

The complaint

Ms T and Mr T are unhappy because Bank of Scotland plc, trading as Halifax ('Halifax') did not reimburse them the money they lost after falling victim to an investment scam.

What happened

Mr T was looking for investment opportunities online with a view to invest a sum of money he had following the sale of his business. Mr T carried out online research looking for investments with higher interest rates. He used a comparison website and left his details.

Mr T has told us a few days later he was contacted by two firms. Mr T wasn't impressed by the service of one of the firms and decided to proceed with the firm I'll refer to as firm A. Mr T was told about two corporate bonds available – one which was paying interest at 9.625% and the other which was paying interest at 11.5%.

The fraudsters sent literature to Mr T and they were also asked to provide a copy of a utility bill and passports to satisfy anti-money laundering regulations. They were also sent contracts to sign. Mr T says after having carried out some online research they felt happy to invest. Mr T agreed to invest £85,000 for himself and another £85,000 for his wife in the bond paying 9.625%.

Mr T was asked to make an initial payment, which he sent on 27 March 2020 from a sole account he holds with another bank. He made this payment to the beneficiary details he was given, which he was told was in the name of firm A. Mr T then made numerous further payments between 30 March 2020 and 10 April 2020. These payments were made to a different payee.

Mr T decided to invest further funds into a bond in his name paying interest at 11.5%. Three payments totalling £75,000 were paid from Ms T and Mr T's joint account with Halifax, while the remaining amount was paid from Mr T's sole account.

It is important to note that the other payments Mr T made from his sole account with a different bank, prior to the payments dealt with in this decision, are being considered under a separate case with our service. Whilst the payments were made as part of the same scam, as they were made from an account Mr T held with another bank, I will not be commenting specifically on them within this decision. I have simply referred to the other payments for the purposes of describing the background. Therefore, this decision will focus on the three payments made from Ms T and Mr T's joint account with Halifax on 30 March 2020, 31 March 2020 and 1 April 2020 to firm A.

Mr T says the fraudsters told him he'd be able to view the investments online and that they'd be in touch to arrange this. When Mr T hadn't received any contact by 21 July 2020, he says he went online and found a warning on the Financial Conduct Authority (FCA) website which indicated the firm had been cloned. This warning had been posted on 16 April 2020.

Mr T contacted Halifax on 22 July 2020 to report the scam. Halifax having considered the standards expected of it as the sending bank, considered it had met its requirements under

the Lending Standards Board Contingent Reimbursement Model (CRM) Code, of which it is a signatory. It added that on each payment a warning was provided which it said alerted Ms T and Mr T to these types of scams. Halifax added that when making the payments a warning was also provided under the 'Confirmation of Payee' (CoP) result which said the name didn't match that of the receiving account. Halifax say that a search of the firm showed that its authorisation was removed on 12 March 2020 which was before they made the payments. Halifax also felt the interest rates offered weren't realistic or comparable to the market at the time which it feels should've caused them concern. Given the warnings provided, Halifax say Ms T and Mr T didn't complete sufficient checks on the firm or investment to have a reasonable basis to believe they were genuine and so no refund was due.

Ms T and Mr T disagreed with Halifax and referred their complaint to our service. One of our investigators considered the matter and thought the complaint should be upheld in part. In brief, she wasn't satisfied Halifax had established that Ms T and Mr T had ignored an effective warning. However, she also didn't think they'd met their requisite level of care under the CRM Code. On this basis, she recommended Halifax reimburse Ms T and Mr T 50% of their loss under the provisions of the CRM Code, along with paying interest on 50% of the loss at 8% simple per year.

Ms T and Mr T accepted the investigator's view, but Halifax responded to say it disagreed. In short, Halifax says Ms T and Mr T are liable for their loss as they didn't complete the due diligence required before making the payments they did. Halifax reiterated that Mr T ignored multiple warnings the bank provided, such as 'no match' CoP results and an Account at Risk (AAR) warning. It added that it was not convinced, had it shown the warnings within its Fraud Hub page on the initial payments page, that Mr T would've taken heed of them. So, it maintains that Ms T and Mr T are liable for their loss.

