

The complaint

X complains that Bank of Scotland plc (trading as Halifax) refuses to refund money she lost to an investment scammer.

X is represented by a third party but for ease of reading, I'll refer to all submissions as having come from her alone.

What happened

The background to this complaint is well known to both parties, so I'll only summarise key events here.

Around 2021 X was looking for investment opportunities online and came across a company I'll call 'F'. She was persuaded to invest after receiving contact from one of F's representatives and she also felt F's website was sophisticated. She made the following debit card payments towards the scam (which were made to a crypto exchange account in her name before being sent to the scammer):

1. 29 October 2021 - £211.89
2. 2 November 2021 - £2,000
3. 26 November 2021 - £5,000

X realised she'd been scammed when a representative of F made an unauthorised payment attempt using her card details and this payment was blocked by the bank.

X contacted Halifax to try to recover her payments but she says she didn't receive any assistance. She later complained that it didn't do enough to protect her from financial harm.

Halifax issued its final response declining to refund X, so she referred her complaint to this service.

One of our Investigators looked into things and didn't think Halifax could have reasonably known X had fallen victim to a scam. He also felt X wasn't honest on a loan application that was used to facilitate the third payment. He therefore didn't think Halifax acted unfairly by declining to refund X. X didn't agree and refutes lying to the bank about the real purpose of the loan application and asked an Ombudsman to review her complaint.

The complaint has therefore been passed to me for determination.

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 don't uphold this complaint and I'll explain why.

At the time X made her payments, banks were expected to process payments a

customer authorised it to make; but as a matter of good industry practice, a bank should reasonably have taken proactive steps to identify and help prevent transactions – particularly unusual or uncharacteristic transactions – that could involve fraud or be the result of a scam.

There is a balance to be struck: banks had (and have) expectations to be alert to fraud and scams and to act in their customers' best interests, but they can't be involved in every transaction.

All of the payments were sent to an account in X's name. It was from that account that she purchased crypto and sent the crypto to the scam wallet, so I've factored this into my decision.

The first two payments

I don't think I can fairly say that the first two payments were particularly large, unusual or uncharacteristic for the account. They weren't all that unusual when considering her previous 12-month account spend. For example, X made a one-off undisputed payment of over £2,000 in February 2021. I don't think either payment was all that unusual for Halifax to have reasonably suspected that X could be falling victim to fraud or a scam.

The third payment

Like our investigator, I agree the third payment was a large one. And the largest single transaction X had made in the 12 months leading up to it. But, I don't think this transaction was so unusual or so suspicious that Halifax ought to have reasonably suspected X could have been falling victim to a scam.

The day before the payment, X applied for a personal loan with Halifax of the same amount. She told Halifax the purpose of the loan was for home improvements and even though she used the loan to purchase crypto the following day, she maintains the original purpose was for home improvements. I don't need to make a conclusion on what I think X's true intention for the loan was. But I do think Halifax were reasonably aware that X applied for a loan with the intention to use the proceeds of that loan shortly after the loan funds credited her account.

I don't think I can reasonably say that X using the loan proceeds to pay a crypto exchange ought to have been an automatic 'red flag' to Halifax at the time. There were and are still legitimate crypto transactions, so I don't think I could reasonably have expected Halifax to stop all payments just because they were going to crypto exchanges. I also don't think I can reasonably say that Halifax ought to have monitored whether the proceeds of the loan were used for the exact reason they were applied for, I think this is impractical for a large bank that lends on a regular basis. And even though I think it was a large sum of money, it was a single transaction, made several weeks after the previous payment in dispute. It was to the same payee as transaction two (with no prior concerns raised). The transactions on the face of it don't indicate the pressure to pay very quickly – which could be the sign of a scam. I don't think there were enough factors that made this payment so unusual or so suspicious (in light of what Halifax reasonably ought to have known) that I think Halifax should have paused the payment to question X before letting it through.

I therefore don't think Halifax acted unreasonably for allowing the payment to go through, not least because I think it would have reasonably expected X to use the proceeds of her loan. And I don't think a one-off payment of £5,000 would have appeared all that unusual to Halifax under the circumstances.

And so, taking all of this into account, I don't think Halifax missed an opportunity to prevent X's loss.

Recovery

I've thought about whether Halifax did what it ought to have done, when trying to recover the funds for X.

X paid funds to an account in her name. From there, she purchased crypto and moved it onto a wallet address of her choosing (albeit upon the scammers instructions). If Halifax tried to recover the funds, it could only have tried to recover funds from X's own account and it appears she would have moved all of those funds on and if not, they would be in X's control to access as and when she wishes. I've seen no record of X's branch visit or repeated telephone contact with Halifax in the way she describes. But even if Halifax had reviewed her request to recover her funds sooner, I think the outcome would've been the same. I don't think Halifax could have recovered X's payments for the reasons I've explained, so, I can't say that Halifax acted unfairly by not attempting to recover X's funds when she reported the scam.

My final decision

My final decision is, despite my natural sympathies for X's loss, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask X to accept or reject my decision before 28 December 2023.

Dolores Njemanze
Ombudsman