

The complaint

Mr K has complained that Bank of Scotland plc (trading as “Halifax”) failed to protect him from falling victim to an investment-related scam.

What happened

The background of this complaint is already known to both parties, so I won’t repeat all of it here. But I’ll summarise the key points and then focus on explaining the reason for my decision.

Mr K has used a professional representative to refer his complaint to this service. For the purposes of my decision, I’ll refer directly to Mr K, but I’d like to reassure Mr K and his representative that I’ve considered everything both parties have said.

Mr K has explained that in December 2023 he found an investment opportunity online and he was led to believe he could earn a lot of money through trading in stocks and shares. Mr K expressed an interest by registering his details and he was then contacted by an individual (“the scammer”) from the alleged investment company who gave him more information about the investment.

Mr K says he was persuaded by the scammer’s knowledge and expertise of the investment market that he could earn healthy returns on his investment. He says that although he was dubious at first, he was initially able to invest a small amount of £250, which using the investment platform he was given access to by the scammer, he could see was making a profit. Mr K says he checked online reviews of the company, which he now believes were planted by the company itself. He also says he was convinced by the investment portal he was given access to as it looked legitimate. Following this he made a payment of £15,000 from his Halifax account to an account he holds with a different bank, and then on to the scammer, on the belief that he was funding his investment.

Mr K says that at one point the scammer tried to persuade him to take out a loan to invest more into the scheme. He also says he was given a cover story by the scammer on what he should say if he was questioned by the bank as to the reason for the payment. Mr K ultimately realised he’d been scammed when the scammer stopped contacting him. He says at that time access the investment platform he’d been using to track his supposed profits was suspended.

Mr K made a complaint to Halifax. In his complaint he said that it failed to pick up on the out-of-character transaction he made, and had it done so, it would’ve been able to prevent the loss he experienced. He also complained that Halifax failed to take appropriate action when he reported the scam. Halifax didn’t uphold Mr K’s complaint as it said it had tried to intervene before the payment was sent, but Mr K gave it incorrect information. Mr K remained unhappy so he referred the complaint to this service.

Our investigator considered everything and didn’t think the complaint should be upheld. She explained that she thought the way Halifax had intervened was proportionate to the circumstances. She said that despite Halifax’s efforts, it hadn’t been able to prevent the

payment from being made because Mr K said he was purchasing a new car, rather than using it to fund an investment, so Halifax wasn't able to provide an effective warning.

As Mr K didn't accept the investigator's opinion, the case has been passed to me to make a 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 sorry to disappoint Mr K but having considered everything I'm afraid I'm not upholding his complaint, broadly for the same reasons as our investigator, which I've set out below.

In broad terms, the starting position is that a firm is expected to process payments and withdrawals that its customer authorises, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. And in this case it's not in question whether Mr K authorised these payments from leaving his account. It's accepted by all parties that Mr K gave the instructions to Halifax and Halifax made the payments in line with those instructions, and in line with the terms and conditions of Mr K's account.

But that doesn't always mean that the business should follow every instruction without asking further questions or intervening to ensure requests coming from their customers are firstly genuine, and secondly won't result in harm.

I should start by explaining that the payment in question was sent to Mr K's own account held with another bank. He made one payment of £15,000. It appears that the scam payments were sent to the scammer from Mr K's other bank account, but nonetheless I've considered what Halifax knew, or ought to have known, about the payment Mr K made.

I can see that Mr K didn't regularly make transfers from his Halifax account, and those that he did make were significantly smaller than the £15,000 in question here. So the starting position is that Halifax ought to have deemed this transfer to be out-of-character for Mr K, and should've had systems in place to detect that it was potentially driven by fraud.

Before releasing the payment Halifax delayed it and asked Mr K to call it. Halifax has provided a transcript of the call. I won't include the full transcript here, but I've provided a summary of the key points below. Mr K has also been sent the full transcript by our investigator.

In the call Halifax asked Mr K for the purpose of the payment – to which he told it he was sending the funds to another account in his own name, and his intention was to purchase a car from "kind of a relative". Halifax warned Mr K to ensure he'd seen the car and test driven it, and received the documents for it. He was also asked by Halifax to confirm that nobody had asked him to move the funds to his other account as part of an investment, and he confirms this to be the case. It also appears the agent gave Mr K some information about the increased number of scams that Halifax is seeing at the moment, which Mr K acknowledged.

On the payment itself I can see that Mr K added a reference saying "NEW CAR" – which is consistent with what he told Halifax about the purpose of the payment during the call. With this in mind I don't hold Halifax responsible for what ultimately happened, as Mr K gave it false information which meant Halifax didn't have the opportunity to identify the scam, or to intervene further by giving questioning Mr K more robustly or provided more suitable warnings.

Had Mr K given Halifax a truthful account of what had happened in the leadup to this payment, and the correct purpose for it, I'm persuaded Halifax would've been able to appropriately warn him about the risks of a scam. I say this because the fact Mr K was being asked to move money to a different account before sending it to the scammer, and he'd been told to lie to the bank about the purpose of the payment, as well as being asked to take out a loan to make an investment, are all hallmarks of a scam.

It's also important to note that Mr K didn't send the funds to the scammer from his Halifax account. He sent the funds to an account in his name, that he had control of, with another bank. So whilst this doesn't necessarily mean the sending bank doesn't have a responsibility to look out for suspicious activity, it does mean that a proportionate intervention may take a different form based on the reduced risk of sending a payment to one's own account, as opposed to an unknown third party.

Considering everything, I'm satisfied that the way Halifax intervened was proportionate to the risk posed by the £15,000 payment Mr K made. Whilst Halifax needs to be on the lookout for suspicious activity to protect its customers from fraud and scams, in this case I don't hold it responsible for the intervention not being effective, as this was the result of false information.

Recovery of the funds

I wouldn't have expected Halifax to attempt recovery of the funds in this situation as they were sent to Mr K's own account that was able to access, so he would've effectively been attempting to recover funds from himself.

I'm very sorry that Mr K has fallen victim to this scam and I do understand that my decision will be disappointing. But for the reasons I've set out above, I don't hold Halifax responsible for that.

My final decision

I don't uphold Mr K's complaint against Bank of Scotland plc, trading as Halifax.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 28 November 2024.

Sam Wade
Ombudsman