

## The complaint

Mr B complains that Bank of Scotland plc trading as Halifax ('Halifax') won't reimburse the money he lost in a scam.

## What happened

Mr B received a lump sum pension payment. He was watching a morning television programme and a celebrity discussed the benefits of investing in Bitcoin. Later, Mr B did some research and found a company I'll refer to in this decision as D. He approached D and was advised that if he invested £250,000, he could have a gold account that allowed access to less volatile markets and his funds were guaranteed. He decided to go ahead.

As Mr B was an inexperienced investor and wasn't confident to complete trades, he allowed D remote access to his computer. Initially D helped Mr B to set up an account with a cryptocurrency exchange I'll refer to as C. Mr B then made payments from his Halifax account to C. A representative of D then moved his funds from C to trade. Mr B had access to an online portal that allowed him to monitor his investment.

Mr B made the following payments from his Halifax account to his own account with C:

| Date     | Amount  |
|----------|---------|
| 15/09/20 | £15,000 |
| 15/09/20 | £2,000  |
| 24/09/20 | £15,000 |
| 24/09/20 | £10,000 |
| 25/09/20 | £15,000 |
| 25/09/20 | £10,000 |
| 29/09/20 | £10,000 |
| 29/09/20 | £15,000 |
| 30/09/20 | £15,000 |
| 30/09/20 | £10,000 |
| 15/10/20 | £10,000 |
| 15/10/20 | £15,000 |
| 21/10/20 | £15,000 |
| 21/10/20 | £10,000 |
| 22/10/20 | £15,000 |
| 22/10/20 | £10,000 |
| 23/10/20 | £15,000 |
| 23/10/20 | £10,000 |

|              |                 |
|--------------|-----------------|
| 26/10/20     | £5,000          |
| 12/11/20     | £25,000         |
| <b>TOTAL</b> | <b>£247,000</b> |

Mr B transferred the final £3,000 from an account with another bank.

D told Mr B that it was easy to withdraw funds and credited his account with £997.36 on 14 October 2020.

Halifax blocked a payment on 15 October 2020 and had a conversation with Mr B. Halifax noted the payment had been flagged on its system as there was a higher than normal risk of fraud or a scam. It asked Mr B who he was paying, the reason for the payment, whether he'd paid C before, whether he had, *"completed all the checks to check everything is genuine with the company"*, whether he'd received a return, who made the first contact, whether he had any concerns about his dealings with C and whether C was FCA regulated. Halifax then released the payment.

Mr B says that his investment reached £750,000 and he tried to withdraw his funds. At this stage Mr B was advised of a fee of £43,000 to remove his profits and realised he was the victim of a scam. Mr B contacted Halifax to raise a scam claim in March 2021.

Halifax told Mr B that the CRM Code doesn't apply as he made the transfers to an account in his own name with C and so Mr B should contact C directly. But Halifax credited Mr B's account with £200 to reflect the poor service he received when he notified it of the scam. Mr B later appointed a representative and Halifax issued a further final response letter in which it said Mr B didn't complete sufficient checks before making the payments and that it had done what it could to recover Mr B's funds. Unhappy with this response, Mr B brought a complaint to this service.

#### *Our investigation so far*

The investigator who considered Mr B's complaint recommended that it be upheld in part. She said this because she felt that Halifax should have intervened when Mr B made the fourth payment request for £10,000 on 24 September as the payment was out of character. Had Halifax discussed the payment, the investigator thought the scam would have been uncovered and further payments prevented (including the final payment from Mr B's account with another bank). The investigator didn't feel that a deduction should be made as it was a sophisticated scam, Mr B checked reviews, D had a professional looking website and Mr B received a return.

Mr B agreed with the investigator's view. Halifax agreed to refund 50% of the amount recommended by the investigator. It accepted that from the payment identified by the investigator it could have done more to prevent the scam. But Halifax said that Mr B should be responsible for the remaining 50% of his loss because:

- It wasn't clear why Mr B thought D was FCA registered and had he checked this he'd have found that D had never been regulated.
- Mr B says he checked a recognised review site, but it's widely known that scammers write fake reviews. If Mr B rechecked reviews when Halifax blocked a payment, he'd have seen warnings about D.
- The rate of return offered was too good to be true and should have been a red flag to Mr B. In the space of around three months Mr B believed his investment had tripled.
- Halifax referred to an advert Mr B provided to it and which it says was clearly fake. This advert showed the name of a newspaper at the top, but this was misspelt and the photograph on the advert was from a breakfast television show unrelated to the

newspaper. Halifax say it was clear the advert wasn't legitimate, and this should have led Mr B to take more care before investing so much.

