

## **The complaint**

Mrs H complains that Bank of Scotland plc trading as Halifax (Halifax) wouldn't refund the money she paid to an investment firm.

## **What happened**

### *What Mrs H says:*

Mrs H had an ISA with Halifax. On 17 November 2017, it had a balance of £51,713.95. Mrs H then made a payment for £40,000 to an investment firm – which I will call A. The payment was made at a branch of Halifax. Mrs H is represented by a third-party claims firm, but I will refer to Mrs H as the complainant here.

Mrs H said she'd made investments of £51,446 with A on 17 November 2017 – of which the payment made from her account at Halifax was £40,000. She said she had been targeted by cold callers who were unregulated introducers. They persuaded her to invest with A. She wasn't an experienced investor and didn't have the expertise to assess the investment prospects of A.

Mrs H said that A raised funds from investors but they weren't used for the purposes they promised. A therefore defrauded hundreds of people.

She said Halifax provided no warnings to her when making the payment, and had they done so, she wouldn't have made it. Mrs H said Halifax should refund the money, plus 8% per annum simple interest.

### *What Halifax said:*

Halifax said this was a civil dispute and not a scam – so it wasn't covered by the Contingent Reimbursement Code (CRM Code). The investment firm (A) existed as a company when Mrs H made the payment and A had the intention of investing her money. While the payment made by Mrs H was unusual, the branch carried out the necessary checks when she made it.

### *Our investigation so far:*

Mrs H brought her complaint to us. Our investigator didn't uphold it. He said A was a legitimate private limited company, incorporated in 2015, but then went into administration in May 2020. So – this couldn't be considered a scam, but a civil dispute. There wasn't any evidence of A operating a scam operation when Mrs H made the payment in 2017. It wasn't the role of Halifax to give Mrs H financial advice about the investment she was making.

But – he said we would've expected to see that the branch of Halifax made the necessary checks when Mrs H made the payment. He could see that the branch discussed the payment with Mrs H and signed off the checklist for it. He couldn't see the checklist. Even if Halifax had warned Mrs H about the investment, he was persuaded that she would've gone ahead anyway.

Given the passage of time, he wouldn't have expected Halifax to try to recover the money – and suggested that Mrs H contact the appointed administrators to see if any funds could be paid back to her.

Mrs H didn't agree and asked that an ombudsman look at her complaint. She said (through her solicitors):

- Halifax should've provided warnings about the information she had been given by the introducer.
- Halifax could've checked the credentials of the person who contacted Mrs H by checking with the FCA's register. This would've shown that he wasn't registered or qualified.
- Halifax should've been aware that the investment in question should only be sold to sophisticated investors and/or high net worth individuals – Mrs H was neither, and was 75 years old at the time. Mrs H had been told the investment was low risk.
- It was argued that as A didn't make the investments that they said they would in its prospectus, this amounted to a scam.

### **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.

I'm sorry to hear that Mrs H has lost money. It's not in question that she authorised and consented to the payments in this case. So - she is presumed to be liable for the loss in the first instance.

In broad terms, the starting position in law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the terms and conditions of the customer's account.

In November 2017 – when Mrs H made the payment to A - there were some circumstances where a bank should have taken additional steps before processing a payment to help protect customers from the possibility of financial harm. For example, there were some guidelines which should have been followed when older or vulnerable customers asked to make unusually large cash withdrawals or where someone appeared to be telling them what to do.

In recent years, there has been an increase in sophisticated fraud and scams, leading to greater expectations of banks in terms of its role in preventing fraud. This started with a super complaint in September 2016. For example, the British Standards Institute's 'Protecting Customers from financial harm as a result of fraud or financial abuse – Code of Practice' was published in October 2017. This recognised that banks should look to identify and help prevent transactions – particularly unusual or out of character transactions - that could involve fraud or be the result of a scam. And the Contingent Reimbursement Model (CRM) Code, effective from 28 May 2019, was set up to provide protection for customers who fall victim to Authorised Push Payment (APP) scams, and to reduce the occurrence of APP fraud – but the CRM Code came into operation after the payment in question.

So, in broad terms, the checks required of firms when Mrs H made her payment in November 2017 were less than at later dates. But - I noted that the British Standards Institution (BSI) code for protecting customers from financial harm as a result of fraud or

financial abuse came into effect on 31 October 2017 – a few days before Mr H made her payment to A. So – I considered what that code said.