Halifax also considers the ruling in *Philipp v Barclays Bank* to be relevant to this case – a court decision that the Quincecare duty should not apply where the transfer is properly and lawfully authorised by the customer. Halifax in its response to our investigator's view has referred to intervention – commenting that the payments Ms T and Mr T made were aligned to the normal spending pattern. Therefore, Halifax says there was no reason to pick up the scam payments as unusual. And that it had no obligation to provide a warning, given the transactions are within usual spending.

After considering Halifax's response, our investigator's view remained the same - for largely the same reasons as she'd previously explained. She did acknowledge the recent *Phillip v Barclays Bank* judgement where the judge took a different view about the Quincecare duty. Whilst she didn't suggest the Quincecare duty applied to this case, she acknowledged that this service had a duty to resolve complaints based on what we think is fair and reasonable in all the circumstances of the case – taking into account not just the law but also the regulators' rules and guidance, relevant codes of practice and what we consider to have been good practice at the time. This includes the CRM Code, which Halifax is signed up to.

Our investigator clarified that she'd not argued Halifax ought to have contacted Ms T and Mr T about the payments and asked questions about them. But she did consider that each of the payments made were remarkable enough to have warranted an effective warning and referred to the requirements for firms under the CRM Code. She concluded each payment Mr T made was significant enough in value for Halifax to have identified a scam risk and provided an effective warning. And whilst she recognised they'd made payments for similar amounts prior to the scam payments - after a credit into the account at the start of March 2020 - she explained that before to this, the account was not used to make such high value payments.

Our investigator explained that under the CRM Code, where the sending firm has failed to meet the standards for firms, and the customer has not met their requisite level of care, each liable party will accept equal responsibility. Therefore, her view remained the same that both Halifax and Ms T and Mr T should share liability 50:50.

As Halifax disagreed with our investigator's view on the complaint, it's 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.

Having done so, I'm satisfied that:

- Under the terms of the CRM Code, Halifax should have refunded 50% of the money Ms T and Mr T lost. I don't think Halifax has met the standards for firms set out in the code as I don't think it provided an effective warning. However, I also don't think Ms T and Mr T have met the requisite level of care under the CRM Code.
- In the circumstances Halifax should now, fairly and reasonably, compensate Ms T and Mr T by paying 50% of the money they've lost as a result of the scam.
- The money sent originated from Ms T and Mr T's joint current account with Halifax. Halifax should pay interest (less any tax lawfully deductible) on 50% of the loss. While I note the joint current account wasn't an interest-bearing account, I've thought about what a fair interest rate would be here, and I find 8% simple interest per annum on these funds to be a pragmatic resolution in this case.

I have carefully considered Halifax's representations about whether Ms T and Mr T ignored an effective warning in relation to the payments, and whether they had a reasonable basis for believing all the payments they were making were legitimate. Having done so, I uphold this complaint in part. I will now explain why.

Did Ms T and Mr T meet the requisite level of care required of customers under the CRM Code?

I've first thought about whether Ms T and Mr T had a reasonable basis for belief for all the payments they made. Having carefully considered all the available evidence, I find myself in agreement with the arguments put forward by Halifax that Ms T and Mr T didn't meet their requisite level of care under the CRM Code.

I'm satisfied that Ms T and Mr T haven't shown they had a reasonable basis of belief because:

