DRN-4413161

The complaint

Mr M has complained Bank of Scotland plc, trading as Halifax, did little to intervene and stop payments he was making which turned out to be an investment scam.

What happened

In both early 2020 and mid-2022 Mr M was concerned about his finances and was looking to invest his savings and income from his business.

In 2020 he found a commodity and forex trading company which he believed, after his own research, to be genuine. In February 2020, Halifax intervened as Mr M tried to make a payment for £25,000 to an overseas company. A couple of days later Mr M made the first of five payments within a few days to an account held with a company I'll call P.

Mr M subsequently told the person he'd been setting this arrangement up with that he was unable to make any further payments, despite being told he was missing out on great opportunities. Mr M was shaken to also be told a little while after that his account was in arrears after trading and he'd be liable for the losses.

A couple of years later, Mr M got in touch with another company involved in trading. He agreed to make further payments to his account with P. Over just under a month, Mr M spent more than £15,000 whilst also receiving a small amount which he was told were the results of his investment.

Mr M later realised this had been a scam and asked Halifax to refund him. Halifax wouldn't agree to do so as they believed they'd alerted Mr M to the dangers of unknown investment in their discussions in February 2020.

Mr M brought his complaint to the ombudsman service. Our investigator reviewed the evidence including the calls between Halifax and Mr M. She felt overall that Halifax should have intervened in February 2020 after Mr M made his first payment to P for £15,000. However she felt Mr M should be liable for half of his losses. She wasn't going to ask Halifax to do anything about the later investments in mid-2022.

Mr M accepted this outcome. Halifax didn't. They believed they'd acted in a suitable manner and there was nothing further that suggested Mr M's transactions to P in February 2020 should have been blocked.

An ombudsman has been requested to consider this complaint.

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. I'll explain why.

Where there is a dispute about what happened, I have based my decision on the balance of probabilities. In other words, on what I consider is most likely to have happened in the light of the evidence.

I don’t dispute Mr M was scammed and has lost a considerable amount of money from his income and savings. He has my sympathy about what he has gone through.

There’s no dispute that Mr M made and authorised all of the payments. Mr M believed he was loading up his account with P enabling trading to be carried out.

I’m satisfied the transactions were authorised under the Payment Services Regulations 2017

It’s generally accepted that Halifax has an obligation to follow Mr M’s instructions. So in the first instance Mr M is presumed liable for his loss. But that’s not the end of the story.

Taking into account the law, regulator’s rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider that Halifax should:

- have been monitoring accounts and payments made or received to counter various risks, including fraud and scams, money laundering, and the financing of terrorism.
- 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 (amongst other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which financial institutions are generally more familiar with than the average customer.
- in some circumstances, irrespective of the payment channel used, have taken additional steps or made additional checks before processing a payment, or in some cases declined to make a payment altogether, to help protect its customers from the possibility of financial harm.

Mr M fell victim to an investment scam. These unfortunately aren’t particularly unusual but are invidious in the way those carrying out the scam inveigle themselves into someone’s trust.

In coming to my decision I’ve also noted our investigator’s detailed view and additional responses provided to Halifax. I see no need to repeat those aspects that aren’t disputed. So specifically I won’t be covering the second investment scam in May and June 2022 in detail although all parties can be reassured I’ve reviewed what happened.

It is clear from the detailed testimony I’ve seen from Mr M that he firmly believed he was making genuine investments. He’s also adamant he carried out due diligence.

I’ve noted the conversations Mr M had with Halifax in February 2020.

Halifax specifically blocked the overseas payment Mr M was trying to make on 5 February. During that conversation Mr M confirmed he was dealing with a cryptocurrency investment company and that he’d downloaded software which allowed the scammers to access his laptop.

I appreciate Halifax believed following this and the warning they gave Mr M that they had no further need to intervene. They also believe Mr M has a history of investment. I’ve reviewed Mr M’s account statements with Halifax and can see this is the case. However I don’t agree with Halifax and believe they should have taken further steps when Mr M made his payment of £15,000 to P.

I say this because:

- Halifax should have been alert to any further investment activity carried out by Mr M as he'd admitted he'd downloaded software which allowed a third party to access his laptop. At that stage, I don't believe they could be satisfied Mr M had authorised the transactions.

- The use of P for investment is known as being used by fraudsters masquerading as genuine investment opportunities.

- No further warnings were provided to Mr M at this time.

- Mr M authorised transactions totalling £33.600 taking his account overdrawn over a very short period of time.

I can't be sure that if Halifax had intervened, Mr M would have listened to their warnings, but I've seen nothing which would indicate that he wouldn't.

Like our investigator, I'm going to be asking Halifax to pay half of Mr M's losses. I say this because:

- I'm not convinced Mr M did carry out suitable research into the company he was trading with.

- Unfortunately just because something is ranked highly within search engines wouldn't indicate them being genuine. Mr M is a director of a limited company and I'd have expected him to be aware of this.

- He'd been warned by the fraudsters that banks didn't like cryptocurrency transactions so took steps to try and disguise what he was doing.

- He'd also received warnings from Halifax after the initial blocked payment.

When looking at what happened two years later, I agree that Halifax need to take no further action. It's clear that Mr M was willing to lie to Halifax when they attempted to intervene.

Putting things right

Halifax will need to pay half of Mr M's initial losses. This amounts to £16,800. 8% simple interest a year will also need to be added to this amount from the date of Mr M's loss.

My final decision

For the reasons given, my final decision is to instruct Bank of Scotland plc, trading as Halifax, to:

- Refund £16,800 to Mr M; and

- Add 8% simple interest a year from the date of Mr M's losses to the date of settlement.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr M to accept or reject my decision before 26 December 2023.

Sandra Quinn
Ombudsman