DRN-5277664

The complaint

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

What happened

Mr P came across an advert about an opportunity to invest in a company which leased cars – Buy2Let/Raedex Consortium Ltd – I'll call these companies B and R. Investors were told their investment would be used to buy a vehicle which would then be leased out, but that they would be granted security over the vehicle. They were told they would receive regular returns on the investment, and then an exit payment (the remainder of the invested capital plus interest) when the vehicle was returned by the lessee. Mr P decided to invest and, in January 2020, he made a payment of £7,000 from his Halifax account to fund the investment.

Mr P received the expected monthly returns until January 2021 – receiving a total of £1,976.28 – but the payments then stopped. Mr P became concerned and so contacted Halifax to report the payment he had made to B as a scam and asked it to refund the money he had lost.

Halifax investigated but said Mr P had lost his money due to a failed investment, rather than as a result of a scam, so it declined to refund the money he had lost. Mr P wasn't satisfied with Halifax's response, so referred a complaint to our service.

One of our investigators looked at the complaint. They said the evidence showed there was a clear discrepancy between the payment purposes Mr P and B had in mind, so they felt this met the definition of a scam as per the Lending Standards Boards' Contingent Reimbursement Model Code (the Code). They also said they were satisfied Mr P had a reasonable basis for believing the investment was legitimate. So, they recommended Halifax refund his losses in full, plus interest.

Halifax disagreed, it has said it believes that cases about B and R should not be progressed until UK Finance concludes its discussions regarding the matter. So, as no agreement could be reached, the complaint has been passed to me.

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 the payment as a consequence of the actions of a fraudster, it may sometimes be fair and reasonable for the bank to reimburse the customer even though they authorised the payment.

Halifax is a signatory of the Lending Standards Boards Contingent Reimbursement Model Code (the Code). This requires firms to reimburse customers who have been the victim of certain types of scams, in all but a limited number of circumstances. But customers are only covered by the code where they have been the victim of a scam – as defined in the code.

Can Halifax delay making a decision under the Code?

The Code says firms should make a decision as to whether or not to reimburse a customer without undue delay but that, if a case is subject to investigation by a statutory body and the outcome might reasonably inform the firm's decision, it may wait for the outcome of the investigation before making a decision.

But this provision only applies before the firm has made its decision under the code – it can't seek to delay a decision it's already made. And Halifax had already reached a decision on Mr P's claim in is final response letter to him, when it said he made a legitimate payment and this didn't appear to be a true scam. So, I don't think Halifax can now rely on this provision here.

And, in any event, the Serious Fraud Office (SFO) had been carrying out an investigation into B and several connected companies. But that investigation concluded on 19 January 2024 when the SFO published the outcome of the investigation, which included the charging of former company directors with fraud, on its website. Halifax has since commented to us that it believes it is premature to reach an outcome on this complaint (and others like it) given that the court case resulting from the SFO's investigation is still ongoing. Halifax believes that it is reasonable to wait until findings have been made (by the court or by UK Finance) regarding from which date it can be proved that B had an intent to defraud.

But as the SFO has reached an outcome on its investigation, I don't think it's fair or necessary to wait until the outcome of the related court case or to wait for any further guidance from UK Finance, which in any case is not a statutory body. And, as Halifax is also aware, the Lending Standards Board has said that the code does not require a criminal test to have been met before a reimbursement decision can be reached. Nor does it require a firm to prove the intent of the third party before a decision can be reached.

So, I don't think it's fair for Halifax to delay making a decision on whether to reimburse Mr P any further.

I'm also aware that the Financial Services Compensation Scheme (FSCS) is accepting customer claims submitted to it against Raedex Consortium Ltd. More information about FSCS's position on claims submitted to FSCS against Raedex can be found here: https://www.fscs.org.uk/making-a-claim/failed-firms/raedex/

The FSCS is also aware that we have issued recent decisions upholding complaints against banks related to the Raedex investment scheme. Whether the FSCS pays any compensation to anyone who submits a claim to it is a matter for FSCS to determine, and under their rules. It might be that Raedex Consortium Ltd has conducted activities that have contributed to the same loss Mr P is now complaining to us about in connection with the activities of Halifax.

As I'm upholding this complaint for the reasons given below, Mr P should know that as he will be recovering compensation from Halifax, he cannot claim again for the same loss by making a claim at FSCS (however, if the overall loss is greater than the amount recovered from Halifax, he may be able to recover that further compensation by making a claim to FSCS, but that will be a matter for the FSCS to consider and under their rules.) Further, if Mr P has already made a claim at FSCS in connection with this matter, and in the event the

FSCS pays compensation, Mr P is required to repay any further compensation he receives from his complaint against Halifax, up to the amount received in compensation from FSCS.

FOS and FSCS operate independently, however in these circumstances, it's important that FSCS and FOS are working together and sharing information to ensure that fair compensation is awarded. More information about how FOS shares information with other public bodies can be found in our privacy notice here: https://www.financialombudsman.org.uk/privacy-policy/consumer-privacy-notice

Has Mr P been the victim of a scam, as defined in the Code?

