

## Complaint

Mr A is unhappy that Bank of Scotland plc (trading as Halifax) didn't reimburse him after he fell victim to an investment scam.

## Background

In late 2019, Mr A fell victim to an investment scam. He'd received a message on a social media platform about an investment opportunity. The sender claimed to be an experience professional in the industry. The profile was active with a large number of followers. This individual persuaded Mr A that he could earn good returns if he allowed them to manage his money on his behalf. According to Mr A's recollections, the scammer used a great deal of investment specific terminology which reassured him as to the knowledge and experience of this individual.

Mr A made the following payments to five different payees:

1	30 December 2019	£1,000
2	15 January 2020	£1,000
3	15 January 2020	£1,500
4	17 January 2020	£1,800
5	20 January 2020	£1,500
6	20 January 2020	£1,300
7	20 January 2020	£1,200
8	20 January 2020	£500

He complained to Halifax via his representatives that it hadn't done enough to protect him from fraud. His representatives also argued that, as he was 20-years old at the time of the scam, he should be considered vulnerable. Halifax didn't agree to reimburse him. It said it would've expected him to carry out further research before agreeing to invest his money. It also said that Mr A had been told that, after his initial investment of £1,000, he could expect to have earned around £9,000 within seven days. It didn't consider this to be realistic and thought Mr A should've been more sceptical of it.

Mr A was unhappy with that response and so he referred his complaint to this service. It was looked at by an Investigator who upheld it in part. She agreed that Mr A should've taken more care than he did here and so didn't think Halifax needed to reimburse him in full. However, she thought that, by the time he asked it to make payment 6 in the table above, Halifax ought to have recognised that there was an elevated chance that he was at risk of falling victim to a scam.

She didn't think it should have processed that payment without first contacting Mr A to satisfy itself that he wasn't at risk. If it had done so, the scam would've unravelled, and he'd have been prevented from making that and the subsequent payments. She recommended that Halifax refund him 50% of his loss from payment 6 onwards – a deduction of 50% being applied to take into account Mr A's own responsibility for his losses.

Mr A didn't agree with the Investigator's view. His representatives argued that Halifax should've intervened in connection with the first payment. They also said that "*under the Contingent Reimbursement Model, banks are required to contact their customers when they make their first payment to new payees ... Therefore, to advise that the £1,300.00 payment on 18 October was the trigger payment is unreasonable, considering the bank should have intervened for the first payment. Halifax failed to contact [Mr A] in respect of the first payment, as well as several other payments to new accounts, despite their obligation to do so under the CRM.*"

Because Mr A disagreed with the Investigator's view, the complaint has been passed to me to consider and come to a final decision.

## Findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

In broad terms, the starting position at law is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account.

However, that isn't the end of the story. Halifax is a signatory to the Lending Standards Board's Contingent Reimbursement Model Code ("the CRM code"). This requires firms to reimburse customers who have been the victim of authorised push payment ("APP") scams, like the one Mr A fell victim to, in all but a limited number of circumstances.

Under the CRM Code, a firm may choose not to reimburse a customer if it can establish that one of the exceptions under the Code is applicable. In this case, Halifax seeks to rely on the exception that Mr A "*made the payment without a reasonable basis for believing that ... the person or business with whom they transacted was legitimate.*"

I've considered the available evidence carefully and I'm not persuaded that Mr A did have a reasonable basis for believing this investment to be genuine. The fact that he received an unsolicited approach on social media ought to have been a cause for concern as well as the fact that he was asked to send money to several different payees. I think he ought to have recognised that it was unlikely a legitimate investment firm would operate in this way. I also understand that he was told he could expect unrealistically high returns on his investment. It ought to have occurred to him that he was being offered something that was simply too good to be true. For those reasons, I think Halifax is free to rely on that exception to reimbursement.

However, the CRM Code also sets out standards for firms. Halifax was expected to be on the lookout for payments that were unusual or out of character to the extent that they ran the risk of being part of an APP scam. On spotting such a risk, the Code says firms should provide their customer with effective warnings. I find that Halifax should have recognised that there was a possibility that this was an investment scam at the point Mr A asked it to process payment 6. The earlier payments were small enough that it couldn't reasonably have been expected to query them. But by payment 6, Mr A had in total transferred more money than

was typical for his account and to multiple payees. Halifax's obligation under the Code to provide a warning was engaged at that point.

Having said that, the Code only sets out the minimum standards for firms. Where the fraud risk is clearer, good industry practice would be to do more than merely give a written warning. In this instance, I think Halifax shouldn't have processed payment 6 without first calling Mr A to satisfy itself that he wasn't at risk of financial harm due to fraud. As I understand it, Mr A hadn't been asked to lie to or mislead the bank in anyway and so I think it's more likely than not that he'd have responded to their queries openly and honestly. If Mr A told an employee of the bank that he was making payments towards an investment that he'd been introduced to via social media, I think the bank could've given him an unambiguous warning that these payments were connected to a scam. It's unlikely he'd have wanted to go ahead. That payment, and the subsequent ones, would therefore have been prevented.

I don't agree with the argument made by Mr A's representatives that the bank should've intervened in connection with the first payment. The earlier payments were sufficiently in keeping with the way Mr A typically operated his account. I don't think it would be realistic to expect Halifax to intervene in connection with a payment of £1,000, even if it was being made to a new payee. Mr A's representatives have said that the Code requires firms to contact customers when they make their first payment to new payees. This isn't correct - the Code imposes no such requirement.

Finally, Mr A's representatives have argued that he was vulnerable at the time of the scam because of his age. This is significant because, under the CRM Code, firms are expected to assess claims differently where the customer is vulnerable. However, his age alone wouldn't mean that he meets the definition of vulnerability. It needs to be shown that it wouldn't be reasonable to have expected Mr A to have protected himself against that particular scam – for example, something that made him unusually biddable or have problems exercising judgement. However, no evidence has been provided to suggest that was the case here and so I don't find that he was vulnerable under the Code.

I don't say any of this to downplay or diminish the fact that Mr A has fallen victim to a cruel and cynical scam. I have a great deal of sympathy for him and the position he found himself in. However, my role is limited to looking at the actions and inactions of the bank and I'm satisfied the decision I've reached here is a fair and reasonable one.

### **Final decision**

For the reasons I've set out above, I uphold this complaint in part.

If Mr A accepts my decision, Bank of Scotland plc needs to refund 50% of payments 6, 7 and 8. It should also add 8% simple interest per annum to those refunds calculated to run from the date the payments were made until the date any settlement is paid to him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 5 April 2024.

James Kimmitt  
**Ombudsman**