

### **The complaint**

Miss S complains that Bank of Scotland plc, trading as Halifax, won't refund money she lost to an investment scam.

Miss S is being represented by solicitors in her complaint.

### **What happened**

The detailed background to this complaint is well known to both parties, so I won't repeat it again here. Instead, I'll provide an overview and focus on giving my reasons for my decision.

In 2020, Miss S was browsing online for investment opportunities. She received a call from an individual who claimed to work for an investment broker "O" after she left her contact details on an enquiry form. She says she was persuaded to open a trading account with O and was assigned an account manager who helped her with the trades.

Miss S says she started with a small deposit and was persuaded to invest more funds after seeing profits being made on her trades and being able to make a withdrawal. Between July 2020 and April 2021, Miss S sent over £26,000 from her Halifax account through several debit card payments and faster payments. She says she switched to faster payments as she was being charged high non-sterling fees by Halifax for using her debit card. She used a money transfer service and sent money to her account with the money remittance firm before sending it on to her trading account with O.

Miss S says she eventually realised she'd been scammed when she tried making another withdrawal, but O did everything possible to deter her from submitting a request. She reported the matter to Action Fraud and contacted Halifax. Halifax refused to refund any of the disputed payments and Miss S referred the matter to our service. Our investigator didn't uphold her complaint either. Miss S has asked for an ombudsman's 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.

I'd like to reassure the parties that although I've only summarised the background above, I've read and considered everything in its entirety. Having done so, I don't uphold this complaint. I'll explain why.

The first question I need to consider in any case involving an investment scam is to determine, so far as is reasonably possible, whether the complainant has in fact been scammed, rather than simply losing money to a high-risk investment. This is important because banks (and other payment service providers) only have a duty to protect customers from the risk of financial loss due to fraud. This duty to intervene isn't triggered where payments are made to a legitimate investment.

Miss S says her dealings were with O. I've done my research into O, and I think it's more likely than not that it wasn't a legitimate trader. The Financial Conduct Authority (FCA), the financial services regulator in the UK, issued an alert in June 2020 about O that it was operating in the UK without its permission. Legitimate firms tend to subject themselves to regulatory oversight.

As I'm satisfied it's more likely than not that Miss S was scammed, I've considered whether Halifax ought to have reimbursed her any of the disputed payments under the provisions of the Contingent Reimbursement Model (CRM) code. Debit card transactions aren't covered by the code. In relation to the faster payments, the code only applies to payments made directly to another person. Payments made to a customer's own accounts aren't covered by the CRM code. As we've been told by Miss S's representative that she sent money from her Halifax account to her own account with the money remittance firm, the code's provisions aren't relevant to her complaint.

While I find the CRM code doesn't apply here, that code is not the full extent of the relevant obligations that could apply in cases such as this. In accordance with the law, regulations and good industry practice, a bank has a duty to protect its customers against the risk of fraud and scams so far as is reasonably possible. If, in breach of that duty, a bank fails to act on information which ought reasonably to alert a prudent banker to potential fraud or financial crime, it might be liable for the losses incurred by its customer as a result.

I've taken into account the law, regulatory rules and guidance, relevant codes of practice, and what I consider good industry practice at the time. Halifax ought to have been monitoring accounts to counter various risks, having systems in place to identify unusual transactions, or other indicators, that its customer was at risk of fraud and, in some situations, making additional checks before processing payments or declining them altogether, to protect its customer from possible financial harm from fraud.

Although there was a regulator warning about O prior to the disputed transactions, Miss S's payments didn't go to O directly. She used her debit card to make payments to different merchants, none of whom had a regulator warning. So, I wouldn't have expected the debit card payments to have flagged on Halifax's systems based on the merchant's name alone.

