

The complaint

Mrs O complains that Bank of Scotland plc trading as Halifax (Halifax) is refusing to refund her the amount she lost as the result of a scam.

Mrs O was previously represented by a third party. To keep things simple, I will refer to Mrs O throughout my decision.

What happened

The background of this complaint is well known to all parties, so I won't repeat what happened in detail.

In summary, Mrs O was contacted by an individual over Telegram. This person asked Mrs O if she was interested in earning an additional income alongside her current job. As Mrs O was struggling financially, she expressed an interest and was later contacted by another individual (X) via WhatsApp.

X explained that the role was part-time and involved promoting tourism. No previous experience in this area was needed as the job was relatively simple.

Mrs O would have to invest in the business and complete missions to see a return. Mrs O was presented with a professional online platform and guided through how everything worked. She was also added to a WhatsApp group with over 70 other people also involved in the same process. After making a small investment Mrs O was able to make a withdrawal from her account with X which would have added to her confidence that the opportunity was legitimate.

Mrs O was later asked to top up her account by £10,000. The large payment request caused Mrs O concerns and after speaking to a family member she realised she had fallen victim to a scam.

Mrs O made the following payments into the scam via the cryptocurrency exchange Binance:

Date	Merchant	Payment Method	Amount
15 September 2022	Binance	Debit Card	£50.00
16 September 2022	Binance	Credit	- £84.25
16 September 2022	Binance	Debit Card	£73.00
17 September 2022	Binance	Debit Card	£74.00
18 September 2022	Binance	Debit Card	£100.00
18 September 2022	Binance	Debit Card	£50.00
18 September 2022	Binance	Debit Card	£350.00
18 September 2022	Binance	Debit Card	£900.00
19 September 2022	Binance	Debit Card	£2,250.00
19 September 2022	Binance	Debit Card	£2,500.00
19 September 2022	Binance	Debit Card	£40.00
20 September 2022	Binance	Debit Card	£1,700.00
27 September 2022	Binance	Debit Card	£1,500.00

27 September 2022	Binance	Debit Card	£135.00
29 September 2022	Binance	Debit Card	£710.00
29 September 2022	Binance	Debit Card	£25.00
01 October 2022	Binance	Debit Card	£790.00
01 October 2022	Binance	Debit Card	£1,000.00

Our Investigator considered Mrs O's complaint but didn't think it should be upheld. Mrs O disagreed so this complaint has 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.

It has not been disputed that Mrs O has fallen victim to a cruel scam. The evidence provided by both Mrs O and Halifax sets out what happened. What is in dispute is whether Halifax should refund the money Mrs O lost due to the scam.

Recovering the payments Mrs O made

Mrs O made payments into the scam via her debit card. When payments are made by card the only recovery option Halifax has is to request a chargeback.

The chargeback scheme is a voluntary scheme set up to resolve card payment disputes between merchants and cardholders. The card scheme operator ultimately helps settle disputes that can't be resolved between the merchant and the cardholder.

Such arbitration is subject to the rules of the scheme, meaning there are only limited grounds and limited forms of evidence that will be accepted for a chargeback to be considered valid, and potentially succeed. Time limits also apply.

Mrs O was dealing with X, which was the business that instigated the scam. But Mrs O didn't make the debit card payments to X directly, she paid a separate cryptocurrency exchange (Binance). This is important because Halifax would only have been able to process chargeback claims against the merchant she paid (Binance), not another party (such as X).

The service provided by Binance would have been to convert or facilitate conversion of Mrs O's payments into cryptocurrency. Therefore, Binance provided the service that was requested; that being the purchase of the cryptocurrency. The fact that the cryptocurrency was later transferred elsewhere – to the scammer – doesn't give rise to a valid chargeback claim against the merchant Mrs O paid.

As the service requested by Binance was provided to her, chargeback wasn't an option for Mrs O, I've also thought about whether Halifax could reasonably have prevented some, or all her loss.

Should Halifax have reasonably prevented the payments Mrs O made?

It has been accepted that Mrs O authorised the payments that were made from her account with Halifax, albeit on X's instruction. So, the starting point here is that Mrs O is responsible.

However, banks and other Payment Services Providers (PSPs) do have a duty to protect against the risk of financial loss due to fraud and/or to undertake due diligence on large transactions to guard against money laundering.

The question here is whether Halifax should have been aware of the scam and questioned Mrs O about the payments she was making. And if it had questioned Mrs O, would it have been able to prevent the scam taking place.

Mrs O started making relatively small payments to a legitimate business (Binance). After making several small payments and receiving a small credit Mrs O made larger payments the largest of which was £2,500 on 29 September 2022. While other payments were also made on the same day the total amount was still less than £5,000.

By the time Mrs O started to make larger payments to Binance she had already made several payments to it and received a small credit without any complaints.

It would be unreasonable to suggest that Halifax should intervene in every payment its customer makes – particularly payments that are to a legitimate business (as was the case here). When considering the payments in dispute, I don't think that when taken individually or collectively, Halifax would have had reasonable grounds to suspect a fraud or scam was taking place. I don't think the payments were unusual enough or of a high enough value to reasonably trigger Halifax's fraud prevention systems prompting it to step in and question Mrs O.

So, I don't think Halifax missed an opportunity to prevent the scam, and it is not responsible for Mrs O's loss.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs O to accept or reject my decision before 11 January 2024.

Terry Woodham
Ombudsman