

The complaint

Mr S complains that Bank of Scotland plc trading as Halifax (Halifax) won't refund money he lost in an investment scam.

What happened

What Mr S says:

A third-party claims firm represents Mr S, but I will refer to Mr S as the complainant here.

In July 2022, Mr S was scrolling through a social media website and saw an advertisement promoting crypto investments. I will call the firm 'A'. He wanted to increase his income to help pay for his daughter's university fees. He clicked on the advert and opened the website for the investment firm. The website was slick and professional. He filled in his contact details and then a representative of the firm contacted him. The investment was discussed. He was encouraged to invest.

He sent a first payment of £250 from another bank account. He was sent a link which purported to show his investments – and which showed the investment growing in value. He then made the first payment of £5,000 from his Halifax account. After that, his investment was showing as declining in value – and he was advised to send more money to top it up – as the scammers told him his account would be closed and he could lose everything. He made a further payment of £5,000, followed by another one.

On 19 October 2022, Mr S was told he could get a discount if he sent more money. Mr S said he didn't want to do that and asked to withdraw the money. He was told he would need to pay £1,000 to do that, so he paid another £1,000.

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The payments were:

Date	Payment	Amount
31 August 2022	Faster payment – bitcoin firm A	£5,000

5 September 2022	Faster payment – bitcoin firm A	£5,000
11 October 2022	Faster payment – bitcoin firm A	£5,000
19 October 2022	Faster payment – bitcoin firm A	£1,000
Total loss		£16,000

Mr S couldn't see the payment arrive in his investment account and tried to contact the scammer with numerous phone calls. He got various excuses each time he called, and after a week (on 26 October 2022) the number was disconnected. He spoke to the genuine crypto firm (with a similar name) – and they said he had been scammed.

Mr S says he didn't get any significant warnings from Halifax for any of the payments. He said Halifax should've done more to protect him. He reported the scam to Halifax on 12 January 2023.

Mr S has lost the money he was putting aside for his daughter's education. He feels embarrassed and ashamed at what happened. He struggles to sleep and has started a second job to try to recoup the money he's lost.

What Halifax said:

Halifax didn't uphold Mr S's complaint or refund any money. They said:

- Mr S sent the payments to his account at A, so the loss happened from there.
- Halifax intervened in the first two payments and were happy with Mr S' answers. After that, they didn't feel the need to intervene again, as they were happy with what he had told them.
- He was shown an online warning on the first payment.

Our investigation so far:

Mr S brought his complaint to us. Our investigator didn't uphold it. He said:

- The two payments were stopped and Halifax spoke to Mr S each time. They were satisfied with Mr S' answers.
- Our investigator listened to the calls; was satisfied that Halifax asked the right questions and could see why they put the payments through, based on Mr S' answers. He considered that Mr S wasn't truthful in his answers to Halifax.
- After that, there was no reason to intervene again.
- It was likely that Halifax also sent an online warning to Mr S for the payment on 11 October 2022.

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'm sorry to hear that Mr S has lost money in a cruel scam. It's not in question that he authorised and consented to the payments in this case. So although Mr S didn't intend for the money to go to a scammer, he is presumed to be liable for the loss in the first instance.

So, in broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. And I have taken that into account when deciding what is fair and reasonable in this case. But that is not the end of the story. Taking into account the law, regulators rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider Halifax should fairly and reasonably:

- Have been monitoring accounts and any payments made or received to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams.
- Have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer.
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or make additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

The Lending Standards Board Contingent Reimbursement Model Code (CRM Code) doesn't apply in this case. That is because it applies to faster payments made to another UK beneficiary— and in this case, the payments were made to Mr S' own account with the investment firm (A).

I need to decide whether Halifax acted fairly and reasonably in its dealings with Mr S when he made the payments, or whether it should have done more than it did. I have considered the position carefully.

I looked at the status of firm A. It looks like there is a genuine bitcoin firm with a similar name, but it's likely that Mr S made the payments to a clone of A – as there was a warning on the FCA website in September 2022 to say that a clone existed with a similar name.

The first consideration here is: if the payments were of a sufficient size and were out of character with how Mr S normally used his account – then we would expect Halifax to have intervened and spoken to Mr S about it. I looked at Mr S' account.

