

The complaint

Mr G complains that Bank of Scotland plc trading as Halifax ("Halifax") has failed to refund over £17,000 he says he lost to two scams.

What happened

The details of this complaint are well known to both parties, so I will not repeat everything again here. Instead, I will focus on giving the reasons for my decision. But in summary, Mr G sent over £17,000 via a number of debit card payments and one bank transfer, over a number of months, to two companies purporting to be publishing agencies. Mr G paid funds to them for various services including marketing and publishing a book that Mr G had written. Mr G says that these firms weren't publishing agencies and were in fact scammers.

Mr G raised a complaint with Halifax as he believed that it should have stopped these payments. He therefore requested that Halifax refund him. Halifax declined to do this for the debit card payments. However, it did though refund the transfer that Mr G made under the Contingent Reimbursement Model.

One of our investigators looked into this matter and they did not think that Halifax had done anything wrong and did not need to do anything more. Mr G disagreed and therefore his complaint has been passed to me to issue a 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.

Firstly, I should stress that there is not automatic right for a consumer to receive a refund from Halifax when they are scammed. For Halifax to be liable to make a refund I would need to be satisfied that Halifax should have intervened during the scam and had it done so the scam would have been prevented. I also must consider whether Halifax is liable to refund Mr G the money he lost based on the rules in place at the time.

The relevant regulations and industry guidance makes it clear that banks have a duty to protect consumers from the risk of financial harm, including fraud and scams. But the obligation to warn customers of the risk of such financial harm will only reasonably have been engaged if there were sufficient grounds for suspecting the payee was a fraudster; meaning that Halifax could have delayed the payment(s) while concerns about the payee were discussed with Mr G.

I should also add that it is arguable given the size of the payments involved that Halifax should not have intervened at all in relation to the payments that were made. We would only expect Halifax to intervene and discuss the payments if they were unusual or had a pattern commensurate with common scams.

But even if Halifax should have intervened, I'm not sure that they would have uncovered that Mr G was potentially being scammed. Especially as scams involving publishing companies are not a common scam, at least in my experience.

So, for me to say that Halifax did something wrong I would need to be satisfied that there were concerns that the two companies were operating a scam when Mr G made the payments to it that would've been apparent to Halifax.

I've consulted the official organisations that publish warnings about merchants that operate in the UK and abroad, including the Investor Alerts Portal of the International Organization of Securities Commissions ("IOSCO"), as well as the FCA's own warning list. These watchlists, along with other reputable sources, lead me to believe that there were no warnings about the companies involved at the time Mr G made his payment that ought to have been apparent to Halifax.

At the time Mr G made his payments, both companies appear with a basic search to have been legitimate companies. I accept that with the extensive research that Mr G has now done there are doubts as to whether the second company was operating legitimately but I don't think that this would have or indeed should have been apparent to Halifax at the time.

Overall I'm not persuaded that there was any reason for Halifax to have been aware that either company was fraudulent or operating a scam at the time of the payments. As a result, Halifax's duty to intervene wasn't triggered. Therefore, I don't consider the bank acted unfairly by preventing or failing to intervene in the payments being made.

I accept that it is possible that these companies were not operating correctly especially with the evidence provided by Mr G but this does not mean that Halifax have to refund the debit card payments that he made. I can only ask Halifax to refund the payments in question if it should have prevented the payments or uncovered the scam prior to the payments being made and for the reasons set out above I don't think that it reasonably should have.

I've also thought about whether Halifax ought to have done anything to recover the funds after Mr G reported his loss. The payments that were made by debit card, the funds could have been potentially been recovered by chargeback. But in this instance, Mr G raised his complaint with Halifax well after the deadlines for a chargeback claim to be raised, so I don't think Halifax did anything wrong in relation to the debit card payments.

I should also add that even if the payments were within the timescales for a chargeback, which they were not, given that the payments for scam two were made via a payment services firm there wouldn't have been have been a reasonable prospect of a successful chargeback. I say this because the payment service firm did what they were paid for which is to send on the funds.

Halifax also wouldn't have been under any obligation to consider refunding debit card payments under the Contingent Reimbursement Model (CRM) Code either. This is because the payment were made by debit card and the Code does not cover that type of payment.

I appreciate this will likely come as a disappointment to Mr G, and I'm sorry to hear he has lost a significant amount of money. But there is not an automatic right for consumers to receive a refund from Halifax if they are scammed it depends on the circumstances and payment method and in this instance for the reasons above Mr G is not due a refund from Halifax.

My final decision

For the reasons given above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 17 January 2024.

Charlie Newton
Ombudsman