

The complaint

Mr W complains that Bank of Scotland plc trading as Halifax ('Halifax') won't refund the money he lost when he says he fell victim to a scam.

What happened

Mr W says he was approached by an unregulated broker about an investment opportunity in a company I'll refer to as H in this decision. H offered loan notes to investors to raise money for its projects. In February 2019 Mr W decided to invest and transferred £15,000 to H.

In November 2023 Mr W's representative sent a letter to Halifax asking it to reimburse Mr W under the Lending Standards Board's Contingent Reimbursement Model Code ('CRM Code'). Mr W said he was the victim of a scam and that Halifax failed to identify he was at risk of fraud and take appropriate steps to protect him when a high value payment was made.

Halifax didn't agree to reimburse Mr W. It said he was involved in a high risk investment which had failed, so it wasn't liable. But Halifax said that if new evidence comes to light which proves it was a scam from the start, it will reconsider.

Mr W was unhappy with Halifax's response and brought a complaint to this service.

When it provided its file to this service, Halifax said the transaction to H wasn't unusual given Mr W's previous account history.

The investigator who considered this complaint didn't recommend that it be upheld. She noted that the payment was made before the CRM Code came into force. The investigator said the transaction wasn't out of character given the previous activity on Mr W's account but, even if it was, intervention by Halifax wouldn't have made a difference. She said this based on the information that was available about H at the time, and her belief that there is insufficient evidence to conclude H was operating a scam.

Mr W didn't agree with the investigator's findings and asked for a review by an ombudsman, so his complaint has been passed to me to decide. He asked me to review the following points:

- The investigator failed to properly consider the PAS Code, which Mr W set out. He said Halifax should have recognised the transaction to H was suspicious and asked Mr W for more information about it.
- The investigator failed to give adequate weight to the information provided to demonstrate that H was operating a Ponzi scheme.
- Mr W was vulnerable at the time as he was not a sophisticated investor and thought he would get guaranteed returns.
- The loss of his funds has had a huge impact on him financially and emotionally.

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.

In deciding what's fair and reasonable, I'm required to take into account relevant law and regulations; regulatory rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

In broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. But there are circumstances when it might be fair and reasonable for a firm to reimburse a customer even when they have authorised a payment.

The payment of £15,000 in February 2019 pre-dated the inception of the CRM Code, so I haven't considered whether it applies here. At the time the payment was made, Halifax should have been on the look-out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). And, in some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, or provided additional warnings, before processing a payment.

After reviewing Mr W's bank statements for the twelve month period before the transaction was made, I'm not persuaded the payment to H was so unusual and out of character that Halifax ought reasonably to have recognised a heightened risk of harm and intervened when it was made. I have noted a £10,000 transaction in February 2018 and three transactions to the same payee (£25,000, £25,000 and £24,615.45) over a three day period in July 2018. In January 2019 there was also a £10,000 payment to a company. Given these transactions, I'm not persuaded a £15,000 payment, even if it was to a new payee, stood out as so unusual that Halifax ought to have taken additional steps before processing it.

Even if Halifax had intervened though, I'm not persuaded it would have made a difference. I don't think that if Halifax had asked the type of questions it should if a risk is identified it would have had concerns that Mr W was falling victim to a scam. H was a legitimate business and Mr W received documentation. There was also nothing in the public domain at the time to indicate any scam concerns in respect of H.

Overall, whilst I'm sorry to hear that Mr W has lost money, I can't reasonably require Halifax to reimburse him.

My final decision

For the reasons stated, I do not uphold this complaint.

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

Jay Hadfield
Ombudsman