

The complaint

Mr W complains that Bank of Scotland plc trading as Halifax did not stop a series of payments he lost to an investment.

What happened

Mr W was looking to invest some of his money and found a financial advisor. Following a personal visit from the financial advisor, Mr W chose to invest in a company involved in overseas property redevelopment which I'll call 'D'. He sent the following funds:

22 August 2014	£70,000	BK Law
22 October 2015	£25,000	BK Law
22 October 2015	£20,000	BK Law
18 December 2017	£50,000	TTT Moneycorp
19 December 2017	£50,000	TTT Moneycorp
20 December 2017	£25,000	TTT Moneycorp
21 December 2017	£25,000	TTT Moneycorp

And received the following returns:

16 February 2015	£1,200
16 February 2015	£3,000
25 August 2015	£21,200
28 August 2015	£3,000

D began to have financial problems and Mr W was contacted by another firm, I'll call 'R', who advised him to transfer his funds from D to R. All but £80,000 was transferred to R. However, since that point, Mr W has been unable to recover his funds and is concerned the investment was a scam. D has since declared bankruptcy and is in liquidation.

Halifax looked into the scam claim and based on what they had seen, they could not find that D had intentionally defrauded Mr W and instead felt this was a genuine, but unsuccessful, investment. Because of this, they did not agree that they should have done more to stop the payment or issue scam warnings.

Mr W referred the complaint to our service. Our Investigator looked into it and asked Mr W's representative a number of additional questions about the investment, the financial advisor and what Mr W's understanding of the investment scheme was. Despite chasing, they did not receive a response to their questions so issued a view based on what they had. In this, they explained that Mr W had received returns in the year following the initial deposit, and at the time there was nothing to suggest he was not taking part in a legitimate investment.

Mr W disagreed with the outcome. In summary, he felt that had Halifax had a conversation with him about the payments before they were processed, it would have revealed that D was not regulated by the Financial Conduct Authority (FCA) and he would not have continued

with the investment. So, he felt he should receive a full refund, with 8% simple interest added.

As an informal agreement could not be reached, the complaint has been passed to me for a final 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.

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to be good industry practice at the time.

Broadly speaking, the starting position in law is that an account provider is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the terms and conditions of the account. And a customer will then be responsible for the transactions that they have authorised.

It should be noted that in 2014 when the first payment of £70,000 was sent from Mr W's account, the regulatory landscape was different to what it is now. A lot of the provisions that are in place today to protect customer's accounts from potential financial harm were not there in 2014. However, the principles set out in the FCA handbook state that firms such as Halifax should pay due regard to the interest of its customers and treat them fairly. So, I've considered whether Halifax have done so in relation to the payments Mr W has highlighted.

I've looked over the statements for the account the payments were made from. This is a savings account, which generally has higher value payments moving in and out of it. Prior to the first payment of £70,000, there were a number of high value credits to the account, followed by a debit of £600,000 the month before. With this in mind, I think it was normal for the account to deal with high value transactions. So, the payment of £70,000 in August 2014, while of a high value, does not look significantly unusual in the context of the value of the other transactions on the account.

However, given that it was to a new payee, and that was out of character for the account, this could therefore have warranted a conversation from Halifax prior to the payment being processed for additional checks. So, I've considered whether a conversation with Halifax at the time of the payment would have made Mr W change his mind about making the payment.

I note that the two later payments of £50,000 in 2017 were made in branch due to the high value and the notes state they were verified by the branch staff. It therefore seems likely the £70,000 payment would also have been carried out in branch and verified by the staff. However, there are no longer any notes confirming this, or what was said.

We have asked Mr W's representatives for more information about what Mr W understood about the investment with D, what literature he was given, who the financial advisor was and what due diligence Mr W carried out about the advisor and the scheme. Unfortunately, we did not receive a response to these questions, so I've had to base my findings on what is available to me.

I understand that Mr W was investing in a company that would redevelop derelict buildings in Germany. The payment of £70,000 was being made to a UK account in the name of a German law firm, so the recipient would not have appeared suspicious or unusual. I've not seen paperwork from the time of the investment, but I can see that Mr W received returns just six months later, and again eight months after that, which suggests that, at least initially, this functioned like a regular investment.

Mr W's representative has pointed out that D was not regulated by the FCA, however, as this was an overseas investment, depending on how it was set up, it may not require regulation, so this would not necessarily be a cause for concern at the time. Based on the limited information available, I've seen nothing to suggest there would have been significant cause for concern when Mr W made the initial payment of £70,000, so I think it's unlikely a conversation with Halifax would have made him change his mind about carrying on with the investment.

As has already been set out, Mr W received returns the year after his first investment, totalling £28,400. And while I haven't seen the initial annual statements, I've seen some from 2017 and these highlight that Mr W was kept up to date on the status of his investments. The later payments of between £20,000 and £50,000 were less than the initial investment discussed above, and looking at Mr W's account activity, these were not unusual or out of character when compared to his normal account activity.

In addition, the last four payments were also sent to a legitimate payment services provider registered with the FCA. So, I don't think the rest of the payments warranted intervention by Halifax, and even if they had, I think it's unlikely Mr W would have changed his mind about continuing to invest when he had already received favourable returns.

Mr W has mentioned that D began to have financial issues and following that he was contacted by another firm, R who advised him to transfer his funds. Mr W followed this advice and transferred the majority of the funds from D to R. Ultimately, the payments had already gone from Halifax to D, so the later transfer to R does not affect the findings outlined above. As this complaint is against Halifax, I can only consider their actions.

D had financial problems and declared bankruptcy towards the end of 2020. Mr W, via his representative, raised a complaint with Halifax in late 2022 and they explained how Mr W could go about trying to recover his funds, as they were unable to do so for him at that stage. Due to the length of time between Mr W making the payments and him raising a complaint about them, as well as the fact D has declared bankruptcy, he should register with the liquidator if he hasn't done so already, as Halifax will not be able to assist him further in recovering his funds.

Having carefully considered everything available to me, I do not direct Halifax to refund the transactions in question.

My final decision

I do not uphold Mr W's complaint against Bank of Scotland plc trading as Halifax.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 21 December 2023.

Rebecca Norris
Ombudsman