

The complaint

Mr W complains that Bank of Scotland plc trading as Halifax refuses to refund payments he says he made as part of an investment scam.

Mr W is being represented by a third party. To keep things simple, I will refer to Mr W throughout my decision.

What happened

The background to this complaint is well known to both parties, so I won't repeat what happened in detail.

In early 2021 a business contact of Mr W recommended a trading broker to him and explained an investment opportunity. Mr W contacted the broker and was sent some marketing information.

The information Mr W received looked very professional and the website provided also looked like that Mr W would have expected a trading website to look like. The broker himself also appeared very knowledgeable and professional explaining he was the owner of the company 'Simply Bots'.

Convinced by the available information Mr W started to invest and over the time Mr W was investing he was in contact with the broker via a popular messaging service

In June 2022 the balance of Mr W's investment fell significantly, and the broker explained to Mr W that the market had moved too quickly to take any action. The broker then stopped communicating with Mr W.

One of our Investigators reviewed the complaint and didn't think it should be upheld. They found there was not sufficient evidence to show Mr W had fallen victim to a scam, and Halifax was not responsible for his loss.

Mr W disagreed so this complaint has been passed to me to decide.

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 don't uphold Mr W's complaint and I'll explain why.

Not every complaint referred to us and categorised as an investment trading scam is in fact a scam. Some cases simply involve high-risk investments that resulted in disappointing returns or losses.

Certain high-risk investment traders may have promoted these products using sales methods that were arguably unethical and/or misleading. However, whilst customers who

lost out may understandably regard such acts or omissions as fraudulent, they do not necessarily meet the high legal threshold or burden of proof for fraud, i.e. dishonestly making a false representation and/or failing to disclose information with the intention of making a gain for himself, or of causing loss to another or exposing another to the risk of loss (Fraud Act 2006).

In simpler terms, some merchants may have used sales and promotional methods that could be seen to be unfair by consumers considering the losses they've incurred – but this does not always amount to fraud.

Banks and other Payment Services Providers ("PSPs") have duties to protect customers against the risk of financial loss due to fraud and/or to undertake due diligence on large transactions to guard against money laundering. But when simply executing authorised payments, they do not have to protect customers against the risk of bad bargains or give investment advice

When considering this, I've paid particular attention to the official organisations that publish warnings about merchants that operate in the UK and abroad.

Mr W has told us the name of the individual broker, and two businesses involved in the transactions he authorised.

I've searched the Investor Alerts Portal of the International Organization of Securities Commissions ("IOSCO"), the international body that brings together the world's securities regulators. And the FCA (as the UK regulator) also has its own warning list, which is in place to share alerts and insight about merchants that have been identified as potentially being fraudulent or unauthorised.

Upon checking both, it's my understanding that none of the businesses had any adverse information reported about them at the time Mr W authorised his payments.

Further research shows that the broker and the business he claimed to own appear to be legitimate. The broker Mr W spoke to is showing as a director of the business on companies' house and he has been a director of that business for several years. He continues to be a director of the business as of today's date.

The website Mr W provided to us is still available and appears to be offering services like that Mr W took with it.

Mr W also signed a money manager agreement with a separate business which I can see he received payments from as part of the investment process. This business appears to be regulated by the Australian Securities & Investments which I think shows it is also likely to be a legitimate business.

Mr W says that the information on companies' house does not accurately reflect the services the broker has carried out and that registering as a business on companies' house is likely an attempt to appear legitimate.

But while not all the information on companies' house may appear to be completely accurate, I don't think there is sufficient evidence in this case to show a scam took place. So, Halifax does not have to refund any of the payments Mr W has included in his complaint.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 25 December 2023.

Terry Woodham
Ombudsman