

The complaint

Mr L is unhappy that Bank of Scotland plc, trading as Halifax, will not refund all of money he lost as the result of an authorised push payment (APP) scam.

Mr L has brought his complaint through a representative, for ease of reading I will refer solely to Mr L in this decision.

What happened

Both parties are familiar with the details of the scam so I will provide only a summary here. Mr L lost £46,016.18 between January and April 2018 as part of a commodities investment scam. He made three international payments of £11,255.76, £21,000 and £13,762.42 believing he was investing in silver. He researched the company managing the investment, found it was registered, and he says the person he spoke to was professional and knowledgeable. He was sent an impressive prospectus. After each investment Mr L received confirmation of the purchase and a statement of account. The scammer provided regular updates at roughly weekly intervals about the performance of his investment. However, in June 2018 Mr L was told he would need to send more money in order to access the profit generated from his investment. At this stage Mr L became suspicious. He reported the scam to Halifax in October 2022.

Mr L says the payments were unusual for his account and ought to have triggered Halifax to contact him to carry out further checks. It did not provide an effective warning. He wants Halifax to refund the payments in full, to pay him £500 compensation and cover any related legal costs.

Our investigator did not uphold Mr L's complaint. She said the initial payment was not unusual for Mr L's account and, whilst the second was of a higher value, it wasn't to a new payee, nor was it Mr L's first international payment. She said Halifax had done what she would expect to try to recover the money when Mr L reported the scam.

Unhappy with this assessment Mr L asked for an ombudsman's review. He said the value of the second payment was suspicious and warranted checks from Halifax.

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 am not upholding Mr L's complaint. I will explain why. There's no dispute that Mr L made and authorised the payments. Mr L knew who he was

paying, and the reason why. At the stage he was making these payments, he believed he was investing in a commodity through a legitimate company. I don't dispute Mr L was scammed and he wasn't making payments for the reason he thought he was, but I remain satisfied the transactions were authorised under the Payment Services Regulations 2017.

It's also accepted that Halifax has an obligation to follow Mr L's instructions. So in the first instance Mr L is presumed liable for his loss. But there are other factors that must be considered.

To reach my decision I have taken into account the law, regulator's rules and guidance, relevant codes of practice and what was good industry practice at the time. To note, as the payments were both international and pre-date its introduction, the principles of the Contingent Reimbursement Model (CRM) code do not apply in this case.

This means I think 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.
- 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, 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.

In this case I don't think Halifax ought to be held liable for the transactions. I'll explain why.

Mr L argues the payments were out of character for his account. I don't think they were. When Mr L made the first payment it was lower than a previous payment he had made for around £12,000, and it was not the first time he had made an international payment. By the time he made the second payment it was to what was by then an existing payee and there had been no issues reported to Halifax about the first transaction made several weeks before: the payments were not made in quick succession. Mr L had also made payments that reduced his balance to a level lower than any of these three payments. There is a balance to be struck between identifying payments that could potentially be fraudulent and minimising disruption to legitimate payments. So, in the round, I cannot fairly conclude that Halifax ought to have intervened in any of the transactions or to have reasonably suspected Mr L was the potential victim of financial harm.

I note the FCA published a warning about the company that managed Mr L's investment but this was in July 2018 so it would not be reasonable to expect Halifax to in some way respond to payments to said company prior to this date.

Mr L also says Halifax did not provide an effective warning, but as I don't find it ought to have intervened in any of the transactions or reasonably suspected that he was the potential victim of financial harm I cannot conclude this was a failing.

I have also considered whether Halifax did what we would expect to try to recover Mr L's money after the scam was reported. As these were international payments the obligations differ and we look to see if the bank has used best endeavours to retrieve the funds. In this case I would need to also take into account the time between the scam and Mr L reporting it to Halifax. I can see that it did attempt to recall the funds but they were no longer in the recipient's account.

This means I am not instructing Halifax to refund any money to Mr L. This is a difficult decision to make, I'm sorry Mr L lost a considerable amount of money which was very distressing for him. I can understand why he would like to be compensated for his loss. And

I do accept Mr L has fallen victim to a sophisticated scam. But I can only consider whether the bank, which had no involvement in the scam itself, should be held responsible for what happened. For the reasons set out above I do not find Halifax can be held liable in the circumstances of this case.

My final decision

I am not upholding Mr L's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 31 July 2023.

Rebecca Connelley
Ombudsman