- When thinking about the sophistication of this scam, while I accept there were persuasive elements to it, such as the literature they received, the initial processes mirroring that of what a legitimate firm would do and the firm giving information as to how much of the funds would be protected under the Financial Compensation Scheme (FSCS), I do agree with many of the arguments Halifax has put forward. In particular, based on the information presented, I can't safely say Mr T carried out the level of research he says he did. Mr T said he looked up the firm online on 9 March 2020 and didn't note anything of concern. However, Mr T told us he attended court in relation to a serious matter the same day – and so I think it's unlikely Mr T would've researched a possible investment on the same day. But in any event, even if I am wrong about this, I'm satisfied there were some other red flags that I feel Ms T and Mr T should've been concerned about before proceeding with the payments.
- The rates of return offered were quite high in comparison with those available elsewhere. I understand Mr T felt this was because they were corporate bonds, however I note there is some discrepancy as to the term of the bonds within the paperwork. Given the rates of return, I think Mr T ought to have looked more closely at the paperwork before proceeding.
- The three payments sent from the Halifax account were all to the same beneficiary account. However, I have to keep in mind that the fraudsters had provided different account details to Mr T when he made an earlier payment from his sole account. With him being told both beneficiary accounts were in the name of firm A. From the evidence provided, I've not seen any plausible explanation as to why the payment details changed. While I note Mr T say he was satisfied he was making payments to firm A, I can see he was presented with a 'no match' CoP result and I'm aware that he would have seen three 'no match' CoP results in total when making the payments across both accounts (Mr T's sole account and Ms T and Mr T's joint account). Given the negative CoP results, I can understand why Halifax feels they ought to have been concerned. This result ought to have prompted Mr T to ask whether he was paying the correct firm, even more so by the time he'd have received two other 'no match' results on the initial payments he made on his sole account.
- As I've set out, I don't think Mr T carried out much independent research prior to making the payments, and at this point, I think he should've checked that he was dealing with a legitimate business. It's also important to note that the possibility of a scam wasn't the only risk. The message shown indicates that it could be the wrong account number and so there was the risk that a mistake may have been made when the details were provided by firm A. It follows that I'd have expected Ms T and Mr T to have considered the risk that there was a possible mistake with the account details, and I've not seen any evidence to persuade me they did any further checks upon receiving the no match CoP results. I'm persuaded that the 'no match' results Mr T was presented with could and should have led to them taking steps to check the payment details and conduct further research into the firm they were trying to invest through. And so, I don't think he held a reasonable basis for belief that they were paying the person/ firm they were expecting to pay.

To summarise, when thinking about the rates of return offered and the discrepancies relating to these rates within the paperwork the fraudster provided, and the negative CoP results, I think Ms T and Mr T should've done more checks, and had they done so, I'm persuaded they would have realised that the firm they believed to be legitimate and authorised was not in fact authorised and, this would've prompted them to call the genuine firm in turn realising they were dealing with individuals impersonating the firm.

So, it follows that I'm not satisfied Ms T and Mr T have met the requisite level of care under the CRM Code.

I've now gone on to think about whether Halifax met the standards required of it under the CRM Code.

Did Halifax meet the standards required of it under the CRM Code and did it present Ms T and Mr T with an effective warning?

In the circumstances of this case, I'm satisfied Halifax ought to have provided effective warnings. This is because I think it ought to have identified a scam risk given Ms T and Mr T were paying large amounts of money to a new payee, and it seems to me Halifax accepts this position given it provided warnings and has said Ms T and Mr T ignored effective warnings.

Having carefully considered all the evidence, I don't think Halifax has shown that Ms T and Mr T ignored an effective warning when Mr T made the payments. I will now explain why. The warning Halifax provided to Mr T isn't specific to any one type of scam and more information on the specific scam types is only accessible through an optional link to the Fraud Hub page. So, this information isn't prominently displayed and therefore lacks the required clarity and impact required of an effective warning. The warning Mr T saw didn't bring to life what investment scams looked and felt like - more specifically it didn't highlight any of the common features of these types of scams and in particular, a cloned firm scam and how sophisticated these can be. It also doesn't set out what specific steps they could take to protect themselves against the common features of investment scams or cloned firm scams as required under the CRM Code. The warning provided to Mr T when making the payments is a generic warning which simply tells the customer to check the account details with a trusted source, yet the importance of this isn't explained, and there is no indication what such a trusted source could be in the circumstances.

