

The complaint

Mr C complains Lloyds Bank PLC (trading as Halifax) didn't help recover the money he says he lost to a fraudulent company. He also believes Halifax should've done more to prevent his loss.

What happened

Mr C became interested in bitcoin trading after seeing advertisements on television, endorsed by celebrities. His son sent him an email detailing how he could get involved. Everything appeared to be legitimate, so Mr C called the firm, who I'll refer to as 'S' and made a payment for €250. He was told a Trader would be in touch.

Mr C says the Trader who contacted him, was aggressive and manipulative. They kept calling – asking him to invest more money. He felt intimidated and made two further payments. By this point Mr C had made three payments (including transfer and purchase fees) totalling over £1,700 using his Halifax debit card. These payments were made to a merchant I'll refer to as 'B'. The Trader continued making further requests and for larger sums. Mr C realised this was not going to end. He refused to make further payments and tried to withdraw his money. The platform kept displaying error messages. He wrote to S' Support Team, who acknowledged his email but then communication ceased. And Mr C lost access to his trading account.

Mr C contacted Halifax for assistance with recovering the money. He told them he'd been the victim of a scam and that he'd been unable to withdraw any funds from his trading account. Halifax asked Mr C for evidence to support his dispute. After reviewing what Mr C had provided, Halifax told Mr C that it would not be raising a claim for the disputed payments as it did not have any Visa chargeback rights against B. Unhappy with this response, Mr C contacted our service. He also complained that Halifax did not provide any warnings when he made the payments.

Halifax issued its final response after the complaint was brought to our service. It didn't uphold Mr C's complaint and maintained its position. Mr C remained unhappy with Halifax's response, so one of our Investigators looked into things. Our Investigator didn't uphold Mr C's complaint. He concluded that he didn't think a chargeback claim against B would've succeeded and didn't think Halifax is liable for Mr C's loss as it didn't miss an opportunity to prevent, or recover, this. Mr C disagrees and has asked for an ombudsman to review his complaint.

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.

Firstly, I'd like to address Mr C's submissions in relation to authorisation. Mr C was dealing with S. So I can see why he makes the argument that payments taken by B were not authorised by him, and were taken without his consent. But in this case, the relevant regulations are the Payment Services Regulations 2017 (PSRs). These say that a payment transaction is regarded as authorised by the payer if it was made using the legitimate security credentials provided by the payment service provider (here Halifax) and if the payer gave consent to the execution of the payment transaction. It's common ground that Mr C agreed to payments being made, these must be regarded as 'authorised payments' even if Mr C believes he was the victim of a sophisticated scam. Simply put, the fact that the payments were taken by a merchant with a different name to that Mr C believed he was dealing with and agreed to pay does not mean they were not authorised for the purposes of the PSRs.

Chargeback

Chargeback is a voluntary scheme. Halifax are bound by the card scheme provider's rules which in this case is Visa. It is Visa – not Halifax, who will ultimately arbitrate on a dispute between the merchant and customer if it cannot be resolved between them after two 'presentments'. Such arbitration is subject to the rules of the scheme — so there are limited grounds on which a chargeback can succeed. Our role in such cases is not to second-guess Visa's arbitration decision or scheme rules, but to determine whether the regulated card issuer (i.e. Halifax) acted fairly and reasonably when choosing not to present (or presenting) a chargeback claim on behalf of its cardholder.

Here Halifax chose not to raise a chargeback claim as it didn't think Mr C's claim had a reasonable prospect of succeeding. It said that B was a payment processing/cryptocurrency exchange firm, that had fulfilled the service it was expected to provide – successfully transferring Mr C's funds to S. Therefore, it didn't have any Visa chargeback rights against B.

