

### The complaint

Mrs F has complained that the Bank of Scotland plc trading as Halifax ("Halifax") will not refund the money she lost as the result of a scam.

Mrs F has used a representative to bring her complaint to this service. For ease, I will refer solely to Mrs F throughout this decision.

### What happened

Both parties are familiar with the details of the scam so I will provide only a summary here. Mrs F contacted a scammer about marketing a product. The scammer introduced her to an investment platform. My understanding is that Mrs F paid the investment platform via debit card and the funds were then sent on to a scam company called B which purported to be a crypto trading firm. Mrs F made the following transactions and the payments were made using a debit card

Transaction number	Date	Amount	Merchant
1	28/10/2020	£100	Igniter
2	02/11/2020	£500	Igniter
3	27/11/2020	£500	Igniter
4	24/12/2020	£25	Igniter
5	24/12/2020	£5,000	Igniter
6	30/12/2020	-£300 credit	Transferwise
7	27/01/2021	-£400 credit	Transferwise
8	27/01/2021	-£50 credit	Transferwise
9	08/02/2021	-£250 credit	Transferwise
10	08/02/2021	£250	Transferwise

Mrs F tried to withdraw some of her "profits" roughly a year after the scam started. She says she was unable to do so and therefore she realised that she had been scammed. Some years later Mrs F raised a fraud claim with Halifax. It rejected her claim.

Our investigator upheld the complaint in part because he thought that Halifax should have intervened at transaction 5 and had it done so the scam would have been stopped. He therefore thought that this transaction should be refunded. He did not consider transaction 10 as a credit was received on the same day so he did not think there was a loss in relation to this. He did though after some back and forth decide that there should be a 50% reduction to the refund as Mrs F used part of the proceeds of a loan to fund transaction 5 and that had Mrs F told the loan provider of her intentions for the loan then it would not have been granted. So, he thought that Mrs F contributed to her own loss.

Halifax did agree with this proposed outcome. Mrs F via her representative did not agree as they said that Mrs F was honest about the loan purpose as she intended the loan for installing a new boiler which she did get done around this time. So, this complaint has been passed to me to issue 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.

There's no dispute that Mrs F made and authorised the payments. Mrs F knew who she was paying, and the reason why. At the stage she was making these payments, she believed she was transferring funds to invest in crypto. I don't dispute Mrs F was scammed and she wasn't making payments for the reason she thought she was, but I remain satisfied the transactions were authorised.

It's also accepted that Halifax has an obligation to follow Mrs F's instructions. So, in the first instance Mrs F is presumed liable for her loss. But there are other factors that must be considered.

To reach my decision I have taken into account the law, regulator's rules and guidance, relevant codes of practice and what was good industry practice at the time. To note, as the payments were debit card payments the principles of the Contingent Reimbursement Model (CRM) code do not apply in this case.

This means I think that Halifax should have:

- been monitoring accounts and payments made or received to counter various risks, including fraud and scams, money laundering, and the financing of terrorism.
- had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (amongst other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which financial institutions are generally more familiar with than the average customer.
- in some circumstances, irrespective of the payment channel used, taken additional steps or made additional checks before processing a payment, or in some cases declined to make a payment altogether, to help protect its customers from the possibility of financial harm.

Firstly, I should say that like the investigator given that payment 10 went to an account that Mrs F held via a different bank and I can't see that this was listed as part of the scam by Mrs F in her initial submissions so I don't think that it is part of this scam.

I think Halifax should be liable for payments 5. I'll explain why.

### *Payments 1,2,3 and 4*

There is a balance to be struck. Banks and building societies have obligations to be alert to fraud and scams and to act in their customers' best interests. But they can't reasonably be involved in every transaction. In this instance the first four payments were not of an unusual size or frequency that I think it should have prompted an intervention from Halifax. So, I don't think that Halifax did anything wrong in relation to these payments.

### *Payment 5*

I think Halifax ought to have carried out further checks and spoken to Mrs F before processing this transaction. It was larger than the first four payments and was unusual enough in itself compared to Mrs F's normal account usage to have prompted an intervention from Halifax.

I also appreciate that Mrs F's loss didn't materialise directly from her Halifax account in these circumstances. But even though she was transferring funds to an account in her own name, I still think that Halifax ought to have taken a closer look at payment 5 – given the significant risk of fraud associated with cryptocurrency investments at the time.

