

The complaint

Mr P complains that Bank of Scotland Plc (trading as Halifax) won't refund to him funds he lost as a result of a scam.

What happened

Mr P is represented in this complaint by a solicitor, for simplicity I will refer to Mr P throughout this decision, even when referencing what his representatives have said on his behalf.

Mr P says that he saw an advert for an investment opportunity online. After paying an initial sum (from an account with a different bank) and speaking with people he believed to be investment brokers, he was persuaded to invest £9,403.82 in three payments made from his Halifax account between 4 and 5 March 2021. These payments were made to cryptocurrency wallets with two different platforms, B and M, that Mr P had been told to open accounts with. After making the last of these payments, Mr P was then unable to make any further contact with the people he'd been dealing with, and at this stage he realised he had been the victim of a scam.

Mr P reported to Halifax that he'd been scammed. Ultimately, Halifax did not think it was obliged to refund any of the money lost to Mr P, but it did pay him £75 to recognise that when he had initially raised the scam he'd had to wait a long time to speak to Halifax. Mr P remained unhappy, and referred his complaint about Halifax to us. As our investigator (who didn't recommend that the complaint be upheld) couldn't resolve the matter informally, the case has been passed to me for a final decision.

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've reached the same conclusion as our Investigator, and for largely the same reasons.

It's not in dispute that Mr P authorised the payments himself as he thought he was dealing with legitimate companies. Broadly speaking, the starting position in law is that Halifax is expected to process payments and withdrawals that Mr P authorises it to make, in accordance with the terms and conditions of the account. And Mr P will then be responsible for the transactions that he has authorised.

Because of this, Mr P is not automatically entitled to a refund. But the regulatory landscape, along with good industry practice, also sets out a requirement for account providers to protect their customers from fraud and financial harm. And this includes monitoring accounts to look out for activity that might suggest a customer was at risk of financial harm, intervening in unusual or out of character transactions and trying to prevent customers falling victims to scams.

In this case, I need to decide whether Halifax acted fairly and reasonably in its dealings with Mr P when he made the payment requests, or whether it should have done more than it did.

In my opinion, the payments Mr P made just weren't sufficiently unusual to reasonably say Halifax shouldn't have allowed the payments to go through without first getting in touch with Mr P to check everything was in order. I appreciate that Mr P's general account usage was for smaller payments, but he had previously made similar large payments to third parties. And while the amounts we are discussing here will undoubtedly feel like a lot of money to Mr P, I don't think they were high enough to have triggered further questions from Halifax. So in the wider context of how Mr P used his account, I can't say that any of these payments were high enough to have seemed suspicious or to have stood out to Halifax.

I also can't see there were any warnings about the businesses Mr P paid that ought to have concerned Halifax. I understand the recipient businesses were involved in cryptocurrency, but not all payments made for cryptocurrency are a result of a scam. And in this case, I don't think where the payment was headed ought to have automatically triggered Halifax's attention.

So as Halifax didn't interact with Mr P at the time of these payments, I'm satisfied it didn't unreasonably miss an opportunity to prevent these payments before they were sent.

After the payments were made, I wouldn't reasonably expect Halifax to have done anything further until Mr P notified it he'd been scammed. It appears this was on 15 March 2021, so around ten days after the last payment had been made. But I've nonetheless thought about whether Halifax could have done more to recover the funds after Mr P reported the fraud, as in some circumstances the money can be recovered via the bank raising an indemnity with the receiving bank.

However, in these circumstances, Mr P transferred money to his own cryptocurrency accounts before the funds were subsequently transferred on to the scammer. So Halifax it wouldn't have the same obligations as the bank responsible for the eventual transfer to the scammer's account. I also know, from experience of these kinds of cases, that scammers invariably will move the proceeds of their scams on very quickly, to avoid them being recalled, in fact Mr P has said the funds were removed from his cryptocurrency accounts immediately. And so any delay in a scam being reported, as there was here, means that the prospect of recovery is very slim. With all of this in mind, I don't consider that Halifax could have done more to recover the money that Mr P has lost.

Halifax is also under no obligation to refund the money to Mr P under the Contingent Reimbursement Model (CRM) Code either, as the Code does not apply to payments which the payer has effectively made to themselves (which would have been the case here given the payments were made to Mr P's cryptocurrency accounts before being moved on to the scammer).

I understand there were some delays in Mr P being able to reach Halifax on the phone when he first tried to make contact about the scam, but Halifax has paid Mr P £75 to recognise the impact of that delay, and I think that is reasonable compensation in the circumstances. I've not seen anything to show that there were any other failures in service that would merit further compensation here.

I appreciate this will come as a disappointment to Mr P, and I'm sorry to hear he has been the victim of a cruel scam. However, I'm not persuaded that Halifax can fairly or reasonably be held liable for his loss in these circumstances, and so I won't be asking it to do anything more.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 9 November 2023.

Sophie Mitchell
Ombudsman