

## **The complaint**

Ms R complains that Bank of Scotland plc trading as “Halifax” won’t refund money she lost to an investment scam.

## **What happened**

The details of this complaint are well known to both parties, so I won’t repeat everything again here. In brief summary, Ms R fell victim to an investment scam in April 2022 after she was contacted by a broker ‘Terra Markets’ (“the scammer”).

She was encouraged to invest, and accounts were opened in her name with several cryptocurrency platforms and electronic money institutions such as Wise and Revolut, which she was told were needed for trading. Ms R then made several payments from her Halifax account to her Wise and Revolut accounts between 29 April 2022 and 21 May 2022, including around £14,000 being spent on her Halifax credit card. The funds sent to Ms R’s accounts were then transferred on again to cryptocurrency accounts in her name, before finally being sent to the scammer.

As part of the scam, Ms R says that the brokers applied for loans on her behalf from several lenders, including a £37,000 loan with Halifax, which she objected to, but said that cash then started being deposited into her accounts. Ms R started to cancel all the other loans that she received emails about, but the Halifax loan was paid into her account and subsequently paid to the scammers.

Ms R later realised she had been scammed and reported the fraud to Halifax, but it refused to refund the money she lost and said she would also be liable to repay the loan she had taken out. Unhappy with this, Ms R referred the matter to our service.

Our investigator didn’t uphold Ms R’s complaint. She didn’t think there was anything more Halifax could have done to prevent the scam, as Ms R did not give honest answers when it called her to discuss the payments. She also didn’t think it was unfair for Ms R to be held liable for the loan given she knew it was being taken out in her name. Ms R disagreed, so the matter has been escalated to me to determine.

## **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 agree with the conclusions reached by the investigator and have decided not to uphold it.

### **Did Halifax do enough to prevent Ms R’s loss to the scam?**

It isn’t in dispute that Ms R authorised the disputed payments she made from her Halifax account and credit card as part of the scam (where her funds were subsequently transferred on again before reaching the scammer). The payments were requested using her legitimate

security credentials provided by Halifax, and the starting position is that banks ought to follow the instructions given by their customers in order for legitimate payments to be made as instructed.

However, I've considered whether Halifax should have done more to prevent Ms R from falling victim to the scam, as there are some situations in which a bank should reasonably have had a closer look at the circumstances surrounding a particular transfer. For example, if it was particularly out of character.

It's common ground that some of the payments Ms R made were considered unusual for her account as they were automatically blocked and prompted interventions via phone from Halifax. Accordingly, it's just a question of whether the bank went far *enough* in all the circumstances with its interventions.

Having listened to the call recordings, I don't think there was anything more Halifax could have done to prevent the scam in this instance, as Ms R failed to provide honest answers to the questions she was being asked. On the call it had with her on 20 May 2022 for example, Halifax asked Ms R the reason for the payment she was making as well as the loan she had taken out, to which she said it was for house renovations. She said that plans with her original builders had fallen through, but that she had since found new builders and so was going to proceed with using the loan for its intended purpose.

Halifax asked Ms R if anyone had helped her take out the loan and if it was her own decision, to which she said it was, and that no one had helped her. This was despite her having confirmed that the scammer told her to take out the loan. Halifax also asked if anyone had asked Ms R to lie to the bank or download remote access software, to which she said they hadn't, despite this being the precise scenario she was caught up in.

I appreciate that Ms R wasn't forthcoming with the true nature of the payments because she had been coached by the scammer to lie to the bank. However, I'm satisfied Halifax asked the right sorts of questions and gave her enough opportunity to be honest and reveal what was happening, e.g. by asking her whether anyone had asked her to take out the loan or to lie to the bank. It was based upon the answers she gave that Halifax was satisfied the payments were not likely being made as part of a scam. And there was little to suggest that she was nervous or unsure about what she was saying. If she had answered the questions accurately and said she was in contact with a third-party broker who was telling her to take out loans and lie to the bank, then I accept it would have been incumbent on Halifax to maintain suspicion and warn her that she was being scammed. But seeing as Ms R was not forthcoming with these details, I don't think there was any failing on Halifax's part to probe any further.