I've carefully thought about whether in these circumstances I think Halifax's decision to not pursue chargeback claims was fair and reasonable. I can see the reason Mr C gave for raising a chargeback was that S had not provided him with the service he'd been promised. For the purposes of the chargeback scheme there is no claim against S as the disputed payments were made to B. And based on what information has been provided by both parties I don't think the conclusion Halifax reached that B was a payment processing/cryptocurrency exchange firm, that had fulfilled the service it was expected to provide was unreasonable. So it follows that I can't say that Halifax acted unfairly or unreasonably in reaching the conclusion that Mr C's claim didn't have a reasonable prospect of succeeding and consequentially deciding not to raise a chargeback claim.

Intervention

I appreciate Mr C feels strongly that Halifax ought to have intervened and alerted him to the possibility of this being a scam. But as a starting position, banks are under an obligation to follow their customers' instructions. Banks have a duty to make payments or accommodate cash withdrawal requests correctly and promptly so that legitimate payments are made correctly. So, consumers who authorise a payment, even where that turns out to be fraud related or they were tricked into doing so, start off on the 'back-foot' when it comes to getting that payment returned to them because the bank was following a valid instruction.

There are some situations where it would be reasonable to conclude – taking into account relevant rules, codes and best practice – that a bank ought to have been on alert or notice that something wasn't right or should have looked at the wider circumstances surrounding the transaction before making the payment. So, I've looked into what this means for this case and whether I think Halifax should reasonably have done more here to prevent the payments in dispute. And I don't think it could have. I'll explain why.

I know Mr C believes that by the time his disputed payments were made in early 2019 Halifax ought reasonably to have had a good enough understanding of how cryptocurrency scams tend to work. It should have had mechanisms in place to identify and stop payments being made to these firms. But the question here isn't whether Halifax had measures or systems in place, it's whether in the individual circumstances of Mr C's case it ought to have intervened.

I don't entirely disagree with Mr C. I do think due to the rise in cryptocurrency scams in recent years banks should have mechanisms in place to detect and prevent this type of fraud. But it's not always the case that a payment made to a payment processor, cryptocurrency exchange or gambling merchant is necessarily at risk of fraud. As much as scammers utilise some of these firms' services when tricking innocent victims, they are equally utilised for legitimate transactions. So banks do have to strike a fine balance between convenience for their customers and prevention of fraudulent activity.

Having considered everything carefully, I don't think Halifax would've had any reasonable basis for intervening in this specific case. I say this because the mere fact that Mr C was making a payment to a payment processor, cryptocurrency exchange or gambling merchant wouldn't justify Halifax making further enquiries before allowing these payments to be made. I appreciate Mr C has provided online reviews about S, which comment on: it being an unregulated/unlicensed broker; its questionable sales methods/trading practices; issues investors experience when requesting a withdrawal; and suggestion that the firm may be operating fraudulently. I know he feels Halifax ought to have known B were involved in the scam with S. But I don't agree. I don't think Halifax could've reasonably known that the payments debiting Mr C's account were to be passed onto S. I've also not seen any credible adverse data about B or evidence to support that it was anything other than a legitimate firm.

I would've expected Halifax to be on the lookout for a significant change in spending behaviour or out of character transactions that indicated Mr C was at risk of fraud. With the benefit of hindsight, we now know that Mr C has likely fallen victim to a scam – but I don't think Halifax could've been expected to identify that at the time. I say that because I can see from Mr C's statements that he made regular payments to other gambling websites. And although the disputed payments were larger than previous activity on the account in the six months leading up to the disputed payments, they weren't sufficiently large enough that I would've expected Halifax to have intervened. There was also no interaction between Mr C and Halifax at the time the payments were processed. So I can't fairly say Halifax missed an opportunity where it could've asked Mr C more questions about the nature of the payments.

Overall, having taken all of the evidence and arguments into consideration, I'm not persuaded that Halifax can fairly and reasonably be held liable for Mr C's losses.

My final decision

For the reasons I've explained above and despite my sympathy for what Mr C has been through, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 1 March 2022.

Sonal Matharu
Ombudsman