DRN-3951707

Complaint

Mr F is unhappy that Bank of Scotland plc (trading as Halifax) hasn't reimbursed him after he fell victim to an investment scam.

Background

In 2017, Mr F fell victim to an investment scam. A friend recommended he put his money in a betting syndicate. He was told that he could double his investment within a year and that this would be without any risk to his upfront capital.

He was persuaded it was genuine because there were multiple testimonials from people who had earned generous returns from the syndicate. In 2019, the underlying reality of the syndicate was revealed. The company running it became insolvent and in May 2019, a court order was issued to wind up the company. The director of the company is now personally bankrupt and, as I understand it, the company owes over £50 million to its investors.

Mr F began investing in March 2017. He made six payments between then and May 2018 and the total value of the funds he transferred was £28,000. Once he realised that he'd fallen victim to a scam, Halifax was notified. It investigated but didn't agree to reimburse him. It didn't think that the payments were so unusual that it ought to have intervened to question them with Mr F. It also pointed out that the payments predated the introduction of the Lending Standards Board's Contingent Reimbursement Model ("CRM") Code and so its provisions didn't apply.

Unhappy with the response from Halifax, Mr F referred his complaint to this service. It was looked at by an Investigator who didn't uphold it. The Investigator said that, while Halifax was expected to be on the lookout for unusual or out of character transactions that might have been fraudulent, she didn't think that these payments were out of character. There were several payments of a similar size around the same time as the scam payments. As a result, Halifax hadn't done anything wrong by not intervening.

Mr F's representatives responded and pointed out that, although there were similar sized payments, these had features that meant they shouldn't be taken into account when assessing the fraud risk of the payments he made to the syndicate. Because no agreement was reached between the parties, the case was passed to me to consider and come to a final decision.

Findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

The starting position in law is that Mr F is generally liable for payments that he's authorised. It's common ground between the parties that these six payments were authorised and so Mr F is presumed liable at first instance.

All of these payments were made prior to the introduction of the Contingent Reimbursement

Model ("CRM") Code and so it doesn't apply here. However, good industry practice required the bank to be on the lookout for transactions that were unusual or out of character such that they might demonstrate a fraud risk. On spotting such a risk, I'd expect it to take steps to protect its customer from the risk of financial harm due to fraud.

Halifax says that there wasn't any clear indication of fraud risk from the activity on Mr F's account. I'm not entirely persuaded by that argument. Although there were other payments around the same time that were of a similar or greater value, these were obviously of lower risk – for example, one such payment was a debit card payment Mr F made to his mortgage provider. Several others were regular transfers he made to his company bank account.

I don't think these have the same risk profile as a £5,000 payment made to a new payee. I think the first payment Mr F made required the bank to take some action to protect him. However, that doesn't automatically mean his case should be upheld. It isn't enough to identify that the bank ought to have intervened – I must be persuaded that its failure to intervene caused Mr F's loss. I emailed his representative to explain my concerns:

> *We know now, with the benefit of hindsight, that this was likely a fraudulent operation. The man running the betting syndicate appears to have been running a Ponzi scheme – paying out winnings to existing clients by drawing on funds provided by newer ones. The problem is that none of that would've been apparent when [Mr F] started investing in 2017. There was no negative information about the company or owner online. It wasn't until 2019 when the director filed for bankruptcy that negative details about the company became available. This isn't particularly surprising - by their very nature, Ponzi schemes don't tend to look like scams until the point that they fail.*
>
> *I don't think the bank would've had any reasonable grounds in 2017 to suspect that this was a scam. Clearly investing money in a betting syndicate is high risk, when compared with a conventional investment. [Mr F] must surely have been aware of that at the time. It seems like the fact that his acquaintance had earned good returns persuaded him this was a reasonable course of action to pursue. And in any event, it wasn't the bank's responsibility to give [Mr F] advice on how to manage his money, just to take reasonable steps to protect him from a clear fraud risk.*

Mr F's representatives responded with several points and drew reference to a different case which also concerned a loss to a betting syndicate, but which was resolved in its client's favour. It noted that the Financial Conduct Authority issued a warning in 2016 about the problems posed by Unregulated Collective Investment Schemes (UCIS). Although such schemes are not unlawful, their promotion is a regulated activity. The operator of the betting syndicate was clearly not regulated by the FCA for those purposes.

I've considered these further representations carefully and I'm not persuaded to depart from the position I set out in my earlier email. I can't know for certain if the betting syndicate would meet the regulator's definition of a UCIS – more would need to be known about the way it operated. Nonetheless, I accept that it's possible it did and, if so, the operator of the syndicate will have failed to comply with the FCA's rules regarding their promotion.

However, I'm not persuaded that it would be reasonable to expect an employee of the bank to make the connection between a betting syndicate and a UCIS in a short exploratory conversation. Even if the bank did make that connection, I don't think it could've framed any warning to him in such a way that it would've prevented him from making the payments.

The information would not have been enough for it to have definitively warned that Mr F was transferring his money to a fraudster. And I think if it had accurately summarised the concerns (i.e. that the betting syndicate could be considered a UCIS and that such schemes can't be promoted by anyone without FCA authorisation) I think this would've seemed like an obscure observation and would be unlikely to have prevented Mr F from going ahead, particularly in view of the very generous returns his friend had already earned and that the company seemed to be, broadly speaking, operating legitimately.

I've also considered the other case Mr F's representatives drew my attention to. Every case that is referred to this service is decided on its own merits. Despite that, the facts of Mr F's case are quite distinguishable for several reasons, not least the fact that the scheme Mr F thought he was investing in didn't claim to rely on unlawfully obtained inside information from individuals working in the horse-racing industry.

Overall, while I think the bank ought to have intervened and discussed the payments with him, I'm not persuaded that its failure to do so caused Mr F's loss because I don't find that the bank would've had good grounds for being concerned that Mr F was falling victim to a scam.

Final decision

For the reasons I've set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 17 November 2023.

James Kimmitt
Ombudsman