For an effective warning to meet the definition under the CRM Code, as a minimum, it must be understandable, clear, impactful, timely and specific. And for the reasons I've explained above, I'm not satisfied the warning presented meets all those requirements. So, it follows that I'm satisfied Halifax can't fairly apply this as an exception to reimbursement and in turn Halifax did not meet the standards for firms under the CRM Code.

Halifax has highlighted Mr T ignored multiple warnings the bank provided, such as 'no match' CoP results and AAR warnings. I think it is important to distinguish an 'effective warning' and negative CoP results under the CRM Code. Effective warnings are intended specifically to address the risk of, and enable customers to protect themselves from, APP scams. As I've explained above, an effective warning must, as a minimum, meet the definition under the Code – that is to be understandable, clear, impactful, timely and specific.

Messages accompanying negative CoP results, though sometimes mentioning the possibility of fraud, are primarily intended to warn customers that payment details do not match (as was the case here) so as to warn customers about the risk of misdirecting a payment. And while I acknowledge Halifax provided a warning (albeit I have already explained why I don't find this

to have been an effective warning) and a negative CoP result within the same payment journey, I don't find the two together to be sufficient to amount to an effective warning in this particular case.

I'm further mindful that Halifax say Mr T didn't read the warnings on the Fraud Hub page but the information under this page was only accessible by an optional link in the AAR warning. I don't find this prominently displayed and so I cannot say this was effective. I don't think it's reasonable to suggest an effective warning should be 'found' by a consumer following links and finding a warning most relevant to their situation.

And whilst I've carefully considered Halifax's position that it doesn't think an effective warning would have made a difference in this case, I don't agree. While I do think the 'no match' CoP result could and should have prompted them to taking steps to undertake more research and check the payment details at the time of making the payments (which I have set out above), I don't think I can safely say Ms T and Mr T have acted with such recklessness or negligence to find they would have ignored an 'effective' scam warning. I've not seen anything which suggests Ms T or Mr T had any prior experience or knowledge of cloned firm scams. And, there were aspects of the scam which were persuasive and mirrored that of what a genuine investment firm would do. It is not the case that I find Ms T or Mr T showed a clear disregard for risk or that they had concerns and yet decided to proceed in any case.

Had an effective warning been provided by Halifax – bringing to life investment scams, explaining they can be sophisticated – for example, that firms can be cloned - and, steps they could take to protect themselves, I think they'd have carried out further checks. I'm persuaded this would've been the case coupled with the 'no match' CoP results – I do accept Mr T didn't act in the way he ought to have done in response to the CoP results, but I think he'd have taken a different course of action had the no match CoP result been provided within the same payment journey as an effective warning. I'm particularly persuaded the two combined would've been more impactful and I think the scam would've unravelled for the reasons I've previously explained. I think Ms T and Mr T would've recognised they weren't dealing with a legitimate firm.

It follows, that I don't find Halifax provided effective warnings and that it failed to meet the standards required of it under the Code. Therefore, Halifax is liable for 50% of the loss in this case. And, while it doesn't impact the outcome in this case, given I've concluded Halifax did not provide effective warnings, I don't think Ms T and Mr T ignored any effective warnings.

Could Halifax have done anything else to prevent the scam?

Having thought carefully about this and considering what was good industry practice at the time, I don't think the payments Ms T and Mr T made as part of the scam would've appeared so unusual or out of character given the previous account activity, whereby I would've expected Halifax to have intervened beyond providing effective warnings.

My final decision

My final decision is that I uphold this complaint in part. I think both parties ought to share some responsibility for the loss.

I therefore require Bank of Scotland plc, trading as Halifax to:

- Refund Ms T and Mr T 50% of their loss and;
- Pay interest on 50% of the loss, from the date Halifax declined Ms T and Mr T's claim under the Code, until the date of the settlement (less any tax lawfully deductible). Halifax should send Ms T and Mr T a tax deduction certificate if they ask for one. The interest should be calculated at 8% simple per annum.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms T and Mr T to accept or reject my decision before 28 April 2022.

Staci Rowland
Ombudsman