There were some large payments, for example:

June 2022 – two payments of £20,000 – to a foreign beneficiary

August 2022 - payments for £4,000, £1,500; £1,000; £1,204; £1,000

There is an argument for Halifax to consider all of the scam payments as in line with Mr S' normal account usage – and therefore to allow them to go through without question. I say this as while Halifax has obligations to be alert to fraud and scams and to act in their customers' best interests, but they can't be involved in every transaction as this would cause unnecessary disruption to legitimate payments.

But – in this this case, Halifax made a decision to stop the first two payments and speak to Mr S. I listened to the calls – as they are important in this case.

I consider Halifax asked proportionate and sufficient questions of Mr S and got the necessary answers from him. I quote the relevant parts of the calls:

Call – 31 August 2022 - £5,000:

Halifax: the payment has been stopped for a fraud check. This is our way of protecting you from fraud and scams. Mr S: sure.

Halifax: Where did you find the firm advertised? Mr S: my friend (recommended it).

Halifax: Be aware that the UK Financial Conduct Authority (FCA) has stated investments in crypto involves very high risk – be prepared to lose your money. Mr S: Yes.

Halifax: So what type of crypto currency are you investing in? Mr S: Bitcoin or 'doge.'

Halifax: What returns are you expecting? Mr S: it depends, maybe a few thousand.

Halifax: A lot of people claim to be brokers or traders – who turn out to be scammers, and they then clear your account out.

Halifax: Confirm the account is in your in name and access isn't shared. Mr S: I set it up myself.

Halifax: If this turns out to be a scam we won't be able to get this £5,000 back for you. Mr S: OK.

Halifax: Has anyone advised you to move this money? Mr S: no.

Halifax: Are you aware of the risks then and happy to proceed? Mr S: yes.

Halifax: We are just trying to protect your money, so many people are reporting scams for these companies.

Call – 5 September 2022 - £5,000:

Halifax: You are sending money into crypto investment? Mr S: yes.

Halifax: Is this the first time? Mr S: no I did it last week as well.

Halifax: Have you seen if the first payment arrived OK? Mr S; yes, yes. No problems.

Halifax: Is someone helping you with the investment? Mr S: no, by myself, no one has advised.

Halifax: Have any third parties asked you to make the investment? Mr S: no.

Halifax: Has anyone advised you to make the investment such as a broker or trader? Mr S: no, myself.

Halifax: The FCA has said these investments are high risk, and you may lose money – if you do, we won't be able to refund you, do you understand? Mr S: yes.

Halifax: How were you introduced to crypto investments? Mr S: my friend told me.

Based on the calls, I'm satisfied that Halifax asked the correct and proportionate questions. And Mr S gave answers that satisfied Halifax. Halifax also gave Mr S warnings that the payments may not be refunded.

I noted that the answers given by Mr S were not consistent with the evidence he put forward with his complaint:

- He told us (and Halifax) that he found A through social media. In the calls, he said it was recommended by a friend.
- He told us that the scammer advised him to invest money. In the calls, he said no one had done so and he acted alone.
- He told us during our investigation that he doesn't know who the FCA are – but on the calls with Halifax, he said he had checked the FCA website.

Had Mr S told Halifax that he found A through social media, and that an 'advisor' or 'broker' was asking him to make the payments, and that he hadn't checked A with the FCA - it may have emerged that there were signs of a scam taking place. As it was, based on the answers Mr S gave on the calls, I'm persuaded that Halifax could feel comfortable that it was unlikely that was the case, and put the payments through.

Halifax also showed us evidence that Mr S was sent an investment scam warning when he made the first payment and he then clicked 'continue anyway'.

I then considered whether Halifax should've stopped the third and fourth payments. But here, based on his previous account activity, and the answers he gave on the first two payments/calls, I don't think it's reasonable to have expected Halifax to do that. So - it was fair for them to process the final two payments without any further inquiries being made.

In summary, I consider Halifax acted reasonably in processing the payments to A.

Recovery:

We expect firms to quickly attempt to recover funds from recipient banks when a scam takes place. I looked at whether Halifax took the necessary steps in contacting the bank that received the funds – in an effort to recover the lost money. Their notes record they didn't take any action – which I think was a reasonable thing for Halifax to have done; as the payments were sent to Mr S' own account with A. And, given the passage of time – there were almost three months between the last payment and when Mr S contacted Halifax - there was little prospect of recovery. This is because in most cases, money is removed very quickly, normally within minutes or a few hours of being sent.

I'm sorry Mr S has had to contact us in these circumstances. I accept he's been the victim of a cruel scam, but I can't reasonably hold Halifax responsible for his loss.

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My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 15 January 2024.

Martin Lord

Ombudsman