- Mr B allowed the scammers remote access to his computer. No reputable company would ask to do this. Mr B should also have questioned why D needed access to his account with B and why funds were immediately removed from his account with B.

The complaint has been passed to me to consider.

### **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 Contingent Reimbursement Model Code (the CRM Code) doesn't apply in this case because Mr B made payments from his Halifax account to an account in his own name. The CRM Code doesn't apply in these circumstances.

Mr B authorised the scam payments from his Halifax account. So, although he didn't intend the money to go to the scammers, under the Payment Services Regulations 2017 and the terms and conditions of his account, Mr B is presumed liable for his loss in the first instance.

However, taking into account the law, regulatory rules and guidance, relevant codes of practice and good industry practice, there are circumstances where it might be appropriate for a bank to take additional steps or make additional checks before processing a payment in order to help protect its customer from the possibility of financial harm from fraud. An example of this would be if a payment instruction is sufficiently unusual or uncharacteristic for the usual use of the account. In such circumstances I'd expect Halifax to intervene and ask more questions about the intended transaction before processing it. I'd also expect Halifax to provide suitable warnings about common scams to help its customer make an informed decision about whether they want to continue with the payment.

I've carefully considered Mr B's bank statements and can see that in the 12 months before the scam Mr B withdrew £128,000 after a similar sum had been deposited. Then in August 2020 Mr B transferred £76,000 to another account in his name, again after receiving a similar sum. So large sums of money were moved through the account. Given this, I don't think the first few payments to C ought reasonably to have caused Halifax any concern.

By the time Mr B made the fourth payment request though, he'd transferred £32,000 to C. He was making the second transfer in a day which took Mr B to the maximum daily withdrawal limit of £25,000. The payments to C matched a known scam pattern and I think Halifax ought reasonably to have intervened and asked Mr B questions about the fourth payment request.

I'm not persuaded that the fact the payments were going to Mr B's own account and so appeared to be going somewhere safe and within his control should have satisfied Halifax that he wasn't at risk of harm. This is because by January 2019, banks had, or ought to have had, a good enough understanding of how these scams work – including that a customer often moves money to an account in their own name before moving it on again to the scammer - to have been able to identify the risk of harm from fraud.

I've thought about what would have happened if Halifax had intervened and asked proportionate questions when Mr B made the fourth payment request. I see no reason why Mr B wouldn't have told the truth, as he did when Halifax later blocked a payment. I think Halifax should have asked Mr B questions around how he found out about the investment, what he understood about the investment and the return, why he was paying C and what he understood about FCA regulation.

If Halifax had done so I think it's more likely than not the scam would have come to light and Mr B's loss been avoided. I say this because Mr B believed the investment was celebrity

endorsed. Whilst Mr B wasn't aware that a celebrity endorsed investment is very likely to be a scam, Halifax should have been. I also think it likely Mr B would have explained that he hadn't invested before and had allowed remote access, which would have been another red flag to Halifax. And whilst Mr B had been told that D was FCA regulated, he knew nothing about FCA regulation or how to check the register.

I accept that Halifax later called Mr B about a subsequent transaction and the scam wasn't uncovered. I think this was because Halifax's questions didn't go far enough though. For example, the agent didn't ask Mr B how he found out about the investment or discuss the checks Mr B had completed.

Halifax has accepted that it didn't do enough to protect Mr B when he made the payments to C, and this is why it has agreed to refund 50% of the fourth payment and all subsequent payments (including the final payment from an account with another bank). So I've gone on to consider whether a 50% deduction is fair in this case.

