DRN-5537988

The complaint

Mr G has complained Bank of Scotland plc trading as Halifax won't refund several payments he says he made and lost to a scam.

What happened

The background to this complaint is well known to both parties, so I won't repeat it in detail here. In summary, Mr G says he fell victim to an investment scam. He made numerous transfers to a cryptocurrency exchange, before forwarding his funds to the scammers, between 12 January 2023 and 22 November 2023. Mr G believed he was sending funds to a credible investment platform. However, he subsequently discovered the investment was a scam after he was informed he had to pay further amounts to release his profits.

Halifax didn't reimburse Mr G's lost funds and so he referred his complaint to us. Our Investigator looked into things but didn't recommend the complaint be upheld. They weren't persuaded that Halifax could have prevented Mr G from falling victim to the scam. As our Investigator couldn't resolve the matter informally, the case has been passed to me for a final decision.

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.

I'm aware that I've summarised this complaint briefly, in less detail than has been provided, and in my own words. No discourtesy is intended by this. Instead, I've focussed on what I think is the heart of the matter here. If there's something I've not mentioned, it isn't because I've ignored it. I'm satisfied I don't need to comment on every individual point or argument to be able to reach what I think is the right outcome. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts.

I don't doubt Mr G has been the victim of a scam here; he has lost a large sum of money and has my sympathy for this. However, just because a scam has occurred, it does not mean Mr G is automatically entitled to recompense by Halifax. It would only be fair for me to tell Halifax to reimburse Mr G for his loss (or a proportion of it) if: I thought Halifax reasonably ought to have prevented all (or some of) the payments Mr G made, or Halifax hindered the recovery of the payments Mr G made – whilst ultimately being satisfied that such an outcome was fair and reasonable for me to reach.

I've thought carefully about whether Halifax treated Mr G fairly and reasonably in its dealings with him, when he made the payments and when he reported the scam, or whether it should have done more than it did. Having done so, I've decided to not uphold Mr G's complaint. I know this will come as a disappointment to Mr G and so I will explain below why I've reached the decision I have.

I have kept in mind that Mr G made the payments himself and the starting position is that Halifax should follow its customer's instructions. So, under the Payment Services Regulations 2017 (PSR 2017) he is presumed liable for the loss in the first instance. I appreciate that Mr G did not intend for his money to ultimately go to fraudsters, but he did authorise these payments to take place. However, there are some situations when a bank should have had a closer look at the wider circumstances surrounding a transaction before allowing it to be made.

Considering the relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to be good industry practice at the time - Halifax should fairly and reasonably:

- Have been monitoring accounts and any payments made or received to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams.
- Have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which payment service providers are generally more familiar with than the average customer.
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or make additional checks, before processing a payment, or in some cases decline to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.
- Have acted to avoid causing foreseeable harm to customers, for example by maintaining adequate systems to detect and prevent scams and by ensuring all aspects of its products, including the contractual terms, enabled it to do so.

So, I've thought about whether the transactions should have highlighted to Halifax that Mr G might be at a heightened risk of financial harm due to fraud or a scam.

The payments Mr G made between 12 January 2023 and 3 February 2023 were not of such a value or frequency that I would have expected Halifax to intervene. Although the payments were identifiably being made to a cryptocurrency exchange there were no wider red flags that would have caused any concern. I agree with our Investigator that a written warning on 6 February 2023, during Mr G's £3,000.00 payment attempt, would have been appropriate. I also agree that as the payments continued a human intervention should have occurred on 6 February. At that stage, a pattern was starting to form that Mr G may be falling victim to a scam.

However, Halifax chose to intervene on the13 January 2023 when Mr G was attempting to make a £1,000.00 payment to the cryptocurrency exchange - requiring him to first discuss it before the funds would be released. During this call Halifax made it clear that some customers have fallen victim to scams and asked if anyone was helping him with his investment. Mr G was not forthcoming with the details and informed them he had been holding Bitcoin for the last year and that's where the payment was going. He also informed them he was a qualified financial advisor. Halifax then again sought to confirm there was no-one guiding him or telling him what to do. Mr G said it was all his own doing.

