

The complaint

Miss N complains she was the victim of an investment scam and that Bank of Scotland plc trading as Halifax didn't do enough to stop that from happening or to recover her money.

What happened

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here.

Miss N came into contact with someone claiming to be an investment broker who advised her to invest in cryptocurrency. She was told to make payments to a cryptocurrency exchange company, before transferring the funds to an online wallet in her name. Between 22 November and 26 November 2021, she made five online transfers totalling £14,164.10.

Miss N was sent a link to download a trading app and the broker explained how to deposit money onto the trading app via the crypto exchange. The broker would then make trades on her behalf. Each time she deposited money, the broker would ask her to send screenshots of her account, telling her what steps to take next and which buttons to click.

On 24 November, Halifax contacted Miss N regarding a payment of £11,600 and, following the broker's advice, she said she was acting alone, and the payment was authorised. Miss N realised she'd been the victim of a scam when she asked to withdraw some funds and the broker told her to invest more money. She contacted Halifax but it said it couldn't recover the money or issue a refund.

Miss N complained to Halifax with the assistance of a representative. The representative explained that Miss N had thought this was a genuine investment, that she'd been brain-washed, and that Halifax should have known that scammers often tell their victims what to say when they call to authorise payments. They argued the earlier payments were also unusual, particularly the payment of £2,324.10 on 22 November which shouldn't have been authorised because it was to a crypto exchange company. The representative argued that Miss N had made five payments ranging from £20 to £11,600 in the space of two days which was unusual and should have caused Halifax to intervene.

Halifax maintained its position suggesting Miss N should contact the cryptocurrency exchange company. Miss N wasn't satisfied and so she complained to this service stating she wanted a full refund. She explained the broker had been very friendly and had sent her videos and photographs and had communicated with her for several days before raising the issue of cryptocurrency. He told her he'd been a broker for two years and sent her screenshots of his trading account to demonstrate how much profit he'd made. She explained she'd been allowed to withdraw a total of £51.50 which made her confident the investment was genuine and that she was told the more money she invested the higher the returns would be.

Our investigator didn't think the complaint should be upheld. She said that as the money was transferred into an account in Miss N's name, the CRM Code didn't apply. She noted Halifax had stopped the payment of £11,600 and discussed it with Miss N. During the call it had

explained it needed to check Miss N hadn't been contacted by anyone on social media, a broker or a financial advisor and Miss N had confirmed no one had contacted her. Our investigator accepted Miss N had been coached by the broker but without Halifax knowing about the existence of the third-party, it wouldn't have known it was a scam.

Our investigator concluded Halifax had provided a warning during the call describing what a scam might look like and things fraudsters might say and she concluded Miss N was so convinced the investment was genuine that there was little else it could have done.

Miss N's representative further argued that even though Miss N had been coached, Halifax should have gone further to protect her. They said the intervention should have taken place on the initial payment of £2,324.10 as this was considerably outside of Miss N's usual spending behaviour, with most payments being no greater than £200 and to an account in her own name. They said if Halifax had provided a warning at an earlier stage, multiple warnings could have contributed to 'breaking the spell of the scammer'.

Miss N's representative also argued that the FCA had ruled in June 2021 that the cryptocurrency exchange company Miss N had used couldn't conduct any regulated activities in the UK and this should've been a further warning to Halifax that something was wrong. They commented Halifax's staff are trained to identify the signs of coaching and when Miss N made the £11,600 payment, her account balance depreciated drastically, which was a clear sign of a potential fraud, meaning Halifax should have blocked the payment and/or invoked the banking protocol.

Our investigator said £2,324.10 wasn't enough to trigger fraud warnings and that from time to time, consumers are expected to make higher payments. She observed that Miss N had made a £1,000 payment to the crypto exchange within twelve months of the payment and there were several payments of £500 to other payees. She also noted that the balance left in the account was over £7,000 and the cryptocurrency exchange wasn't a new payee, so she didn't accept £2,324.10 was significantly unusual.

