

The complaint

Ms D complains that Bank of Scotland plc (trading as “Halifax”) won’t refund over £16,000 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 D fell victim to a scam after she was contacted by a fraudulent broker in December 2021. The scammer claimed that funds Ms D had lost in a previous scam were held in another account, and that she could release this money by paying certain fees.

Ms D made several payments via open banking from her Halifax account to her cryptocurrency wallet with Paxful, where her funds were subsequently transferred to the scammer’s cryptocurrency wallet via Blockchain. She later discovered she had been the victim of a scam and reported the fraud to Halifax, who refused to refund the money she lost as she’d authorised the payments.

Our investigator upheld the complaint. She thought that the fourth payment Ms D made to the scammer was suspicious and that Halifax ought to have questioned her about it before releasing the payment. If it had done so, she thought the scam could have been unravelled and any further loss prevented. However, the investigator recommended that Halifax only refund 50% of this loss in light of Ms D’s own contributory negligence, as well as deducting a £1,816 credit received from the scammer that was paid into her account from Blockchain on 26 January 2022.

Halifax accepted the investigator’s outcome and proposed settlement, but Ms D disagreed. She didn’t think it was fair that she should be held jointly liable for her loss. In terms of the credit received, she said this hadn’t come from the scammer, but that she had transferred too much money to Blockchain and so returned any surplus to her Halifax account, which was what the £1,816 credit into her account was. As Ms D didn’t agree with the redress proposed, 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’m satisfied the redress proposed by the investigator is fair for the following reasons:

- Halifax has accepted that it’s liable to refund the money Ms D lost from the fourth payment onwards, and I’m also satisfied this is where it ought to have intervened given it was the fourth payment being made on the same day in quick succession, which can often be indicative of fraud. In light of Ms D’s account activity, I don’t think any of the prior payments she made would have appeared particularly unusual, so I’m not persuaded Halifax would need to refund any of these earlier payments.

- It also isn't in dispute that Halifax could have prevented the scam if it had intervened on the fourth payment, as this has since been accepted by the bank, so I don't consider it necessary to explore this point any further. What remains in dispute here is whether it is fair and reasonable for Ms D to be held jointly liable for her loss as a result of her own contributory negligence, which I'm satisfied she should in these circumstances.
- There's a general principle that consumers must take responsibility for their actions and decisions, and it's only fair that we take account of this if it appears that a consumer failed to take reasonable course of action that could have either prevented or at least mitigated their loss. In this instance, I can see from correspondence with the scammer that Ms D had seen negative reviews about the broker online, and seemingly had doubts that it wasn't legitimate. But despite having those doubts, and instead of consulting further independent sources, she decided to proceed with making the payments after the scammer reassured her, knowing there was a risk that she might not get her money back. Therefore, I'm satisfied that Ms D's actions contributed to her loss here, such that it would be fair and reasonable for her to share liability with Halifax, with a 50% deduction in redress being proportionate in the circumstances.
- In terms of the credit received from Blockchain, Ms D received a payment of £1,816 on 26 January 2022. She said that there were issues with her Paxful account, so she was guided by the scammer to transfer £2,000 from her Halifax account to Blockchain instead, where it was then sent on to the scammer. As a result, she says this meant the Paxful transaction was left in the blockchain, and that it was this money she withdrew and credited back to her Halifax account.
- Ms D has confirmed that she had not used Blockchain prior to the scam, so we know that the credit coming back into her account wouldn't have been from a prior unrelated investment. Given this money was paid out of her Halifax account to the cryptocurrency platform as part of the scam, and was subsequently credited *back* to the account from Blockchain, this reduces her overall loss, as it is money she has been able to get back. As a result, it wouldn't be fair to ask Halifax to pay back the total value of payments that left Ms D's account as part of the scam, given she was able to recoup some of this. Therefore, I'm satisfied it would be fair and reasonable for Halifax to deduct the £1,816 credit received into the account from Blockchain from her total loss.
- I've also considered that Halifax is signed up to the Contingent Reimbursement Model (CRM Code), which typically covers faster payments lost to another person as part of a scam. However, in this instance, the payments made from Ms D's Halifax account were not made to another person; they were paid to an account in her own name. As such, Halifax would be under no obligation to reimburse the payments in line with the Code given they were not made to another person. In terms of Halifax recovering the funds from the receiving bank, there also would have been very little prospect of this being successful given we know the funds were quickly transferred on from Ms D's crypto wallet on to the scammer. So, I don't think there was anything more the bank could've done to recover the funds either.

I appreciate this may come as a disappointment to Ms D, and I'm sorry to hear that she had been the victim of a cruel scam. But overall, I'm satisfied that the redress proposed by the investigator and accepted by Halifax is fair, so I won't be asking the bank to pay anything further.

My final decision

For the reasons given above, I uphold this complaint and direct Bank of Scotland plc (trading as "Halifax") to:

- Refund 50% of the payments Ms D lost to the scam from the £2,000 payment made on 26 January 2022 onwards, less the £1,816 credit received back from Blockchain.
- Pay 8% simple interest per year on this amount from the date of loss until the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms D to accept or reject my decision before 11 November 2023.

Jack Ferris
Ombudsman