

The complaint

Mrs N complains that Bank of Scotland plc trading as Halifax ("Halifax") have failed to refund £2,395 she lost as part of an investment scam.

What happened

The details of this complaint are well known to both parties, so I will not repeat everything again here. Instead, I will focus on giving the reasons for my decision

But in summary, Mrs N was approached by a fraudster that I will call B. They persuaded Mrs N that they were experts at trading in crypto currencies. Mrs N first transferred funds to a bank in Portugal and then made two debit card payments to a crypto exchange called Luno that were forwarded onto B. These transactions totalled over £2,400

Mrs N subsequently tried to withdraw the "profits" that she had made, but was told that she was unable to do so unless she paid further fees. It was at this point that Mrs N found out that she had been scammed.

Mrs N complained to Halifax regarding this, but they declined to refund the disputed transactions.

One of our investigators looked into this matter and they did not think that the payments made were out of character for Mrs N's account. They therefore concluded that Halifax did nothing wrong in not preventing the payments.

Mrs N disagreed and therefore this complaint was referred to me to issue a 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.

Having done so, I agree with the conclusions reached by the investigator for the following reasons.

It isn't in dispute that Mrs N authorised the disputed payments she made via transfer and using her Halifax debit card. The payments were requested by her using her legitimate security credentials provided by Halifax, and the starting position is that banks ought to follow the instructions given by their customers, in order for legitimate payments to be made as instructed.

However, I've considered whether Halifax should have done more to prevent Mrs N from falling victim to the scam, as there are some situations in which a bank should reasonably have had a closer look at the circumstances surrounding a particular transfer. For example, if it was particularly out of character. However, having taken Mrs N's account activity and limited payment history into account, I do not think the payments she is disputing should have been regarded as particularly unusual.

I appreciate that overall, Mrs N has lost over £2,400 which is a significant amount of money. But this amount wasn't paid in one single large or 'out of character' transaction. It was spread over several smaller increments which, in my judgment, would not have appeared particularly unusual or out of character when compared with Mrs N's spending history with Halifax. I don't think that they ought to have been regarded as suspicious or indicating that she might have been at risk of falling victim to a scam.

The payments were not of such a large amount (largest payment was £1000) that they would represent a significant deviation from what would be considered as 'usual' activity.

So, having considered the payments Mrs N made, I'm not persuaded there was anything that ought reasonably have triggered Halifax's fraud monitoring systems, or that would have indicated she was in the process of being scammed. I therefore do not consider there to have been any obligation on Halifax to have intervened under any of the codes Mrs N has cited.

I will now address whether Halifax did enough to attempt to recover the funds. In relation to the transfer, I can see that Halifax did attempt to contact the bank in Portugal to ask that the funds be returned. This attempt was not successful. But in the circumstances, I would not expect Halifax to do anything more as all it can do is request a return. I should also add that given the timescales between the transfer and Mrs N contacting Halifax, it is highly unlikely that the funds would have remained in the account they were sent to, as in most cases the funds are withdrawn immediately by the scammer.

I've also thought about whether Halifax did enough to attempt to recover the money Mrs N lost using her debit card as debit card transactions can be refunded through making a chargeback claim.

In this case, a chargeback would not have been successful, as the transactions Mrs N used her debit card for was to pay Luno for the purchase of cryptocurrency, which she duly received. The money was subsequently lost from the crypto platform when she transferred the funds to the scammer. So, she could not claim that she did not receive the goods or services paid for from her Halifax account, which was the purchase of the cryptocurrency. As a result, I don't think Halifax have acted unreasonably by not pursuing a chargeback claim here in relation to the debit card payments.

Finally, I have considered whether the transaction could have been recovered by other means such as the Contingency Reimbursement Model ("CRM") but the CRM only covers transfers between UK bank accounts and in this instance this does not apply for any of the transactions in question.

I appreciate this will come as a disappointment to Mrs N, and I'm sorry to hear she has been the victim of a cruel scam. However, I'm not persuaded that Halifax can fairly or reasonably be held liable for her loss in these circumstances.

My final decision

For the reasons given above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs N to accept or reject my decision before 26 October 2023.

Charlie Newton
Ombudsman