The Code defines an APP scam as a payment made "to another person for what they believed were legitimate purposes, but which were in fact fraudulent."

So, I need to consider whether the purpose Mr P intended for the payment he made was legitimate, whether the purposes he and B had in mind for the payment were broadly aligned and then, if they weren't, whether this was the result of dishonest deception on the part of B.

I'm satisfied Mr P made the payment here with the intention of investing with B. He thought his funds would be used to buy a vehicle which would then be leased out – by R, a company related to B and which was regulated by the Financial Conduct Authority (FCA) – and that he would receive regular returns on his investment. Nothing I've seen suggests to me that Mr P didn't think this arrangement was a legitimate investment.

But I think the evidence I've seen does suggest that B didn't intend to act in line with the purpose for the payments it had agreed with Mr P. Mr P says he had been told that his investment would be backed by a specific asset – a vehicle – and we are aware that many investors in the scheme were told that their investments would be secured in their favour by way of a charge registered at Companies House. But the FCA's supervisory notice to R – the connected company that would be leasing the vehicles - said that, while the various companies involved had around 1,200 customers and had entered around 1,200 leases, they had only registered 69 vehicles at Companies House – suggesting that the vast majority of the vehicles funded weren't secured in the way investors were told they would be.

The FCA also checked a sample of the vehicles the companies held against the DVLA database, and found many more discrepancies:

- more of these vehicles were second-hand than the stated business model suggested or would support,
- a number of leases started significantly before the vehicles were put on the road, and
- some vehicles were not found on the database at all.

The FCA also said it considered the companies' valuation of the vehicles it held was unrealistic and that the group's liabilities significantly exceeded its assets.

A report by the administrators of R also said that the total number of known loan agreements was 3,609, relating to 834 investors, but that the number of vehicles held by the group at the appointment of the administrators was 596 – or less than one car for every six loan agreements.

I think the evidence shows the company was not carrying out key aspects of its agreement with investors on a large scale. There's also no evidence to show that Mr P received any

security over any vehicle following his investment. So, a significant aspect of what he agreed with B does not appear to have been carried out.

The SFO has also made it clear that the former company directors are accused of providing those who invested with false information and encouraging people to invest whilst knowing that investments were not backed up by the cars they had been promised.

With all this in mind, I'm satisfied that the purpose that B intended for the payment Mr P made was most likely not aligned with the purpose Mr P intended for that payment. And that the discrepancy in the alignment of the payment purposes between Mr P and B was the result of dishonest deception on the part of B. It follows that I consider the circumstances here do meet the definition of a scam as set out in the Code.

Is Mr P entitled to a refund under the Code?

Halifax is a signatory of the Lending Standards Boards Contingent Reimbursement Model (the CRM code). This code requires firms to reimburse customers who have been the victim of authorised push payment scams, like the one I'm satisfied Mr P 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, or 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. I have also seen no evidence that any effective warnings were shown to Mr P regarding the payment he made, so I don't consider he can be said to have ignored an effective warning.

And, from what I've seen, the information available at the time of Mr P's payment would not have indicated to him that B was acting illegitimately. R, which carried out the leasing activity on B's behalf, was an FCA regulated company. The company literature that appears to have been available at the time appeared professional, as did the documents Mr P received. And B had been operating for several years at the time Mr P invested. So, I don't think there was anything about the investment that should have caused Mr P significant concern. I therefore consider that Mr P did have a reasonable basis for believing the investment was legitimate.

With this in mind, I don't think Halifax has established that any of the exceptions to reimbursement under the Code apply here, and so it should refund the money Mr P lost in full.

Putting things right

I don't think any reasonable action I would've expected Halifax to take would have prevented Mr P making this payment, or enabled it to recover any of Mr P's funds once he told it of the scam. I say this as I don't think any of the information I would've reasonably expected it to have uncovered at the time of the payment would've brought the scam to light. I also don't think it was unreasonable for Halifax to initially decline Mr P's claim, as it wasn't wholly clear from the evidence available at the time that this was a scam. Halifax also could not have

recovered Mr P's funds at the time the scam was reported given that B had already entered liquidation by that stage.

But I do think Halifax should have responded to Mr P's claim and refunded his losses under the Code within 15 days of the SFO publishing the outcome of its investigation. And so I think Halifax should now pay 8% interest on the refund, from 15 days after the SFO published its outcome on 19 January 2024, until the date of settlement.

As B is now under the control of administrators, it's possible Mr P may recover some further funds in the future. In order to avoid the risk of double recovery Halifax is entitled to take, if it wishes, an assignment of the rights to all future distributions under the administrative process before paying the award.

And, as Mr P received a number of monthly interest payments back from B, I think it would be fair for these payments to be deducted from the amount Halifax has to refund him.

To resolve this complaint Halifax should now:

- Refund to Mr P the payment he made as a result of this scam, less any returns he received from B and its related companies

- Pay Mr P 8% interest on that refund, from 15 days after 19 January 2024 until 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 Mr P to accept or reject my decision before 27 February 2025.

Sophie Mitchell
Ombudsman