

The complaint

Mrs H has complained that Bank of Scotland plc (trading as Halifax) won't refund the money she lost after falling victim to a scam.

What happened

Both sides are most familiar with the case, so I'll summarise what happened in brief.

In 2018, Mrs H was dealing with a legal issue, and a friend recommended a person who claimed to be a lawyer. They later turned out to be a scammer. Mrs H decided not to pursue the legal issue, but the scammer persuaded her to invest in their company. They said they were working on a large infrastructure project in Africa, and promised a 30% return to be paid the following year. Mrs H paid them £15,000 by bank transfer.

In 2019, the returns never arrived and the scammer cut contact. Mrs H reported the scam to Halifax, who tried to recover the money from the receiving bank, but were unable to.

Mrs H's representatives argue Halifax should have blocked the payment and intervened. Halifax argue they didn't have sufficient reason to.

Our investigator looked into things independently and didn't uphold the complaint. They found that while the payment was large, it wasn't so out of character that they'd expect Halifax to have intervened. And they thought Halifax had made sufficient efforts to try to recover the money. Mrs H's representatives asked for an ombudsman to look at things afresh, 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.

I understand that Mrs H fell victim to a scam, and so she has my sympathy. I appreciate this can't have been an easy time for her, and I appreciate why she feels that her money should be returned. It's worth keeping in mind that it's the scammer who's primarily responsible for what happened, and who really owes Mrs H her money back. But I can only consider what Halifax did. Having carefully considered everything that both sides have said and provided, I can't fairly hold Halifax liable for Mrs H's loss. I'll explain why.

It's not in dispute that Mrs H authorised the payment. So although she didn't intend the money to go to a scammer, under the Payment Services Regulations she is liable for the loss in the first instance. And broadly speaking, Halifax had an obligation to follow her instructions – the starting position in law is that banks are expected to process payments that a customer authorises them to make.

Halifax should have been on the lookout for payments which could be the result of fraud or scams, to help prevent them. But I also accept that a balance must be struck between identifying and responding to potentially fraudulent payments, and ensuring there's minimal disruption to legitimate payments. I've thought carefully about whether Halifax should have done more in Mrs H's case.

However, I don't think the payment involved was so unusual or out of character that Halifax needed to intervene. While it was certainly a large payment, it was funded by a withdrawal from Mrs H's savings, and it's not unusual for customers to occasionally make very large payments using their savings – indeed, that's a rather usual way to use savings. The payment did not drain Mrs H's current account – the remaining balance was the same as before this incident – nor her savings account, which still had a healthy balance afterwards. Mrs H had made a number of sizeable bank transfers in the months before this incident, so while this payment was her largest I'd not consider it to be so out of character for her that I'd expect Halifax to intervene. Further, this payment was a one-off rather than a series of rapid ones, it went to a UK account, and it was authorised by the genuine customer. Overall, I'm afraid I don't see that Halifax had sufficient reasons to intervene in this particular instance.

Next, I've considered what Halifax did to try to recover Mrs H's money after she told them about the scam. I'd expect Halifax to notify the receiving bank immediately after being told about the potential fraud. I can see they did so here, and they also chased the receiving bank. Unfortunately, Mrs H only reported the scam to Halifax over a year after paying the money. And it's a common tactic for scammers to move on the money as quickly as possible, before the victim realises what happened. So it was exceptionally unlikely that Halifax could get her money back by that point. And here, they were unable to. I think Halifax did what I'd expect them to do in this situation.

So while I'm very sorry to hear about what happened to Mrs H, I don't think Halifax should be held responsible for her loss. And so I can't fairly tell Halifax to refund Mrs H's money in this case.

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 Mrs H to accept or reject my decision before 21 August 2023.

Adam Charles

Ombudsman