Had Mr G been forthcoming with the full details of the investment it would have allowed Halifax an opportunity to uncover the scam. Instead, he alleviated Halifax's concerns by confidently responding to its queries and misleading it as to his true intentions for the funds. At such an early stage of the scam, where a scammer had had less time to influence Mr G's actions and there was not as much money invested, I would have expected him to be more likely to share what was taking place. Generally as a scam progresses it becomes harder, not easier, for a scammer's influence to be broken. I see no reason why Mr G could not have informed Halifax that someone was helping him with this investment. Had he done so, it would have given Halifax the opportunity to ask further questions and uncover the scam.

It was a common theme throughout the intervention calls, which took place between 13 January 2023 and 26 February 2023, both before and after the interventions I think should have occurred, that Mr G did not reveal any third-party support. Halifax specifically warned him of third parties reaching out offering good return rates, which is common with investment scams and asked whether anyone was helping him such as an account manager. In response he confirmed he had completed research and the transactions were all of his own volition – continuing to reassure Halifax.

I do agree that some aspects of the interventions which did occur could have been stronger, but I must consider on the balance of all available evidence whether the interventions I think should have occurred would have made any difference. Overall, I'm not persuaded that a written warning or human intervention on 6 February 2023 would have uncovered the scam. It seems most likely Mr G was not sharing all the pertinent details of the investment because of his belief in it / what the scammer told him. Consequently, on balance, it's most likely Mr G would have provided Halifax with credible answers that would have reassured it of any concerns it may have had. Therefore, I do not think Halifax could have prevented the loss.

Considering the payments which subsequently took place I would not have expected Halifax to keep intervening. Mr G's account would have, at that point, reflected an account holder that had a history of sending funds to a legitimate cryptocurrency exchange. Buying cryptocurrency is a legitimate activity and it wasn't / isn't uncommon for individuals to want to invest their funds this way. So, I do not think Halifax needed to do anything further.

I've noted Mr G has referenced decisions that he believes are close to his circumstances. However, we consider each case on its own individual merits and although he believes the circumstances of other decisions seem to be similar, there are key differences.

I am sorry to hear about the vulnerable situation Mr G was in during the scam. The repercussions such a cruel scam has had on him is not something I have overlooked when reaching my decision. However, I have not seen a pattern emerge that would have highlighted to Halifax that Mr G had vulnerabilities, or that they may have been impairing his decision-making during this scam. I am empathetic towards him, but I do not consider his vulnerabilities, in isolation of any other clear indicators of a potential risk of financial harm, to be something that should have triggered further red flags for Halifax.

<u>Recovery</u>

I have gone on to consider if Halifax took reasonable steps to try and recover the funds. It's important to note Mr G didn't instruct Halifax to send the money directly to the scammers. He completed the transfers to his own account at the cryptocurrency exchange – which then completed the service he asked of it. All the funds were then sent on to a wallet address provided by the scammer. Halifax would only ever have been able to attempt to recover the funds from his own account. If these funds had not already been transferred to the scammer, they would be in Mr G's control to access as and when he chose.

<u>The Contingent Reimbursement Model Code</u>

Although Halifax has signed up to the Contingent Reimbursement Model Code, the payments Mr G made from his Halifax account aren't covered by the Code because he made the payments from his Halifax account to his other account and not to another person.

I cannot fairly and reasonably say that Halifax should have to refund payments under the Code when it doesn't apply here.

So, in light of all of the above findings, there's no fair and reasonable basis under which I can ask Halifax to reimburse Mr G's loss.

My final decision

My final decision is that I don't uphold this complaint against Bank of Scotland plc trading as Halifax.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 22 August 2025.

Lawrence Keath
Ombudsman