So, overall, I'm not persuaded Halifax could have done anything more to have prevented Ms R's loss in these circumstances, as it seems likely she would have continued to provide false information in order to make the payments. The same would also apply to the credit card payments she made because, although they would have appeared suspicious and ought to have prompted their own intervention, I'm not persuaded she would have been honest about what the payments were for in any event.

As such, I don't consider it would be fair and reasonable to hold the bank liable for failing to prevent the scam.

### Recovery

I've also thought about whether Halifax could have done anything more to recover the funds after the fraud was reported. However, in terms of the faster payments, they were made to

accounts in Ms R's own name, and we know they were swiftly transferred on again to the scammer. So, there would have been no prospect of Halifax being able to recover the funds from the receiving accounts in these circumstances.

Similarly, in terms of the card payments, there would've also been no prospect of a successful chargeback claim being made given that Ms R had paid money to accounts in her own name. So, I don't think there was anything more Halifax could have done to try and recover the funds she lost in these circumstances.

In terms of the credit card payments, I've also considered whether Ms R would have any recourse to recover the funds she lost under Section 75 of the Consumer Credit Act (CCA) 1974. However, in order for a valid section 75 claim to be made, there must be an agreement between the debtor, creditor and supplier. In this instance, the supplier was the scammer (Terra Markets) but Ms R didn't pay them directly; she sent the money to her own Wise account *before* sending it on again to the scammer. As such, there is no direct agreement with the supplier for a valid section 75 claim to be made for either breach of contract or misrepresentation, so I'm afraid Ms R would have no recourse here either.

*Has Halifax acted fairly by holding Ms R liable to repay the loan?*

As part of the scam, Ms R says the fraudster took out several loans in her name on her device via remote access software. This included a £37,000 loan with Halifax, and Ms R is unhappy that she's being held liable for this debt. I've therefore considered whether it's fair and reasonable for Halifax to expect her to pay this back, or if it should write the debt off.

Section 83 of the CCA 1974 sets out that a person won't be held liable for a debt if it was taken out by another person who wasn't acting as their agent. So, I've considered the extent to which Ms R was involved in the loan application with Halifax, and whether she ought reasonably to have known that she had received the proceeds of a loan into her account.

When the loan was being applied for, Ms R says screen was moving very quickly, and that she couldn't keep up with what the scammer was doing on her computer. However, she was nonetheless aware they were taking out a loan in her name, and says she also gave information for them to be able to complete the loan application, as she was concerned she would lose her investment profits if she didn't cooperate.

I can see that Ms R spoke to Halifax about the loan during a call she had with it on 15 May 2022. I appreciate that, during this call, she said she wanted to return the loan proceeds because she was no longer having renovations carried out on her property and felt the builder may have been a scammer. Halifax said it would put her through to the loan department to discuss returning the loan, but it appears that the line was disconnected before this could happen.

However, when Ms R later spoke to Halifax again on 20 May 2022, she then confirmed she wanted to keep the loan as she had found a new builder and was going to proceed with the renovation works.

I understand Ms R thought she could cancel the loans later, which for some she was able to do so. But it appears she didn't stop the scammer from applying for the Halifax loan on her behalf, and she didn't pursue her original request to return the money, so I don't think it could reasonably be said that she didn't consent to it. Therefore, I'm not persuaded Section 83 of the CCA 1974 would have the effect of absolving Ms R of any liability for the debt in such circumstances, as the scammer can effectively be treated as having acted as her agent. And given she later confirmed to Halifax that she wanted to keep the loan (albeit for reasons that were not true) I'm satisfied she was aware of it, including how much it was for.

So, when Ms R received the £37,000 into her account, she would have known it was the proceeds of a loan, which she would need to pay back with interest. But instead of returning the funds to Halifax, Ms R transferred the loan proceeds to another account in her name, where the funds were subsequently lost to the scammer, so I'm satisfied she can fairly be held liable for repaying it.

I'm also satisfied Halifax undertook reasonable credit checks to ensure the loan was affordable for Ms R at the time it was applied for. As a result, taking everything into account, I don't think it would be fair and reasonable to ask the bank to write off the debt in these circumstances.

I appreciate this will likely come as a disappointment to Ms R, and I'm sorry to hear she has been the victim of such a cruel scam. However, I'm not persuaded that Halifax has acted unfairly, so I won't be asking it to take any further action.

### **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 Ms R to accept or reject my decision before 28 November 2023.

Jack Ferris  
**Ombudsman**