

The complaint

Mr T complains that Bank of Scotland plc (trading as Halifax) won't refund money he lost that he alleges was part of an investment scam.

What happened

The details of this complaint are well known to both parties, so I will not repeat them again here. Instead, I will focus on giving the reasons for my 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.

Having done so, I've reached the same outcome as our investigator for these reasons:

- I recognise there's a disagreement here about whether these disputed payments were made as part of an investment scam. But I don't think I need to make a finding on this point.
- That's because, even if I accept this was a scam, it wouldn't automatically follow that Halifax are liable to refund Mr T. Instead, I must consider whether Halifax – taking into account relevant rules, codes and best practice – ought to have identified a fraud risk, so should have looked at the wider circumstances surrounding the transaction before making the payment.
- Having reviewed how Mr T used his account in the months leading up to the scam, I've noted he made several payments by cheque, which was the type of payment in dispute here. I've also considered how the few disputed payments were made over a year and a half – so there wasn't anything alarming in their frequency.
- I realise the payments were for increasingly significant amounts. Mr T's representatives submit that, in line with the rules, Halifax ought to flag *any* large payment. But what they're referred to are *examples* of suspicious activity – it's not a prescriptive list. And I think it's reasonable to say that what is deemed unusual can only be determined by reference to what is usual. Here, Mr T had made previously several payments of a similar size to those in dispute, so I don't think this represented a significant departure from how the account usually operated.
- Mr T's representative also point out that these payments went to a new payee. But I don't think that, in itself, is enough to say it's unusual or suspicious, bearing in mind the plentiful legitimate reasons new payees are created.
- Taking this all into account, I consider it reasonable that Halifax didn't detect a fraud risk – so simply processed the payments in line with Mr T's instructions.
- As well as considering whether Halifax ought to have prevented any alleged losses,

I've considered whether it ought to have done more to recover it. It didn't explore this, as it wasn't satisfied it was a scam. But even if it was wrong about this, I don't think it would've made any difference. That's given the time that passed between the payments and Mr T's reporting of the alleged scam – and, therefore, the likelihood that any funds could be recovered.

- I appreciate this will be very disappointing to Mr T. But, having considered this carefully, even if this was a scam, I'm not persuaded Halifax could fairly be blamed for failing to stop or recover his losses.

My final decision

For the reasons I've explained, I don't uphold Mr T's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 19 October 2023.

Emma Szkolar
Ombudsman