She explained that cryptocurrency isn't regulated in the UK and banks are not required to stop payments sent to cryptocurrency exchanges. And the Banking Protocol should only be involved if the bank is sufficiently concerned that a fraud is taking place and, as Halifax didn't know someone else was helping Miss N trade, there wasn't anything further it could reasonably have done.

Miss N remained dissatisfied and has asked for her complaint to be reviewed by an ombudsman.

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.

There's no dispute that Miss N 'authorised' the payments. This is because they were made by her using the legitimate security credentials provided to her by Halifax. Miss N believes she's entitled to a refund because, even though she authorised the payments, she was the victim of a scam and Halifax should have either done more to stop that happening or help her get the money back.

Not every complaint referred to us and categorised as an investment scam is in fact a scam. Some cases simply involve high-risk unregulated investments that have resulted in disappointing returns or losses. Some of these investments may have been promoted using sales methods that were arguably unethical and/or misleading. However, while customers

who lost out may understandably regard such acts or omissions as fraudulent, they do not necessarily meet the high legal threshold or burden of proof for fraud, i.e. dishonestly making a false representation and/or failing to disclose information with the intention of making a gain for himself or of causing loss to another or exposing another to the risk of loss (Fraud Act 2006).

I've carefully considered the circumstances, and I am persuaded the broker was operating as part of a scam. But, although Miss N didn't intend her money to go to scammers, she did authorise the disputed payments. Halifax is expected to process payments and withdrawals that a customer authorises it to make, but where the customer has been the victim of a scam, it may sometimes be fair and reasonable for the bank to reimburse them even though they authorised the payment.

Buying cryptocurrency is a legitimate activity and from the evidence I've seen, this was a genuine cryptocurrency exchange company. However, Halifax has an obligation to be alert to fraud and scams and these payments were part of a wider scam, so I need to consider whether Halifax ought to have intervened to warn Miss N when she tried to make the payments. If there are unusual or suspicious payments on an account, I'd expect Halifax to intervene with a view to protecting its customers from financial harm due to fraud.

the first payment

Miss N's representative has argued that Halifax should've blocked the first payment Miss N made on the basis it was for a higher amount than she was accustomed to paying and it was suspicious because the payee was a cryptocurrency exchange company. I don't think the payment was sufficiently unusual to have triggered a warning because it wasn't to a new payee and while Miss N did generally use the account for smaller payments, there were some larger payments and £2,324.10 isn't so high that it was unreasonable for Halifax not to have blocked it.

I've also considered whether the payment was suspicious, and I don't think it was. As our investigator has pointed out, even though cryptocurrency isn't regulated in the UK, banks aren't required to block all payments to cryptocurrency exchanges and Miss N had previously made payments to other cryptocurrency exchanges, so this alone wasn't enough to have triggered fraud warnings. Further, even if Halifax had intervened at this point, I've no reason to conclude the outcome of the call would have been any different to the outcome of the subsequent call.

the call

Halifax concluded £11,600 was an unusual payment, blocked it and contacted Miss N. I don't think it doing so was unreasonable or unfair. I've listened to the call and I'm satisfied that Halifax asked Miss N sufficiently probing questions, warned her about the risk of fraud and told her about the various methods used by scammers.

Unfortunately, during the call, Miss N stuck to the advice given by the broker, hiding the involvement of the third-party from Halifax. While I understand Miss N feels she's lost out because Halifax failed to pick up on this, I don't think there's anything else it could reasonably have done and in the circumstances it wouldn't be fair to make it refund the money.

Further, it's clear Miss N was convinced this was a genuine investment and even if she had told Halifax about the broker, I don't think there's anything it could have said to talk her out of going ahead with the payment.

Overall, I'm satisfied Halifax took the correct steps prior to the funds being released – as well as the steps they took after being notified of the potential fraud. I'm sorry to hear Miss N lost such a significant amount of money. But for the reasons I've explained, I don't think Halifax is to blame for this and so I can't fairly tell it to do anything further to resolve this complaint.

My final decision

For the reasons I've outlined above, 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 N to accept or reject my decision before 2 January 2023.

Carolyn Bonnell
Ombudsman