DRN-5243317

## The complaint

Ms K complains that Bank of Scotland Plc (trading as Halifax) won't refund the money she lost when she was the victim of a scam.

## What happened

Around 20 years ago Ms K lost a significant sum when an Unregulated Collective Investment Scheme (UCIS) that she had invested in had entered insolvency. In 2023 Ms K received a letter from a third party – which I'll call S – which claimed to be managing the UCIS's insolvency and told her it could reimburse her losses from the failed investment. Ms K was told she was owed £48,600, but would need to pay various fees and charges to release those funds. Ms K was told that any payments she made for these fees and charges would be returned to her when her capital was released.

Over the course of around three months Ms K made 19 payments totalling over £90,000 to three separate individuals she was told were associated with S. When she had still not received any money back, and was told she needed to pay yet more fees, Ms K wrote directly to S to complain, using an address she had found online. At this stage, when a real representative of S wrote back to say they had no knowledge of her, Ms K realised she had been scammed.

Ms K told Halifax what had happened, and asked it to refund her loss. Halifax looked at what had happened, but only agreed to refund part of Ms K's loss. It felt it could have done more to protect her from the sixth payment onwards, but also felt Ms K should bear some responsibility for her loss, and so it refunded 50% of her loss form the sixth payment to the scam onwards. Ms K was unhappy with Halifax's response, so she referred her complaint to our service.

Our investigator upheld the complaint in part. Overall, they thought that Halifax did not provide an effective warning when it identified the first payment Ms K made to the scam as a potential risk (nor did it do so for any of the later payments). So, given that Ms K had accepted that she should also bear some responsibility for her loss, the investigator recommended that Halifax refund 50% of the first five payments Ms K had made to the scam (in addition to the 50% refund Halifax had already done for payments 6 to 19), plus interest.

Ms K accepted these findings, but Halifax did not, it has said that the first five payments were not unusual enough to have warranted intervention, and that it was therefore not required to provide an effective warning regarding those payments. So, as no agreement could be reached, the matter has been passed to me for review.

## 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 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, where the customer made a payment because of the actions of a fraudster, it may sometimes be fair and reasonable for the bank to reimburse the consumer even though they authorised the payment.

The Lending Standards Board's Contingent Reimbursement Model code ("the CRM code") is of particular significance here. The Code requires firms to reimburse customers who have been the victim of authorised push payment scams, like the one Ms K fell victim to, in all but a limited number of circumstances. And it is for the firm to establish that one of those exceptions to reimbursement applies.

Under the Code, a firm may choose not to reimburse a customer if it can establish that:

- The customer ignored an effective warning in relation to the payment being made
- The customer made the payment without a reasonable basis for believing that:
    - the payee was the person the customer was expecting to pay;
    - the payment was for genuine goods or services; and/or
    - the person or business with whom they transacted was legitimate

There are further exceptions within the Code, but these don't apply here.

Halifax has argued that Ms K didn't act reasonably and should have done more to check who she was paying. I note Ms K has already accepted the finding that she did not have a reasonable basis for belief here, so I won't go into this again in detail. But in summary, I agree that she did not have a reasonable basis for belief in the circumstances. I appreciate that there were sophisticated elements to this scam, but there were also a number of things about what was happening and what she was told that I think should have caused her significant concern. There was also information readily available online at the time that would have clearly indicated to Ms K that S was not acting legitimately.

With this in mind, I don't think Ms K had a reasonable basis for belief when making any of the payments in dispute here, and so Halifax doesn't have to refund all of the money she lost as a result of these payments.

**Did Halifax meet its requirements under the Code?**

Even though I don't think Ms K had a reasonable basis for belief when making the payments, she may still be entitled to a refund of some of the money she lost if Halifax didn't meet its requirements under the Code – one of which is to provide effective warnings when it identifies a scam risk.

Halifax has already accepted it did not meet the requirements of the Code from payment 6 onwards, and has therefore refunded 50% of those payments. So, what remains to consider here is whether Halifax also failed in its obligations regarding payments 1 to 5 and so should also refund 50% of those funds. I've set out payments 1 to 5 in the table below:

| | **Date** | **Payee** | **Amount** |
|---|---|---|---|
| **Payment 1** | 08/05/2023 | Payee 1 | £4,000 |
| **Payment 2** | 08/05/2023 | Payee 2 | £2,961.12 |
| **Payment 3** | 12/05/2023 | Payee 2 | £4,000 |
| **Payment 4** | 12/05/2023 | Payee 1 | £4,000 |
| **Payment 5** | 15/05/2023 | Payee 2 | £6,000 |

When Ms K made the first payment to the scam, which was to a new payee and for £4,000, Halifax asked Ms K what the payment was for and then provided her with a warning based on the answer she gave. It then did the same for each new payee she set up. Halifax also showed an additional warning for any payment over £5,000. Halifax has sent us screenshots of the warnings it says Ms K saw when making payments to the scam.

Halifax has said that these warnings were not given because it had identified an APP scam risk, but were simply because a new payee was being set up. But I'm satisfied, given the value of Payment 1 and that it was to a new payee, that while more direct intervention was not warranted at this stage, we would expect Halifax to have provided an effective written warning in the circumstances. And given that Halifax did provide a specific scam warning, it is difficult for me to agree with its argument that it had not identified a potential scam risk.

The Code says that an effective warning should enable a customer to understand what actions they need to take to address a risk and the consequences of not doing so. And it says that, as a minimum, an effective warning should be understandable, clear, impactful, timely and specific. I consider it reasonable to expect that any effective warning should have had a realistic prospect of preventing a scam of the general type the warning was intended for. But the warnings Halifax gave were fairly generic in nature, highlighting some possible hallmarks of scams, but nothing that I think would have rung particular alarm bells for Ms K. And the warnings did nothing to bring to life what a scam might look or feel like or set out the potential consequences of going ahead. So, I don't think the warnings given were sufficiently impactful or specific as required by the Code.

So, while I'm satisfied Halifax should have identified a scam risk here, I'm not satisfied that the warning messages it gave were sufficient to show it complied with the requirements of the Code in relation to the payments Ms K made. And so, I don't think Halifax met its requirements under the Code to provide effective warnings. It follows that Halifax should refund 50% of payment 1 to 5, plus interest.

**Putting things right**

To resolve this complaint Halifax should now:

- refund 50% of payments 1 to 5; and
- pay 8% simple interest per annum on that refund, form the date it declined Ms K's claim to the date of settlement.

**My final decision**

I uphold this complaint. Bank of Scotland plc (trading as Halifax) should now put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms K to accept or reject my decision before 29 May 2025.

Sophie Mitchell
**Ombudsman**