

## **The complaint**

Miss I complains that Bank of Scotland plc trading as Halifax won't refund the money she lost when she was scammed.

## **What happened**

The details of this complaint are well known to both parties. So rather than repeat them all again here, I'll briefly summarise the key points.

Miss I says she fell victim to two investment scams in 2022. Regarding scam one, she says she was introduced to a company, F, by her friend. After checking F's website and social media page, she started investing. She made 17 debit card payments from her Halifax account between February and July 2022, totalling £10,300. These didn't go straight to the scam company but were paid to an intermediary before being transferred on to F's platform.

Miss I says she kept being pushed to invest more, so decided to look F up on the instant messaging service she primarily used to contact them. She found lots of references to F being a scam.

While investing with F, Miss I also found an account on social media claiming to be creating a new cryptocurrency coin (scam two) offering an early investment opportunity with an expected return of 400% within 30 days. She transferred £600 to the account in July 2022. Shortly after, she was contacted by people warning her it was a scam.

Miss I has complained to Halifax about both these scams. As it wouldn't refund her, she referred her complaint to our service.

Our investigator didn't uphold the complaint. They didn't think Halifax ought to have prevented the scams, or could have recovered the loss – explaining (for scam one) that a chargeback claim wouldn't succeed as the merchant paid directly provided the expected service.

As the scam two payment was a UK bank transfer, the investigator also considered if Miss I was due a refund in line with the Lending Standards Board's Contingent Reimbursement (CRM) code which Halifax has signed up to (but which doesn't cover card payments). They thought an exception applied in the code – namely that Miss I didn't have a reasonable basis for believing the investment was legitimate – and so Halifax didn't need to refund her.

Miss I has appealed the investigator's view. In summary, she's unhappy that Halifax wouldn't raise a chargeback claim in relation to scam one, given the evidence she's provided about F being a scam. She queried why they couldn't raise a claim for scam two. She also said she didn't have concerns before making the payment, and had got advice from someone who had sent her evidence of his experience. After the investigator responded to these points, Miss I requested an ombudsman's decision. So the case has been passed to me.

## **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 decided not to uphold it. I'll explain why.

It is accepted that Miss I has fallen victim to two investment scams. I'm mindful of how much that has impacted her, not only in terms of the financial loss but also the worry and breach of trust that comes from having been deceived. My role here is to consider whether Halifax, as Miss I's bank, holds any liability for the money she lost to the scammers.

In line with the Payment Services Regulations 2017, the bank is expected to execute authorised payment instructions without undue delay. As Miss I authorised the payments (albeit as a result of being tricked by the scammers), the starting position is that she is liable for them.

But there are some situations where we believe that banks—taking into account relevant rules, codes and best practice—ought to have identified a fraud risk, so should have looked at the wider circumstances surrounding the transaction before making the payment. If Halifax failed to do so, and that failure led to a fraudulent loss, it might be fair to hold it liable.

Regarding scam one, I've carefully considered Miss I's account activity to assess whether I think Halifax's anti-fraud systems ought to have identified any of the payments as uncharacteristic and indicative of a fraud risk. I'm not persuaded it should have.

The payments didn't go direct to the scammers; they went to a legitimate intermediary. The individual amounts didn't look concerning. And the payments were spread out over a period of months. All of that made the payments appear less suspicious – as the amount, type and destination of the payments was in keeping with her usual account activity.

There were two occasions (towards the end of the scam) when a number of payments were made to the intermediary on the same day. But the overall amount paid still didn't seem worryingly high. And by that point, the intermediary was an established payee. So I'm not persuaded Halifax had cause to be concerned. It was reasonable for it to simply execute the payments in line with the authorised instructions it had received.

Similarly, I'm not persuaded it ought to have identified the payment to scam two as suspicious. This was a one-off payment of £600. In amongst Miss I's other account activity, it didn't look unusual or concerning – and so I don't think Halifax had cause to perform checks or issue a scam warning to warn Miss I.

I've also considered whether Halifax missed an opportunity to recover the funds once it was notified of the scams. For scam one, as these were card payments, these are covered by the chargeback scheme which provides some protection for card payment disputes. The scheme is voluntary, so banks aren't obliged to raise claims under the scheme. But we consider it good practice to do so if the claim is likely to succeed.

In this instance, it's clear Miss I's dispute is with F. I accept her evidence and testimony about how their actions amounted to a scam. But that would have no bearing on a chargeback claim for these payments. Such a claim would only consider the service provided by the merchant paid directly.

There is no indication or allegation of service failings by the intermediary who was paid. They are a legitimate company, and it seems they processed the payments as they were expected to. Although the funds were then moved on to F, who I accept deceived Miss I, that is beyond the scope of a chargeback claim. Unfortunately, in situations like this, a claim wouldn't succeed. And so I don't think it was wrong for Halifax not to pursue such a claim.

As our investigator has explained, a chargeback claim couldn't be raised for scam two as that scheme only covers card payments – whereas this payment was made via a bank transfer. All Halifax could do was notify the recipient bank – as I've seen it did when Miss I reported the scam - to see if they could return the funds. But it didn't receive a response, so it couldn't do more. In my experience, scam payments tend to be moved on promptly, so it seems unlikely Miss I's funds were in the recipient account when she reported the scam.

For these reasons, I'm not persuaded Halifax made any errors which caused or contributed to Miss I's loss. However, there is an additional consideration for scam two. As mentioned above, as it was a UK bank transfer (unlike the scam one payments), it is covered by the CRM code. In line with the code, the starting position is that signatories should refund victims of these types of scams – unless they establish that an exception applies.

In this instance, Halifax declined to refund Miss I in line with an exception which says it's not expected to refund a customer if, in the context of the scam, they made the payment without a reasonable basis for believing they were paying for genuine services and/or that the person or business with whom they transacted was legitimate.

Having considered the arguments by both sides, I'm satisfied Halifax established sufficient grounds for that exception. I appreciate Miss I didn't realise it was a scam. But the test here is what basis she had for thinking it was a legitimate investment opportunity.

Miss I made the payment to someone she didn't know personally after seeing the opportunity on social media. I understand she spoke to the scammer, and possibly others, via an instant messaging service. But I don't think that was enough to establish their legitimacy. She didn't receive any official documentation such as a contract setting out the terms of the investment. And she didn't complete any independent research before making the payment.

Miss I was also told she would receive a profit of four times her investment within 30 days, which I think sounded too good to be true. So, taking this altogether, I'm persuaded Halifax has applied the code fairly in deciding not to refund Miss I. I don't think she had a reasonable basis for believing the investment was legitimate.

I'm also satisfied Halifax met its obligations under the code and in line with its usual duties. As explained above, it didn't have reason to suspect the payment was a scam at the time. So it wasn't obliged to perform checks or deliver an effective warning.

I appreciate this will be disappointing for Miss I, who has clearly lost out due to the cruel actions of the scammers. But in the circumstances, I'm not persuaded Halifax needs to refund her for her loss.

**My final decision**

For the reasons given above, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss I to accept or reject my decision before 23 August 2023.

Rachel Loughlin  
**Ombudsman**