DRN-5423941

Complaint

Ms A and Mrs A complain that Bank of Scotland plc, trading as Halifax, did not reimburse the money they lost when Ms A fell victim to an investment scam. Although the payments were made from a joint account, it was primarily Ms A who engaged with the fraudsters. For ease of reference, I will refer to her throughout this decision.

Background

In late 2020, Ms A was introduced to an investment opportunity managed by an individual I will refer to as Mr V. He was presented as a highly skilled forex trader capable of generating exceptional returns. Ms A was informed that Mr V intended to establish a hedge fund in an offshore jurisdiction where investor funds would ultimately be managed. Another individual, Mr K, appeared to work alongside Mr V in recruiting new investors.

The investment opportunity was recommended to Ms A by Mr J, whom she had met through a Facebook group. Mr J had assisted her in acquiring a car but the two subsequently became friends. He showed Ms J evidence that he'd received returns on his investment with Mr V in late 2020. Ms A was interested and so contacted Mr K and Mr V to sign up. Ms A was promised a monthly return of 10% on her investment. She received regular investment updates via email, which included monthly statements reflecting the performance of her investment. However, there was no direct-access to a trading platform. Investors had to rely on email updates from Mr V and Mr K.

Ms A carried out some online checks but did not find anything to suggest that Mr V's business was not legitimate. Having previously attended a forex trading course, she did not find the promised 10% monthly return to be excessive, particularly as Mr J appeared to have successfully invested and received returns.

Ms A used her Halifax account to make the following payments to an account controlled by Mr V:

18 January 2021	£20,000
28 April 2021	£20,000

When Ms A later had difficulties in getting her money back from the investment, she realised that it was likely she'd fallen victim to a scam. She reported the matter to Halifax. The bank acknowledged that it could have done more to protect her from the risk of fraud but also believed she should have undertaken greater due diligence. As a result, it offered a 50% refund. Ms A was dissatisfied with this offer, believing she should be reimbursed in full and so she referred her complaint to this service. An Investigator reviewed the complaint and upheld it in full. However, Halifax then changed its position, arguing that there was insufficient evidence of fraud and that this was instead a private civil dispute. It suggested that Ms A should attempt to recover her money through the courts.

As Halifax did not accept the Investigator's conclusions, the complaint was referred to me to consider.

Findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I issued a provisional decision on 10 February 2025. I wrote:

> *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 (in this case, the 2017 regulations) and the terms and conditions of the customer's account. However, that isn't the end of the story. Halifax has signed up to the Lending Standards Board's Contingent Reimbursement Model Code ("the CRM code"). This code requires firms to reimburse customers who have been the victim of authorised push payment ("APP") scams in all but a limited number of circumstances.*
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> *The CRM Code doesn't apply to all payments. Ms A's payment is only covered if it meets the relevant parts of the definition of an APP scam under the CRM Code. For it to do so, Ms A must have "transferred funds to another person for what [she] believed were legitimate purposes but which were in fact fraudulent." I have considered whether this scenario constitutes an APP scam under the CRM Code and, based on the available evidence, I am satisfied that it does. Ms A is not the only consumer to have raised concerns about Mr V. In several other cases that have been brought to this service, I have seen evidence showing that Mr V was not using client funds as intended. Instead, it appears he may have been using funds from new investors to pay returns to earlier investors or misappropriating the money for his personal use. For those reasons, I'm satisfied that this case can be considered under the CRM Code.*
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> *Halifax has already offered a 50% refund to Ms A. The starting position under the Code is that a customer should be reimbursed in full unless an exception applies. The most relevant exception is at R2(1)(c) in the Code. It says there that a signatory doesn't need to reimburse the customer in full if "In all the circumstances at the time of the payment, in particular the characteristics of the Customer and the complexity and sophistication of the APP scam … … the Customer made the payment without a reasonable basis for believing that … the person or business with whom they transacted was legitimate."*
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> *I accept that Ms A did sincerely believe that she was genuinely putting her funds under the control of someone who would manage it on her behalf and generate returns for her. However, the question I have to consider is whether that belief was a reasonable one. It's also worth noting that the way the test is written in the Code isn't*

