

## The complaint

Mrs A and Mr Y complain that Bank of Scotland plc trading as Halifax (Halifax) is refusing to refund the amount Mrs A lost as the result of a scam.

Mrs A and Mr Y are being represented by a third party. To keep things simple, I will refer to Mrs A and Mr Y 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 A saw a post on a friend's Instagram account explaining she had made money investing with their coach. The friend's Instagram account pointed to another individual's Instagram account (X) that appeared legitimate. X's account had over 20,000 followers and X appeared to be a cryptocurrency expert.

Mrs A contacted X and was persuaded to invest with it. After making an initial investment Mrs A was advised she had made a substantial profit but would have to make further payments before she could make a withdrawal.

After making further payments Mrs A was still unable to make withdrawals from the investment and realised, she had fallen victim to a scam. Mrs A's friend's Instagram account had also been hacked and it transpired that she had not recommended the services of X herself.

Mrs A made the following payments into the scam via a cryptocurrency exchange (HFinance\_Simplex).

<u>Date</u>	<u>Payee</u>	<u>Amount</u>	<u>Payment Method</u>
19 March 2022	HFinance_Simplex	£1,000	Debit Card
19 March 2022	HFinance_Simplex	£1,000	Debit Card
19 March 2022	HFinance_Simplex	£2,000	Debit Card
19 March 2022	HFinance_Simplex	£1,000	Debit Card
20 March 2022	HFinance_Simplex	£2,900	Debit Card
20 March 2022	HFinance_Simplex	£900	Debit Card
20 March 2022	HFinance_Simplex	£500	Debit Card

Mrs A has been unable to recover any of the payments she made into the investment.

Our Investigator considered Mrs A and Mr Y's complaint but didn't think it should be upheld. As Mrs A and Mr Y disagreed 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 A has fallen victim to a cruel scam. The evidence provided by both Mrs A and Halifax sets out what happened. What is in dispute is whether Halifax should refund the funds Mrs A lost due to the scam.

#### *Recovering the payments Mrs A made*

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

The service provided by the cryptocurrency exchange would have been to convert or facilitate conversion of Mrs A's payments into cryptocurrency. Therefore, it 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 A paid. As the cryptocurrency exchange provided the requested service to Mrs A any chargeback attempt would likely fail. So, I don't think Halifax was able to recover the payments Mrs A made using her card.

#### *Should Halifax have reasonably prevented the payments Mrs A made?*

Mrs A has accepted she authorised the payments that left her account with Halifax, so the starting point here is that Mrs A 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 stepped in when Mrs A was attempting to make the payments, and if it had, would it have been able to prevent the scam taking place.

Before Mrs A made the first successful payment of £1,000 into the scam on 18 March 2022, she had made multiple other payment attempts to the cryptocurrency exchange Moonpay on the 16 and 17 March 2022. These payments were declined which prompted conversations to take place between Mrs A and Halifax. Halifax has provided a copy of these calls to our service.

In a call that took place on 17 March 2022 Mrs A explained she was trying to make a payment to "Bitcoin" (Moonpay) of £2,650. After a brief conversation the Halifax representative explained there had been concerns about several payments that had been declined. She ran through the payments which included the payments Mrs A attempted to Moonpay previously. No warning was given on this call and no payments were processed.

On 18 March 2022 Mrs A spoke to Halifax about the above transaction to Moonpay that was showing as pending on her account and wanted to know when it would show in her account as available. Halifax advised Mrs A that if the payment does go through, she can dispute it later.

Later the same day Mrs A called Halifax again and explained there were payments on her accounts with Halifax that she didn't recognise to Simplex. Halifax asked Mrs A if she had spoken to anyone online which she denied, and Mrs A also denied she had spoken to Halifax the previous day. All these statements were incorrect, Mrs A did recognise the payment, she had spoken to someone online, and she had spoken to Halifax the day before. Mrs A also told Halifax that her email had been hacked.

Mrs A called back again the same day explaining this time that she didn't recognise a payment for £2,650, and when asked if she had ever invested in cryptocurrency, she confirmed she had not and had never heard of it. Again, Mrs A had not answered Halifax's questions honestly. The Halifax representative told Mrs A he could see the payment had been authorised on her device and that her claim was declined.

I think it would have been reasonable for Halifax's fraud prevention systems to have been triggered by the payments Mrs A made to Simplex and for it to have stepped in and spoken to Mrs A. The payments she was making were unusual compared to the normal running of her account. But it's clear from the above calls that Mrs A was prepared to be dishonest about what the payments were and how they were made, so I think it's unlikely Mrs A would have been any more honest with Halifax had it asked more probing questions. So, I don't think Halifax questioning Mrs A about the payments would likely have prevented the scam taking place and it's not responsible for her loss.

The calls between Mrs A and Halifax highlighted above appear to have taken place before her successful payments to Simplex were made on 19 March 2022, which would mean Mrs A was likely aware of issues with the payments before she made them. Mrs A has told us the calls took place after she made the payments into the scam, and she was dishonest as she was worried that she would not be able to recover her funds. But either way I still think it was unlikely Mrs A would have given honest answers if Halifax questioned her in more detail, so this does not change my decision.

Mrs A has also told us that she was suffering from a condition at the time she made the payments which affected her decision making. I appreciate Mrs A was going through a tough time, but I can't see that Halifax were aware of this condition and I don't have enough to say Mrs A was not able to make day to day decisions effectively. So again, this doesn't change my decision either.

### **My final decision**

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A and Mr Y to accept or reject my decision before 10 August 2023.

Terry Woodham  
**Ombudsman**