

The complaint

Mrs H has complained that Bank of Scotland plc (trading as Halifax) won't refund the money she 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, Mrs H (and her partner, Mr 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, Mr and Mrs H made initial payments from their joint account, and they started receiving returns. Mrs H then made further payments totalling £45,000 from her sole Halifax account, paid via an offshore company.

The initial returns stopped, and in 2019 the firm went into liquidation. Information has since come to light which indicates this may have been a scam.

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

Our Investigator looked into things independently and didn't uphold the complaint. 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 Mrs H may have fallen victim to a scam here, and so she has my sympathy. I appreciate this can't have been an easy matter to face, and I appreciate why she wants her 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 Mrs H her 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 Mrs H's loss. I'll explain why.

It's not in dispute that Mrs H authorised the payments involved. So although she didn't intend for the money to go to scammers, under the Payment Services Regulations she is liable for the loss in the first instance. And broadly speaking, Halifax had an obligation to follow her 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 Mrs H warnings about scams or asked further questions about the reasons for the payments, I think it's more likely than not that 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 Mrs H's payments. I've not found any public warnings, investigations, or other significant negative information about the firms involved which pre-dates Mrs H's payments. As far as I can see, the matter would've looked broadly legitimate at the time
- By the time of Mrs H's payments, Mr and Mrs H's initial joint investment had already begun receiving substantial returns

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.

Mrs H's representatives argued that had Halifax referred Mrs H to the FCA register and warned her about the higher risks of unregulated investments, she wouldn't have gone ahead. But in the circumstances of this case, I find that to be much too speculative. While unregulated investments are higher risk, that doesn't necessarily mean they're a scam. Mrs H was based outside the UK, and paid in via an offshore company, so it doesn't seem especially likely that she 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. The documentation also stated that the matter was high risk, that profits were not guaranteed, and that she might lose her 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 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 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 her.

Lastly, I've considered whether Halifax should've reasonably done more to recover Mrs H's funds, once they 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 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 Mrs H in this case.

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 to accept or reject my decision before 8 January 2025.

Adam Charles
Ombudsman