

The complaint

Mr D is unhappy that Bank of Scotland plc, trading as Halifax, won't reimburse money that he lost as the result of a romance scam.

What happened

In March 2020, Mr D started talking to a performer, who I'll refer to as 'P' on an online cam site. Mr D was led to believe by P that she had genuine feelings for him and that Mr D and herself were in a romantic relationship. Over the course of the next twenty-one months, Mr D made several payments to the cam site and to another similar online site to engage with P. However, when Mr D's funds were diminished, P confessed to Mr D that she'd lied to him about her feelings and deceived him into wrongly believing that they were in a romantic relationship.

Upon realising he'd been scammed, Mr D contacted Halifax and asked for their assistance in recovering his money. But Halifax felt that Mr D had made payments to sites from which he had received the service offered by those sites – which in this instance was interaction with P. Mr D wasn't happy about this, so he raised a complaint.

Halifax responded to Mr D and reiterated their position. However, they did apologise to Mr D for not raising his complaint correctly in the first instance, and they made a payment of £40 to him as compensation for any upset and inconvenience this may have caused. Mr D wasn't satisfied with Halifax's response, so he referred his complaint to this service.

One of our investigators looked at this complaint. But they didn't feel Halifax had acted unfairly towards Mr D by not reimbursing the money to him for the reasons Halifax had provided, and so they didn't uphold the complaint. Mr D remained dissatisfied, so the matter was escalated to an ombudsman 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'd like to begin by confirming that this service isn't a regulatory body or a Court of Law and doesn't operate as such. This means that it isn't within my remit here to declare that Halifax have acted in a non-regulatory or unlawful way.

Instead, this service is an informal, impartial dispute resolution service. And while we do take relevant law and regulation into account when arriving at our decisions, our remit is focussed on determining whether we feel a fair or unfair outcome has occurred – from an impartial perspective, after taking all the circumstances and factors of a complaint into consideration.

I note that in his correspondence with this service, Mr D has referenced the Contingency Reimbursement Model ("CRM") Code. However, the CRM Code doesn't apply when the payments in question are made by debit card – as was the case in this instance – and so isn't something I've considered when reviewing this complaint.

It isn't in dispute that Mr D was deceived by P here, or that he made payments over a prolonged period which total a considerable amount to online sites to engage with P because of that deception. However, the question I must ask here is whether I feel that Halifax should fairly and reasonably be considered as accountable and responsible – in part or in full – for the losses that Mr D has incurred because of the scam perpetrated by P.

In broad terms, the starting position at law is that Halifax are expected to process payments that its customer authorises it to make, in accordance with the terms and conditions of that customer's account. In this instance, there's no debate that Mr D authorised the payments in dispute. This is because at the time Mr D sent the money, he wanted the payments to be made. And although Mr D didn't realise at this time that he was being tricked, under the Payment Services Regulations 2017 (which are the relevant regulations that apply here), he is presumed liable for the loss in the first instance.

However, considering the law, regulators' rules and guidance, relevant codes of practice, and what I consider was good industry practice at the time, I feel that Halifax should fairly and reasonably have been monitoring Mr D's account, and any payments made, to look out for unusual transactions or other signs that might have indicated that Mr D might have been at risk of being scammed. And, if Halifax did have cause to suspect that Mr D might be being scammed, to have potentially contacted Mr D and asked him about the payments he was making and, where appropriate, to have warned him about potential scams.

But this isn't the end of the story here, because if I were to feel that Halifax should have had cause for concern that Mr D might have been in the process of being scammed, and should have contacted Mr D and spoken with him about what was happening, I'd also need to feel that such an intervention from Halifax would most likely have been successful and resulted in Mr D recognising that he might be being scammed and deciding to take action – such as no longer communicating with the scammer – moving forwards.

In this instance, upon review of Mr D's account statements, it appears that Mr D began making payments to the online sites in March 2020. These initial payments were made by Mr D in relatively quick succession, on 9 March, 12 March, 16 March, and 23 March 2022. And while each single payment was for approximately £210, which wasn't an amount I'd consider unusually large – given how Mr D used his current account in the months leading up to that time – I do feel the four payments to the new payee totaling approximately £840 could have been seen as out of keeping with how Mr D used his account.

Furthermore, from 2 April 2020 onwards, the spending pattern to this new payee changes significantly, with Mr D making several payments a day to it. For instance, on 6 April 2020, Mr D made 14 separate payments to this new payee, totaling approximately £1,950 – which was close to 20% of Mr D's account balance at that time.

