. The advert suggested the investment was secure and backed by the promoter, a businessperson with ties to charitable work and multiple directorships. Miss N also says there were positive reviews online. She felt reassured by these details, and after some initial research, including meeting the promoter, she decided to invest.

Between December 2020 and October 2022, Miss N made payments totalling just over £17,000 into the investment. Communication with the promoter continued primarily through WhatsApp—both in a group chat with other investors and individually—as well as by phone and email. However, at the end of 2022, Miss N became suspicious when the promoter suddenly left the WhatsApp group and blocked her from further contact. At this point, she feared she had been scammed and reported the situation to Halifax in July 2023, asking for a refund of her losses.

Halifax declined to reimburse Miss N. It said that she had not taken reasonable steps to verify the legitimacy of the investment. In its view, Miss N could have done more to protect herself.

Miss N wasn't happy with that response and so she referred her complaint to this service. It was looked at by an Investigator who didn't uphold it. The Investigator noted certain red flags that could have raised doubts, such as the payments being directed to personal accounts and the informal quality of the legal documentation that was supposed to support the scheme.

Miss N disagreed, arguing that businesses are not required to use company bank accounts and that any shortcomings in the paperwork were the promoter's responsibility, not hers. Since Miss N did not accept the Investigator's conclusions, her complaint has been 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 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, like the one Miss N fell victim to, in all but a limited number of circumstances. Halifax ought to refund her unless it can show that an exception to reimbursement applies. In this instance, Halifax says Miss N made these payments *"without a reasonable basis for believing that ... the person or business with whom they transacted was legitimate."*

After reviewing the available evidence, I believe Miss N genuinely trusted that this was a legitimate investment. However, I am not persuaded that her belief was reasonable. The payments were made to personal accounts which, while not conclusively evidence of fraud, is unusual for an investment of this nature. In my view, this should have prompted Miss N to carry out further checks before investing. In addition to that, the documents provided by the promoter were overly simplistic and informal for a property investment scheme, which should have raised additional concerns.

Miss N was also informed that she would receive documentation confirming her legal title to the investment property. As I understand it, she didn't receive it, yet she continued to make payments. While Miss N says she conducted due diligence, she appears to have relied heavily on assurances from the promoter, whom she didn't know well. Given this limited familiarity, I do not think it was reasonable for her to rely solely on the promoter's assurances without independently verifying the legitimacy of the investment. The returns she was promised were also extraordinarily high. This should have led her to proceed with great caution.

I have also considered whether Halifax should have done more to protect Miss N under the CRM Code, which requires signatories to provide effective warnings when they detect potential fraud risks. In hindsight, we know Miss N was the victim of a scam, but I am not persuaded that Halifax had enough information to identify these transactions as likely fraudulent. The payments were spread out over nearly two years and were generally of low value, with all but the first payment directed to the same recipient. This payment pattern would not necessarily have raised suspicion.

I've also considered Halifax's attempt to recover Miss N's funds from the receiving accounts. Unfortunately, given the significant time elapsed between the final payment and her report, it is understandable that any funds remaining in the recipient's account would likely have been moved meaning there was no realistic prospect of recovering her money.

I don't say any of this to downplay or diminish the fact that Miss N has fallen victim to a cruel and cynical scam. I have a great deal of sympathy for her and the position she's found herself in. However, my role is limited to looking at the actions and inactions of the bank and I'm satisfied it didn't do anything wrong here.

Final decision

For the reasons I've set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss N to accept or reject my decision before 6 December 2024.

James Kimmitt
Ombudsman