

The complaint

Mr A and Miss Y complain that Bank of Scotland plc trading as Halifax (Halifax) has refused to refund them the amount they lost as the result of a scam.

Mr A made the payments related to the scam so I will refer to Mr A throughout my decision.

What happened

The background of this complaint is well known to all parties, so I won't repeat what happened in detail.

In summary, Mr A was contacted by an individual via Twitter promising high returns on cryptocurrency investments. Mr A was persuaded to invest using a business called etalbit.com (E) and made the following payments to the legitimate cryptocurrency exchange Coinbase (CB) that were then forwarded to E.:

1. 6 December 2021 – desktop payment - £7,500
2. 7 December 2021 – desktop payment - £25,000
3. 7 December 2021 – branch payment - £15,000
4. 8 December 2021 – desktop payment - £15,500
5. 8 December 2021 – debit card payment - £758
6. 10 December 2021 – debit card payment - £300
7. 14 December 2021 – desktop payment - £1,000
8. 16 December 2021 – desktop payment - £17,000
9. 22 December 2021 – debit card payment - £600
10. 26 December 2021 – desktop payment - £3,000
11. 29 December 2021 – desktop payment - £2,000
12. 31 December 2021 – debit card payment - £1,000
13. 6 January 2022 – desktop payment - £1,900

Mr A was able to see his investments on the E platform but when he attempted to make a withdrawal from the account, he was asked to make further deposits and realised he had fallen victim to a scam. Mr A has been unable to recover any of the funds he sent to E.

Our Investigator considered Mr A's complaint but didn't think Halifax was responsible for his loss. Mr A disagreed, he said Halifax should have stepped in and prevented the scam from taking place. As Mr A disagreed this complaint has been passed to me to decide.

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.

The circumstances of this complaint are not in dispute and the evidence provided by both Mr A and Halifax set out what happened well. What is in dispute is whether Halifax should refund any of the money Mr A and Miss Y have lost because of this scam.

Halifax was unable to process a chargeback for the payments Mr A made on his debit card in relation to this scam to CB.

The chargeback scheme is a voluntary scheme set up to resolve card payment disputes between merchants and cardholders. The card scheme operator ultimately helps settle disputes that 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. Time limits also apply.

Mr A was dealing with E, which was the business that instigated the scam. But Mr A didn't make the debit card payments to E directly, he paid a separate cryptocurrency exchange (CB). This is important because Halifax was only able to process chargeback claims against the merchant he paid (CB), not another party (such as E).

The service provided by CB would have been to convert or facilitate conversion of Mr A's payments into cryptocurrency. Therefore, CB provided the service that was requested; that being the purchase of the cryptocurrency.

The fact that the cryptocurrency was later transferred elsewhere – to the scammer – doesn't give rise to a valid chargeback claim against the merchant Mr A paid. As CB provided the requested service to Mr A any chargeback attempt would likely fail.

Mr A has accepted he authorised the payments he made to CB via various methods (online and in branch transfers and debit card payments), so the starting point here is that Mr A is responsible. However, banks and other Payment Services Providers (PSPs) do have a duty to protect against the risk of financial loss due to fraud and/or to undertake due diligence on large transactions to guard against money laundering.

The question here is whether Halifax should have been aware of the scam and stepped in to prevent the payments Mr A was making.

Halifax has provided a transcript of all calls that took place between Halifax and Mr A.

The first payment Mr A made to CB on 6 December 2021 was for £7,500. This payment didn't trigger Halifax's fraud prevention systems. Halifax has explained CB had already been setup on Mr A's account as a beneficiary so I think Mr A would have thought he could trust CB when making payments to it.

The second payment Mr A made (a desktop transfer) on 7 December 2021 for £25,000 was stopped by Halifax and a call was completed. The Halifax representative warned about cryptocurrency scams and checked that Mr A had paid CB before. The representative also checked that the account at CB was in Mr A's name which he confirmed it was. This payment was then processed as per Mr A's request.

The third payment Mr A made to CB was made in branch for £15,000. Halifax has told us that it was standard procedure for the Halifax branch representative to complete a high value checklist (HVC). The completed checklist is no longer available but on balance I think it's likely this process would have been followed. The HVC included a warning that would have been read out to Mr A warning of potential scams like the one he was falling victim to and letting him know that it was likely funds would not be recovered if something went wrong.

Mr A would have had to confirm he had not been contacted by a third-party to make the payment before it could be processed. As the payment was processed, I think it's likely Mr A

confirmed he had not been contacted by a third-party.

The fourth payment Mr A made to CB on 8 December 2021 for £15,500 (a desktop transfer) was stopped and a call was completed. A Halifax representative explained that the payment had been stopped due to *“higher than normal risk of being a scam”* the representative explained that he needed to ask some questions and it was *“important to answer them honestly and truthfully”*.

The representative checked that Mr A had not been contacted by a third-party and asked to make the payment. He also checked that the payment was going to an account in Mr A's own name, which Mr A confirmed it was, and the payment was released.

The fifth and sixth payments Mr A made to CB on 8 and 10 December 2021 were for smaller amounts of £758 and £300. These payments weren't stopped, but I don't think this is unreasonable. The payments were for relatively low amounts to a legitimate business Mr A had a history of paying.

The seventh payment Mr A made to CB on 14 December 2021 for £1,000 (a desktop transfer) was stopped and a call was completed. After being warned by the Halifax representative about potential scams Mr A confirmed he had completed his own research into cryptocurrency and that he had not been contacted by a third-party to invest. Mr A briefly touched on borrowing money from a friend, but this part of the conversation was not elaborated upon. I don't think further questions about borrowing from a friend were necessary considering Mr A had already confirmed no third-party involvement.

The eighth payment Mr A made to CB on 16 December 2021 for £17,000 (a desktop payment) was stopped and a call was completed. The Halifax representative asked Mr A several questions and Mr A explained he had completed his own research and that no one else helped him with the investment *“no I do it all myself, nobody contacts me or helps me do the currency I do it all myself”*.

The Halifax representative checked again that Mr A had not been contacted by a third-party to make the payment and he replied, *“No definitely not”*. Having answered all of Halifax's questions the payment was processed as requested.

The remaining payments made between 22 December 2021 and 6 January 2022 were of lower amounts and were not stopped by Halifax's fraud prevention systems. But this doesn't surprise me. By this time Mr A had made several large payments to CB that had been stopped and followed a fraud prevention process before being released. They were also for lower amounts spread across several days that I don't think would reasonably have triggered Halifax's fraud prevention systems.

Halifax stepped in every time Mr A attempted to make a significant payment to CB and asked relevant questions about them. Mr A was not honest when he answered these questions, and the answers he gave overall gave the impression he was making payments to CB (a legitimate business) for his own personal investments with no outside influence. So, I think it would have been extremely difficult for Halifax to step in and have prevented the scam Mr A had fallen victim to.

Mr A was warned several times that he would be unlikely to recover the funds he was sending if something was to go wrong, and that Halifax were seeing a lot of investment scams. Yet Mr A ignored these warnings and continued to give inaccurate answers to the questions asked by Halifax that were designed to establish when a scam was taking place.

Overall, I think Halifax's fraud prevention systems were appropriately triggered throughout

the time the scam was taking place and Mr A gave inaccurate answers to the questions Halifax asked him. Because of this Halifax was not able to identify the scam taking place and could not step in to prevent it. So, Halifax is not responsible for any of the money Mr A and Miss Y lost because of the scam.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A and Miss Y to accept or reject my decision before 9 March 2023.

Terry Woodham
Ombudsman