

The complaint

Miss T complains that Bank of Scotland plc trading as Halifax ("Halifax") failed to refund her after losing funds as a result of a scam.

What happened

Miss T explained that she was contacted through a social media platform to invest in crypto currency. She made a small payment from a bank account she held with another bank and was provided with instructions to open an account with a crypto merchant I'll refer to as B.

Miss T, over a period of about a month, made 19 transactions worth over £40,000 to her account held with B. Miss T explained that her "broker" persuaded her to make the transactions in order to invest in crypto currency and make large gains (notes from a later conversation with her bank describe her investment as being doubled within months).

Miss T was asked to download software to her computer to allow her "broker" to assist her with investing her funds. Miss T was also provided access to a trading platform where she could see her investment.

Over the course of the payments made by Miss T, Halifax stopped several of them and spoke with Miss T at length about the circumstances of the transactions. During these conversations, Halifax asked Miss T various questions about the reason she had for moving the funds. Halifax explained to her that a number of scams were currently operating in relation to crypto currency investment.

Halifax described how these scams operated including an approach via social media of someone claiming to be a "broker" who gets them to open crypto accounts and pay money into the account. Also that the customer is persuaded to allow software to be downloaded onto their computer allowing the "broker" access. The scams also followed a similar line with very large gains being offered over a short period of time.

Miss T was asked various questions about the arrangement and consistently told Halifax that she hadn't been approached by anyone and it was her friend who had told her about crypto trading and how to open an account with B. On a couple of occasions, Halifax prevented the payment from leaving Miss T's account and they asked her to conduct further enquiries about the arrangement she had for her to be certain she wasn't being scammed.

Miss T was also asked to visit a branch at one point because the Halifax fraud team member wasn't satisfied with Miss T's answers. This was because she had slightly changed her version of events and was now telling Halifax that she was moving the funds into crypto to send to her family. When Miss T visited the branch to confirm her identity and speak with their fraud department, she amended her story and told them she was transferring the funds to keep them in the account (rather than send to a family member).

Eventually, Miss T realised she'd been scammed and approached Halifax about the money she'd lost. They told her they couldn't do anything further and to approach B about the loss. Miss T complained and Halifax investigated the circumstances of the transactions. They

didn't change their position and declined to refund Miss T, telling her that she ignored their warnings and wasn't open with them about the circumstances of her payments.

Miss T was unhappy with how Halifax had handled her complaint and brought it to the Financial Ombudsman Service for an independent review. An investigator was assigned to look into the complaint and reviewed evidence provided by both parties, including a number of phone calls held between Halifax and Miss T. Miss T believed that because English isn't her first language, she didn't fully understand the conversations she was having with Halifax.

After considering the evidence, the investigator didn't uphold Miss T's complaint. He commented that Miss T had answered Halifax's questions and based on her answers, it was reasonable for them to release the payments. He didn't think the language barrier was an issue because Miss T hadn't asked for a translator.

Miss T disagreed with the investigator's outcome and asked for a further review of her complaint. She believed Halifax failed to prevent her losses and didn't warn her about the accounts she was sending funds to.

As no agreement could be reached, Miss T's complaint has now been passed to me for a 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.

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to be good industry practice at the time.

In broad terms, the starting position at law is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account.

I was sorry to learn that Miss T was the victim of a scam. Here, she made the payments herself. So, although Miss T did not intend the money to go to a fraudster, under the Payment Services Regulations 2017, and the terms and conditions of her account, she is presumed liable for the loss in the first instance.

But, Halifax also has to be on the lookout for, and help to prevent, payments that could involve fraud or be the result of a scam. They identified, on several occasions, that payments being made by Miss T were unusual and potentially the result of fraud or a scam. They spoke with her several times when she was sending payments to B. On each occasion, they warned Miss T about the potential of being scammed and asked her various questions concerning the arrangement she'd entered into.

Miss T has later argued that Halifax should have had translators to help her understand the situation she was in. As far as I'm aware, she had operated the account without such a facility prior to these scam payments leaving her account. I haven't seen any request by Miss T to ask for an interpreter and Miss T seemed to respond to the questions she was being asked and was insistent her money be sent to her account with B.

On one of the calls, the fraud operator wasn't satisfied with Miss T's answers (she'd said she was transferring the funds via crypto to her family) and refused to send the payment. She was asked to go to a branch and talk with the staff and provide ID. By the time she went to the bank (a few hours after the call), her story had changed, and she told the Halifax employee that she wanted to send the funds and keep them in her crypto account with B.

I think this is an example of Miss T understanding what she was being told and because she met a block by the bank, changed her approach to tell them what she thought they wanted to hear. I wouldn't be surprised if this was in conjunction with the scammer's advice (although I've no evidence to base this on as there's little information about the relationship between Miss T and the "broker").

Halifax described to Miss T the usual set up of a crypto investment scam (social media approach/a "broker" to advise/crypto accounts/downloaded software/substantial gains to be made over a short period of time) which is what she later experienced herself. I haven't been able to understand why Miss T decided to be less than open with her bank, but I can't find in her favour when she misled Halifax with her answers and insisted that she send money to her account with B. I don't put the blame on Miss T because she's the one who lost funds, but her approach to communicating with the bank led to Halifax carrying out her instructions despite there being several warnings that were specific to her situation.

Halifax were so concerned that on two different occasions they declined to carry out her instructions and asked her to take time to think about her situation. They referred her to other resources to research the arrangement she had. I don't think Miss T carried out any research and appeared to want to move her funds as fast as possible. There was no doubt pressure from her "broker" to send the funds. That's because this is a typical scenario faced by many people in the same situation, but it seems Miss T took the word of a stranger over her bank.

Given Halifax's numerous warnings, advice to research the situation and blocks temporarily preventing some of her payments from leaving her account, I don't think it would be reasonable to expect them to have done anything more in the circumstances.

The payments made to Miss T's account went into a crypto "wallet" and were later transferred to the scammer's wallet. Under these circumstances, Halifax had no real opportunity to retrieve the funds as they'd already effectively disappeared.

Overall, I'm afraid I won't be upholding this complaint as I don't think it would be fair to ask Halifax to refund the money lost by Miss T as a result of the scam.

My final decision

My final decision is that I do not uphold this complaint against Bank of Scotland plc trading as Halifax.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss T to accept or reject my decision before 18 October 2023.

David Perry
Ombudsman