The BSI code of practice gives recommendations for how banks can protect its customers from fraud and financial abuse, and it explains how to recognise consumers who might be at risk. It included several activities as examples of what might indicate fraud or financial abuse. As far as Mrs H's payment was concerned, the relevant parts of the code said firms should be aware of:

- Transfers to other accounts
- A withdrawal or payment for a large amount
- A payment or series of payments to a new payee

Bearing all of this in mind, I need to decide whether Halifax acted fairly and reasonably in its dealings with Mrs H when she requested the payment, based on the expectations of banks in 2017. I need to consider whether Halifax did all that it ought to have done when Mrs H made the payment in the branch.

Having done so, I'm not persuaded Halifax should refund Mrs H the amount she lost.

Mrs H has said she was targeted by a person who acted as a financial adviser – and he/she advised her to invest in A. Mrs H told Halifax that she'd contacted A herself and they appeared credible at the time.

I looked at what happened to A. It was a trading company when Mrs H made the payment in November 2017 – as A lodged a 'confirmation statement' at Companies House in August 2017. And filed its annual accounts for the year ended 28 February 2018. It was only later when A went into difficulty – as it went into administration in May 2020. But - this decision does not hinge on the status of A at the time.

The crux of this complaint is what happened at the branch when Mrs H made the payment – as there were some obligations on Halifax to carry out relevant checks, as I've set out.

We asked to see the 'High Value Authorisation' form (HVA) completed by the branch at the time of Mrs H's visit. And we asked to see the details of the payment made. The HVA, completed by the manager, showed:

- The beneficiary of the payment was Mrs H's account with A. It quoted Mrs H's account number with A.
- The HVA form says the payment was out of character for the way Mrs H used the account (as it was an Individual Savings Account).
- It says the purpose of the payment was 'bond investment'.
- It says a warning about scams was read out to Mrs H. This said "...*please confirm you are not making the withdrawal because you have been told to do so by a third party...(if that is the case) your money could be at risk...*". And I can see Mrs H signed the clause to say she understood that.
- The form was signed by the manager and he confirmed the transaction was 'genuine'.

The evidence shows that the payment was referred to and authorised by a manager. He considered it to be 'unusual' compared to normal activity. I looked at Mrs H's ISA statements

– and these show there was no activity during the previous 12 months – other than interest being credited to the account. So – it was not a normal thing for her to do.

But equally, it was a savings account – and so we would not expect there to have been a lot of payments activity on it, as the purpose of a savings account is to accumulate funds, rather than making payments. But having said that, the form indicates that Halifax asked Mrs H more questions about the payment – as it was for a high amount. So, Halifax did the right thing – as they checked the payment with Mrs H.

The form shows the investment was into a bond – so Mrs H told the manager that. It would seem a reasonable thing for a customer to move savings from an ISA into a bond – if she felt that would get better returns. So – I can see why Halifax considered that to be reasonable.

And – I can see that Halifax read out a scams warning to Mrs H, and she signed to say she understood it.

Mrs H has argued that Halifax should've asked more about the investment and whether it was suitable for her circumstances – but I don't consider it was the role of Halifax to do that, as they weren't advising her on the investment. She also argues that Halifax should've asked why she was investing in A, who advised her to do so, and what their qualifications were – and checked those out. But – I don't consider it's reasonable to have expected Halifax to do that – in the context of the checks they needed to do at the time.

Mrs H has also argued that Halifax should've questioned her more about A, and she expected Halifax to have conducted due diligence on A – in terms of its performance and investments. But here, I don't think it was the role of Halifax to do that. Halifax were making a payment and didn't have an obligation to go further in the way Mrs H has argued.

I noted also that the payment was to Mrs H's account with the recipient bank. So – that information would've supported Halifax's decision to release the payment. I say that as it would've been reasonable for Halifax to consider there was little chance of the payment being misappropriated if it was in favour of Mrs H personally.

#### *Recovery:*

We expect firms to attempt to recover funds from recipient banks where a scam has taken place. But here, Mrs H complained to Halifax in October 2022 – and given the passage of time since the payment was made, there wasn't any chance the funds could've been retrieved. So - I don't think Halifax had any obligation to try to recover the funds after such a period.

I was very sorry to learn that Mrs H has lost money. But I'm satisfied that Halifax carried out the necessary checks when Mrs H made the payment. Therefore, I'm not asking Halifax to do anything here.

#### **My final decision**

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 15 September 2023.

Martin Lord  
**Ombudsman**