

The complaint

Mr P complains Bank of Scotland plc trading as Halifax won't refund £22,000 he says he lost to an investment scam.

Mr P is represented in this complaint, but as it's his complaint, I'll refer mostly to him.

What happened

Mr P received a cold call from a third party in 2019, he was persuaded to pay £22,000, to a company I'll call W, for an investment.

Mr P was then contacted in 2022 by administrators to say W had gone into liquidation. In 2023, Mr P felt he'd been the victim of a scam, so complained to Halifax. He felt they should've done more to protect him.

Halifax responded to the complaint to say they didn't think they'd done anything wrong. They said Mr P should have done more checks in relation to W, including checking whether they were regulated by the Financial Conduct Authority (FCA) or covered by the Financial Services Compensation Scheme (FSCS). Halifax also said, though they do monitor accounts for unusual activity, they do expect customers to sometimes make one-off large transactions – so they didn't think Mr P's payment would have caused concern.

Mr P wasn't happy with Halifax's response so he referred his complaint to our service.

An Investigator considered Mr P's complaint. She said, in summary, although she thought Halifax should've intervened and spoken to Mr P about this payment – she didn't think this would've stopped Mr P making the payment or that Halifax should have refused to make it. This was because at the time, W appeared to be a legitimate company and Mr P had been advised by an IFA he trusted.

Mr P didn't accept the Investigator's findings, so the complaint's 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.

Halifax say they do not believe W was operating a scam. Mr P says he believes this to be the case because the money that he invested was not used for the purposes described in the memorandum. It's not immediately clear whether W was likely operating a scam at the time Mr P made his investment, as I've received little evidence to suggest this. But in any event, even if I were to accept that he had been scammed, I still don't think Halifax can fairly be held liable for his losses, for reasons which I'll go on to explain.

There's no dispute Mr P authorised the payment he made to W. The payment was made by Mr P using the legitimate security credentials provided by Halifax.

Generally, banks should follow their customers' instructions in relation to legitimate payments and, as I've already explained, Mr P did instruct the bank to make this payment.

However, banks are required in some circumstances to take additional steps or make further checks before processing a payment to help protect customers from potential fraud, scams or financial harm. So, proceeding on the assumption that W might have been operating a scam at the time, I've considered whether Halifax should have done more in the circumstances of this particular payment to have prevented Mr P's loss.

Mr P's payment to W of £22,000 was made in January 2019. As it was made prior to 28 May 2019, the Contingent Reimbursement Model (CRM) code does not apply to Mr P's transaction. I've reviewed Mr P's bank statements for the six months before this payment. Having done so, I'm satisfied that the £22,000 payment was substantially larger than the usual payments Mr P had made in the previous six months, so was out of character in that respect. The payment to W was also to a new payee - someone Mr P hadn't paid before. So, considering the size of the payment and Mr P's usual account activity, I think Halifax should have intervened and spoken to Mr P about his payment to W.

If Halifax had contacted Mr P about this payment, I would've expected them to have asked questions about the nature of the payment. I think Mr P would likely have explained he was sending the payment to W for investment purposes. At the time, W was registered with Companies House and I'm not aware of any information Halifax could or should have been aware of, at the time of the payment, that ought to have alerted them that Mr P was being scammed. There also seems little available in the public domain at the time that Mr P could have found if the bank had told him to carry out further research. So I think it's unlikely a conversation about this payment would have led Mr P to realise he was being scammed, and therefore wouldn't have stopped him from going ahead with it, or given Halifax such cause for concern that they should have refused to make it. Therefore, even if W was operating a scam at the time, I don't think Halifax's failure to intervene can be considered as the proximate cause for his loss.

I've considered whether Halifax could've done more to recover the funds for Mr P. But since Mr P made his payment in 2019 and didn't contact Halifax to complain about it until 2023 and by the time he did so, W was in liquidation – I don't think any attempt to recover the money would likely have been successful.

I am sorry that Mr P has lost such a significant amount in these circumstances but, I don't consider it would be fair or reasonable to find Halifax is responsible for his loss.

My final decision

For the reasons I've explained, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 19 October 2023.

Eleanor Rippengale
Ombudsman