I've considered the operation of Miss S's account to determine whether the debit card transactions as well as the faster payments were so unusual or uncharacteristic such that I think Halifax ought to have intervened. Looking at the account activity in the year prior to the transactions, I don't consider any of the debit card transactions – which ranged between £1,000 and £2,000 – as particularly unusual or suspicious such that they ought to have triggered Halifax's fraud detection system. Just in the month prior to the initial disputed transaction, Miss S had made a debit card payment of just over £2,000. I can't see that she's raised any concerns about that payment with Halifax or our service. As it formed part of her account spending pattern, I don't think Halifax acted unfairly in executing the debit card payments she now disputes.

In relation to the faster payments, the first two payments were for £2,000 and £1,005 respectively. And there was a gap of 12 days between the payments. Given the previous transaction amounts, I don't consider these amounts to be *that* unusual for the account activity. The third payment was for £5,051. I acknowledge that the payment was for a much larger amount. But I also note that there was a three-month gap between the second and the third payments. Miss S hadn't raised any concerns about the initial payments to the same payee. I'm also mindful that it wasn't unusual for her account to make payments to money remittance firms. Besides the payments in dispute, Miss S's account shows payments to another money remitter (albeit for smaller amounts).

Having thought carefully about this, I'm not persuaded that an amount of £5,051 to an established payee – which also happened to be a money remittance firm – ought to have triggered Halifax's systems. It follows that I don't think it acted unfairly in releasing the payment without making further enquiries. The fourth payment of £4,000, was made nearly seven weeks later. The fifth and final payment of £5,501 was sent two months after that. By the time of these transactions, the previous payments to the same payee came to form part of Miss S's pattern of account activity. So, they wouldn't reasonably have appeared suspicious to Halifax. Having carefully considered everything, I'm not persuaded that Halifax acted unreasonably in allowing the disputed transactions to go through.

### *Recovery*

I've also thought about Halifax's actions in relation to the recovery of funds once it became aware of the situation.

In relation to the debit card payments, the avenue would have been a chargeback. The chargeback scheme is a voluntary scheme set up to resolve card payment disputes between merchants and card issuers (on behalf of cardholders). The card scheme operator – Visa in this case – ultimately arbitrates on a dispute if it can't be resolved between the merchant and the cardholder. Such arbitration is subject to the rules of the scheme, meaning there are only limited grounds and limited forms of evidence that will be accepted for a chargeback to be considered valid, and potentially succeed. And time limits also apply.

Visa does give chargeback rights in relation to investments, but those rights are very narrow. The only grounds for a chargeback claim for an investment-related transaction is if the cardholder has tried to withdraw an available balance and this isn't processed by the investment firm. The rules state that the cardholder must evidence this with confirmation of their available balance and evidence of a withdrawal request for equal to or less than this amount, all dated to evidence the withdrawal was done at a time when that amount was available. And the time limit for raising a chargeback claim for issues pertinent to this case is within 120 days of the transaction processing date or within 120 days of the date the goods or services were expected to be received (but no later than 540 days from the transaction processing date).

I don't think Miss S was outside the chargeback time limits like Halifax and the investigator have suggested. From what she's said, it appears that she contacted Halifax within 120 days of when she unsuccessfully attempted to withdraw funds from her investment account. And she was still within 540 days of the transaction dates. That's within the time limits to request a chargeback under the relevant reason code. But I don't think that makes a difference to the outcome here. I haven't seen anything that leads me to conclude Miss S had the required evidence (for example, a timed and dated screenshot showing all the required information) or that she would have been about to obtain it if Halifax had requested this at the time. Even if the required evidence was available, there's no guarantee that the chargeback would have been successful.

In relation to the faster payments, Halifax could have only attempted recovery of funds from the account it sent the money to. In this case, the recipient account was an account held in Miss S's name with the money remittance firm. It's unlikely that recovery would have been successful, given that she's told us she sent the funds to her trading account once they reached her account with the money remittance firm.

### *Summary*

I know that Miss S will be disappointed with this outcome. Not least because the matter has been ongoing for some time, and she's lost a lot of money. But having considered the matter carefully, I won't be asking Halifax to make good her losses.

### **My final decision**

For the reasons given, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 7 April 2023.

Gagandeep Singh  
**Ombudsman**