*Should Mr B bear some responsibility for his loss?*

I've thought carefully about whether Mr B should share responsibility for his loss. On balance, I don't think he should. I say this because:

- Mr B was an inexperienced investor and didn't know what kind of checks he needed to complete to protect himself from cruel scammers. He completed the checks he thought were appropriate by looking at D's website (which has now been taken down), that appeared genuine and professional, and checking reviews on a well-known and trusted site. I don't agree with Halifax that Mr B acted unreasonably in relying on such reviews on the basis that some reviews might be fake. The review site Mr B used is widely used and as an inexperienced investor I consider Mr B acted reasonably in trusting it.
- Mr B was told he needed to invest £250,000 to be a gold member which would mean he was given access to less volatile markets. To an inexperienced investor, this seems plausible.
- Mr B was able to log into a sophisticated online portal. The portal showed deposits, withdrawal requests, transaction history and had a trading area that allowed Mr B to see how his investment was performing. He could also post messages. The portal looked legitimate and made Mr B think he was dealing with a genuine company.
- Over the course of the two months Mr B made payments the scammer built a rapport with him which gave Mr B confidence to continue to make payments. He was emailed regularly and had telephone conversations with traders who sounded professional and knowledgeable.
- After Mr B had made some payments, he was able to withdraw profits of nearly £1,000. This gave Mr B reassurance that he was investing in a genuine scheme. I appreciate this is a cruel trick played by scammers to entice a victim to part with further funds, but Mr B wasn't aware of this.

Halifax has stated that it isn't clear why Mr B thought D was FCA regulated and had he checked he'd have seen this wasn't the case. Mr B has explained the scammers told him D was regulated by the FCA and with no knowledge of how to check this he accepted what he was told.

Halifax has also said that Mr B should have been concerned that funds were immediately removed from his account with C, but I don't agree. Mr B knew that his funds would be moved from his account with C to trade and this is what happened. He could then see how his investment was performing on the portal.

Mr B says he provided the advert Halifax has referred to for context, but it wasn't the advert that induced him to invest – it was the celebrity endorsement. So the comments Halifax has made about the advert being a clear fake aren't relevant here.

I appreciate that with the benefit of hindsight Mr B could have done more but this doesn't mean Halifax can fairly apply an exclusion to reimbursement.

*Did Halifax do what it could to recover Mr B's funds?*

In this case Mr B's funds went to a genuine cryptocurrency exchange and were rapidly moved out of his account. In the circumstances, I don't consider there was any prospect of Halifax recovering Mr B's funds.

*Distress and inconvenience*

I've also considered whether Halifax should pay Mr B compensation to recognise the distress and inconvenience he's experienced as a result of its actions. I appreciate that the scammers are the ones responsible for the majority of the upset Mr B has suffered but I believe Halifax has unnecessarily added to it. Mr B's representative has explained that the loss of such a substantial amount of money has made Mr B feel anxious and depressed about the future and needing to seek help in respect of his mental health. Mr B has experienced sleep deprivation which has impacted other areas of his life. He has also been unable to bring a complaint to this service himself and so appointed a representative. Halifax has already paid Mr B £200 and I think this is a fair amount of compensation so am not awarding any more

*Interest*

The majority of the funds Mr B used in the scam were transferred in from a savings account which had recently received large credits (around £124,000 in October 2019 and around £76,000 in August 2020). Mr B has explained that these were pension funds and that were it not for the scam he'd have invested the funds through his bank. But Mr B hadn't researched any products and says he doesn't know how he'd have invested his funds. So I don't think it's fair to say Mr B's funds would have remained in his savings account were it not for the scam but at the same time can't determine how Mr B would have invested them. In the circumstances, I consider it fair to award interest at 8% simple per year from the date of loss to the date of settlement.

I consider it more likely than not the £3,000 Mr B transferred from a current account at another bank would have remained where it was and been used for everyday spending were it not for the scam. So, Mr B should also receive interest on this amount at the rate of 8% simple per year from the date of loss to the date of settlement. Mr B may need to provide Halifax with evidence of this rate.

### **My final decision**

I uphold this complaint and require Bank of Scotland plc trading as Halifax to:

- Refund £214,002.64 (£215,000 less £997.36 'profit' returned to Mr B);
- Pay interest on the above amount at the rate of 8% simple per year from the date of each payment to the date of settlement;
- Refund the £3,000 Mr B paid from his account with another bank;
- Pay interest on the £3,000 above at the rate of 8% simple per year from the date of loss to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 10 April 2023.

Jay Hadfield  
**Ombudsman**