> *entirely objective – it allows me, where relevant, to take into account the characteristics of the customer.*
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> *I'm afraid I'm not persuaded that Ms A's belief in the legitimacy of this investment was a reasonable one. The promised returns (10% per month) were certainly considerably higher than the returns that would be generally available to any retail investor. Ms A knew that Mr V was supposedly speculating on the movements in foreign exchange. She also told us that she'd attended a training course on such investments. I think she'd have been aware that, while exceptionally high returns are a theoretical possibility with investments like this, foreign exchange is an extremely volatile asset class that comes with significant risk. From the information that I've seen, Mr V assured investors that 10% returns were guaranteed. Unfortunately, I don't think that was at all realistic.*
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> *I also think Ms A ought to have been concerned about putting her money under the control of someone like Mr V, who seemingly didn't have any relevant professional experience or expertise to suggest he was an appropriate person to manage such a huge amount of client money. From the evidence I've seen, he persuaded people to invest by showing his impressive history of forex trading. That information was forged, but it suggested that he'd made an initial investment of $3,000 and turned that into $10 million in two years, which equates to a monthly return of nearly 15,000%. Having said that, it's not entirely clear to me whether Ms A saw that information prior to investing.*
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> *I understand that Ms A invested her money following a personal recommendation from someone who had invested several months earlier and had received returns. Although I think Ms A ought to have been more sceptical of this investment opportunity, I accept that it might be quite reasonable for that scepticism to be supplanted by a personal recommendation. But Ms A's recommendation came from someone with whom she'd had a commercial relationship, albeit one that subsequently developed into friendship. I don't think that this personal recommendation was sufficient to override the other clear warning signs.*

Halifax didn't respond to the provisional decision. Ms A disagreed with my findings.

She pointed out that she hadn't seen Mr V's trading history that I referred to above and so this didn't influence her decision to invest. She also said she took advice from two personal friends who work in the banking industry and were familiar with forex trading and took their advice into consideration. She said that the forex trading course she'd taken conveyed that a person who was skilled in watching and predicting the market (for example, by observing economic indicators and geopolitical events) *could* earn returns equivalent to 10% per month. She invested on the basis that she believed she'd found someone with a track record in studying market forces and economic conditions to enable them to invest profitably. She also said that she knows someone who was able to trade in forex profitably to the extent that it enabled them to take early retirement and live on their profits from trading and so a promised return of 10% per month wasn't unrealistic.

I've considered the further representations Ms A has made but I'm still not persuaded that she made this investment with a reasonable basis for believing that it was legitimate.
I recognise that she believed she was paying someone with the necessary skillset to enable them to watch market conditions and trade based on their predictions as to how exchange rates would move in the light of those wider conditions. However, there was no indication that Mr V had any professional background or experience in financial services or trading (other than as a hobbyist retail trader). Despite that, he was offering extraordinary returns. I recognise that what she was told on a training course suggested that a skilled trader could

earn returns of 10% per month. But I'm mindful of the fact that, for it to be worth it for Mr V to manage other peoples' money, the putative return on capital must have been considerably more than that.

Ms A told us the forex trading course had covered techniques like stop-loss orders, which she understood could be used to manage risk. I've taken that into account. Stop-loss orders are a common tool used by traders to limit potential losses. They don't, however, eliminate the risk to capital entirely. In volatile markets like forex, prices can move rapidly, and a stop-loss may not trigger at the desired level. There can also be liquidity issues, where there are no buyers or sellers available at the stop price, meaning the trade is executed at a less favourable rate. Stop-loss orders are risk-management tools and, while they can help minimise losses, they can't protect capital entirely, and they don't guarantee strong or consistent returns.

It's also important to recognise that forex markets are dominated by large institutional players, such as major banks, who have significant advantages over retail traders. These institutions run large-scale, professionally managed operations and may benefit from access to market-moving information that simply isn't available to retail traders, like Mr V. Against that backdrop, even for skilled individuals, consistent profits are difficult to achieve. In my view, the idea that a private individual, with no institutional backing, could reliably produce double-digit monthly returns without risk wasn't credible.

Ms A also said she knew someone who had traded forex successfully and had been able to leave their job. I understand why that may have influenced her thinking. It's true that some individuals do make money from forex trading. Normally, those cases involve individuals with a lot of experience and a willingness to tolerate significant risks. I'm afraid I'm not persuaded that the fact that someone she knew was successful makes it reasonable to assume that any opportunity offering high, fixed returns could be legitimate.

Taking everything into account, I don't think Ms A had a reasonable basis for believing this was a genuine investment and so I don't find that Halifax needs to reimburse her in full.

Final decision

For the reasons I've explained above, I uphold this complaint in part. If this decision is accepted, Bank of Scotland plc trading as Halifax need:

- to refund 50% of the money lost to the scam (if this hasn't already been paid); and
- add 8% simple interest per annum to that amount calculated to run from 15 business days after they made their fraud claim until the date any settlement is or was paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss A and Mrs A to accept or reject my decision before 22 April 2025.

James Kimmitt
Ombudsman