Similar multiple payments to the new payee were made at other times in April 2020 and in the following months. This pattern of payments seems clearly out of character with how Mr D had used his account up to that time, and I feel it should have given Halifax cause for concern such that they should have contacted Mr D and questioned him about what the payments were for.

However, Mr D has explained that he didn't visit the online sites with any intention of looking for or finding a romantic relationship, and that when he began using the sites it was only after a few weeks of interacting with P that P began falsely professing her love for him. And this timeframe corresponds with the change in Mr D's spending pattern, described above.

Accordingly, given that the service provided by these sites is interaction with the performers on those sites, it seems that in the first weeks that Mr D used the sites he was receiving the service he visited the sites to receive. And indeed, even after P began to manipulate Mr D, it

could be argued that Mr D continued to receive the service offered by those sites – a payment for time and engagement with a performer – albeit now with a falsely given understanding that a real romantic relationship with P had begun.

As such, I'm not convinced that Mr D was the victim of a scam until the point in April 2020 when his spending pattern changed and when his manipulation by P began. And so, I wouldn't expect or instruct Halifax to reimburse to him the money that he paid to the sites in questions and for the service provided by those sites which he received.

I'm also not convinced that even if Halifax had contacted Mr D in April 2020 and asked him about the payments he was making that a different outcome would have occurred here. This is because Mr D genuinely believed he was in a romantic relationship with P at that time, and I feel it's more likely than not – given how Mr D has described what happened – that he would have confirmed to Halifax that he was happy to make the payments that he was making and wouldn't have felt that he was being scammed.

I'm aware that Mr D feels differently and instead feels that had he been contacted by Halifax and been told about romance scams that he would have recognised that he might be being scammed and would have acted differently moving from that point. However, while I can appreciate Mr D's strength of feeling in this regard, his position now has the benefit of hindsight, and I'm not convinced that Mr D would have acted as he now says he would.

In taking this position I've considered several factors, including that Mr D has explained that his mental health had been impacted by having to isolate because of the social restrictions brought in by the UK Government in response to the global emergence of the Covid-19 pandemic which was taking place at that time. As such, from what Mr D has said about his circumstances at the time, it seems to me that he may have been more vulnerable to the manipulation from P which he encountered, and therefore unfortunately more likely than not to have been taken in by it – even if he had received warnings about the nature of romance scams from Halifax.

Finally, Mr D is unhappy that Halifax didn't recover his money via a chargeback. A chargeback is a process by which some disputes are resolved between the card issuer, in this case Halifax, and merchants, in this case the online sites, under the relevant card scheme rules.

These rules are set by the card provider – the company whose symbol is on the card. The card provider has an agreement with banks and building societies as to how its cards are used, and this agreement covers when an attempt at a chargeback can be made. These rules are strict, and Halifax doesn't have the power to change them. And one of these rules is that a chargeback can't be claimed when a service has been received. And, as alluded to above, Halifax felt that Mr D had paid money to online sites which provided a service – time and engagement with a performer – which he had received.

It's also important to note that a chargeback claim isn't a 'right' that a customer has – it's a voluntary act on the part of the bank in question. And this means that Halifax weren't required to ask the card provider for the transactions to be reversed via the chargeback scheme. And while it is considered good practice for them to have done so, if they thought the chargeback claim was likely to succeed, it's correspondingly expected that Halifax wouldn't submit any claims that they didn't feel had a reasonable chance of being successful. Halifax's position on this matter doesn't seem unreasonable to me, and so I don't feel that they did act unfairly by choosing not to submit Mr D's chargeback claim as they did.

I realise this won't be the outcome that Mr D was wanting here, but it follows from all the above that I won't be upholding this complaint or instructing Halifax to take any further

action. This is because I feel that Mr D did initially receive a service from the online sites in the manner he expected to, and also because, once Mr D began being manipulated by P, I don't feel its likely that any intervention that Halifax could reasonably have made in regard to the payments to P would have resulted in Mr D recognising that he was being scammed such that a different outcome would have occurred here.

This isn't to say that I don't sympathise with Mr D and what's happened to him here. But it is to say that I don't feel that Halifax should fairly or reasonably be considered as being solely or partially responsible or accountable for the losses that Mr D has incurred such that any instruction of reimbursement should be issued to them. I hope that Mr D will understand, given all that I've explained, why I've made the final decision that I have.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 28 July 2023.

Paul Cooper
Ombudsman