The FCA and Action Fraud published warnings about cryptocurrency scams in mid-2018. And by January 2019, cryptocurrency scams continued to increase in frequency. So, by the time Mrs F started making her investments in October 2020, it is reasonable to say Halifax ought to have had a good enough understanding of how crypto scams works – including the fact that their customer often moves money to an account in their own name before moving it on again to the scammers.

Therefore, I'm satisfied that Halifax should've had mechanisms in place to detect and prevent this type of fraud at the time Mrs F was making this payment, and that it should have led to it intervening to ask further questions about payment 5.

I would expect Halifax to have intervened and asked Mrs F who the payment was for, what it was for, and for the surrounding context of the payment - it could, for example have, asked how she had been contacted, whether she'd parted with personal details in order to open a trading account, whether she was being helped by any third parties e.g. a broker, and how she had come across the investment.

I have no reason to believe Mrs F wouldn't have been open with Halifax, and I think she would have taken its intervention seriously. So, I think Halifax would have quickly learned from its conversation with Mrs F the basic background to the payment instruction – that she was buying cryptocurrency and then sending onto what she thought was a cryptocurrency type trading investment which she'd decided to pursue after learning about it via WhatsApp.

Even though the conversation would have identified the payment was going to Mrs F's own account (before being sent onto the scammers), the conversation shouldn't have stopped there on the basis that the money appeared to be going to somewhere safe and within Mrs F's control. This is because by 2020 Halifax was well aware – or ought to have been well aware – of how scams like this work – including that the customer often moves money onto an account in their own name before moving it on again to scammers.

So, I think Halifax would have been concerned by what the conversation would most likely have revealed and so warned Mrs F, explaining the typical characteristics of scams like this. Had it done so I think Mrs F would have listened and recognised she was at risk. I am satisfied she would have had second thoughts if Halifax had intervened effectively.

It therefore follows I think Mrs F would not have gone ahead with payment 5.

I've considered carefully whether Mrs F should hold some responsibility for her loss by way of contributory negligence. In this instance the investigator said that Mrs F should be partially responsible for her loss as she used the majority of the proceeds from a loan to make transaction 5. And that during the loan application process Mrs F had not disclosed that her loan was mainly being used for investment purposes.

Mrs F's representative has argued that she gave the correct reason for the loan to the loan provider and she did use the majority of the funds to install a new boiler. I have carefully considered this but I think it likely given the timing of the loan and the payments to B that when Mrs F took out the loan she did intend to use most of the proceeds to invest with B. I also am satisfied that had she told this to the loan provider it would not have agreed to the loan. So, I think that Mrs F did contribute to her own loss.

I should also add for the sake of completeness that even had this not been the case I would likely have made a 50% deduction for the redress. I say this because I have researched B and I can see that around the time that Mrs F was scammed it was promising 1% to 2% a day in returns along with other bonuses such as cars and watches. This is considerably too good to be true and therefore I don't think anyone could reasonably have thought that this was a legitimate company to deal with. I don't think that Mrs F did her due diligence prior to "investing" with B.

So overall and having considered everything I think that Mrs F contributed to her own loss and therefore I feel that it would be appropriate to reduce the amount of compensation due to Mrs F by 50%.

I have thought about whether Halifax could have recovered the funds via a chargeback but given the timescales between when the scam occurred and when Mrs F raised a complaint about this matter I don't think a chargeback would have been successful. I also don't think that there was any other way to recover the funds.

In relation to interest added to the redress I note that the investigator recommended that no interest be due as the loan was applied for prior to the scam payment and therefore had the scam not occurred the loan and associated interest would still have to be paid. I am not sure I completely agree with this, however I also note that Mrs F did receive credits from B that were paid into her wise account and were forwarded to her Halifax account. So I would usually think it appropriate to deduct these from the refund due (prior to the 50% reduction). Given that roughly the interest that Mrs F would have earned would be commensurate with the deduction that I would have proposed from the redress, I think for the sake of avoiding further delays that the redress already proposed by the investigator and agreed to by Halifax is fair and reasonable given the overall circumstances of this complaint.

### **Putting things right**

Halifax therefore will have to

- Refund 50% of transaction 5

### **My final decision**

I uphold this complaint in part and require Bank of Scotland plc trading as Halifax to pay the redress outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs F to accept or

reject my decision before 3 January 2024.

Charlie Newton  
**Ombudsman**