

The complaint

Mr and Mrs H have complained that Bank of Scotland plc (trading as Halifax) won't refund the money they lost after falling victim to a scam.

What happened

Both sides are most familiar with the case, so I'll summarise things more briefly.

In 2018, Mr and Mrs H were introduced to an unregulated forex trading firm. Mr H visited their office in person, met the directors, watched them trade live, was shown their statements with years of profits and payments to investors, and an independent accountant confirmed they had many millions of pounds of funds under management. A written agreement was signed, and over the course of a few months, Mr and Mrs H paid around £75,000 to the firm from their joint Halifax account, via an offshore company.

Mr and Mrs H received initial returns, but these stopped, and in 2019 the firm went into liquidation. Information has since come out which indicates this may have been a scam.

In 2024, Mr and Mrs H complained to Halifax. Halifax didn't think they were liable for Mr and Mrs H's loss.

Our Investigator looked into things independently and didn't uphold the complaint. Mr and Mrs H's representatives appealed, so the complaint's been passed to me to decide.

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 seems that Mr and Mrs H may have fallen victim to a scam here, and so they have my sympathy. I appreciate this can't have been easy to face, and I appreciate why they want their money back. It's worth keeping in mind that it's the scammers who are primarily responsible for any scam, and who'd really owe Mr and Mrs H their money back. But I can only look at what Halifax are responsible for. Having carefully considered everything that both sides have said and provided, I can't fairly hold Halifax liable for Mr and Mrs H's loss. I'll explain why.

It's not in dispute that Mr and Mrs H authorised the payments involved. So although they didn't intend for the money to go to scammers, under the Payment Services Regulations they are liable for the loss in the first instance. And broadly speaking, Halifax had an obligation to follow their instructions – the starting position in law is that banks are expected to process payments which a customer authorises them to make.

Halifax should have been on the lookout for payments which could be the result of fraud or scams, to help prevent them. A balance must be struck between identifying and responding to potentially fraudulent payments, and ensuring there's minimal disruption to legitimate payments. But I agree that Halifax should have intervened here and asked proportionate questions about the payments.

However, even if Halifax *had* flagged the payments and given Mr and Mrs H warnings about scams or asked further questions about the reasons for the payments, I think it's more likely than not that Mr and Mrs H would've still gone ahead. I say this for the following reasons:

- This was a real firm which had been trading for years
- Mr H visited their office in person, which he said was on a long-term lease and had a busy, thriving workforce
- Mr H met the directors personally, found them to be credible and professional, and they answered his questions
- Mr H watched one of the directors trading live
- Mr H was able to view the firm's statements, which showed 3-year to-date profits and payments to investors
- An independent accountant had reviewed the firm, and confirmed in writing that the value of the Funds Under Management of the firm was many millions of pounds. They also confirmed that they were personally available for further detailed due diligence, and that detailed figures and screen views were available
- There was a signed, written agreement
- While events and information later emerged which indicated the firm might have been running a scam, those had either not happened yet or were not reasonably publicly available yet before Mr and Mrs H's payments. I've not found any public warnings, investigations, or other significant negative information about the firms involved which pre-dates Mr and Mrs H's payments. As far as I can see, the matter would've looked broadly legitimate at the time

As such, even if Halifax had intervened, I don't think they would've uncovered a scam at the time, nor do I think they would've had sufficient reason to block the payments outright.

Mr and Mrs H's representatives argued that had Halifax referred Mr and Mrs H to the FCA register and warned them about the higher risks of unregulated investments, they wouldn't have gone ahead. But in the circumstances of this case, I find that to be too speculative. While unregulated investments are higher risk, that doesn't necessarily mean they're a scam. Mr and Mrs H were based outside the UK, and paid in via an offshore company, so it doesn't seem especially likely that they would've stopped because the matter was not regulated within the UK. And from what Mr and Mrs H have said and provided, they already knew the firm was unregulated, and its unregulated nature was set out in the documentation. So the fact that it was unregulated would not have been new information to them. The documentation also stated that the matter was high risk, that profits were not guaranteed, and that they might lose their money, so that shouldn't have been new information either. And I would not expect Halifax to have carried out a detailed investment assessment or to have given Mr and Mrs H investment advice here.

Ultimately, given the points I set out above, along with what Mr and Mrs H have told us, I think the matter would've looked legitimate at the time, and Mr and Mrs H had been given good reasons to feel reassured about and/or convinced by the firm. So I don't think that a general warning about unregulated investments was very likely to have deterred them.

Next, I've considered whether Halifax could've reasonably done more to recover Mr and Mrs H's funds, once Halifax were made aware of the scam. But given the time that had passed, and given that the firm had since gone into liquidation, there wasn't anything more that Halifax could reasonably do to get the money back.

So while I'm very sorry to hear about Mr and Mrs H's loss, I don't think Halifax can fairly be held responsible for it. And so I can't fairly tell Halifax to reimburse Mr and Mrs H here.

My final decision

For the reasons I've explained, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H and Mr H to accept or reject my decision before 8 January 2025.

Adam Charles
Ombudsman