

The complaint

Ms M complains that Bank of Scotland plc trading as Halifax (Halifax) is refusing to refund her the amount she lost as the result of a scam.

Ms M is being represented by a third party. To keep things simple, I will refer to Ms M 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.

Ms M was interested in investing and found an Instagram account of an individual well known for his experience in cryptocurrency investment. Unknown to Ms M the account was not the well-known individual but instead a fake account impersonating him. I will call this person X.

X posted an opportunity on the account for X to invest on behalf of individuals in return for a commission on the profits that were made. Ms M was convinced that the Instagram account was legitimate by the number of followers it had and the posts that X was putting up, so she contacted X. Before long Ms M and X were communicating via WhatsApp.

X persuaded Ms M to set up a trading account on its platform and transfer funds to the account via the legitimate cryptocurrency exchanges Blockchain and Moonpay. Ms M was able to see the deposits she was making in her trading account and was happy with the returns she was making.

Although after Ms M made her final payment to X, X stopped responding to messages and Ms M was unable to contact him. Ms M realised she had fallen victim to a scam and has been unable to recover the money she paid X.

Ms M made the following payments to X Via Blockchain and Moonpay using her debit card:

1. 15 June 2022 - £550 - Blockchain
2. 16 June 2022 - £550 - Moonpay
3. 17 June 2022 - £500 - Moonpay
4. 20 June 2022 - £1,000 - Moonpay
5. 20 June 2022 - £500 - Moonpay
6. 20 June 2022 - £1,000 - Moonpay
7. 21 June 2022 - £2,000 - Moonpay
8. 21 June 2022 - £500 - Moonpay
9. 22 June 2022 - £2,000 - Moonpay
10. 22 June 2022 - £2,000 - Moonpay
11. 22 June 2022 - £2,000 - Moonpay
12. 23 June 2022 - £1,000 - Moonpay
13. 23 June 2022 - £2,000 - Moonpay
14. 27 June 2022 - £700 - Moonpay

15. 27 June 2022 - £3,000 - Moonpay
16. 27 June 2022 - £600 - Moonpay
17. 27 June 2022 - £1,000 - Moonpay
18. 29 June 2022 - £4,000 - Moonpay

Our Investigator considered Ms M's complaint but didn't think it should be upheld. Ms M disagreed she said Halifax should have done more to protect her from the scam.

As Ms M 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.

Halifax was unable to process a chargeback for the payments Ms M made in relation to this scam to Blockchain and Moonpay.

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.

Ms M was dealing with X, which was the person that instigated the scam. But Ms M didn't make the debit card payments to X directly, she paid separate cryptocurrency exchanges (Blockchain and Moonpay). This is important because Halifax was only able to process chargeback claims against the merchants she paid (Blockchain and Moonpay), not another party (such as X).

The service provided by Blockchain and Moonpay would have been to convert or facilitate conversion of Ms M's payments into cryptocurrency. Therefore, Blockchain and Moonpay 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 Ms M paid. As Blockchain and Moonpay provided the requested service to Ms M any chargeback attempt would likely fail.

Ms M has accepted she authorised the payments she made to Blockchain and Moonpay, so the starting point here is that Ms M 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 ask Ms M meaningful questions about them, and had Halifax stepped in, would it have prevented the scam from taking place.

All the payments Ms M made were for relatively low amounts so although they were to a new payee to start off with, I wouldn't necessarily have expected Halifax's fraud prevention systems to have been triggered, giving Halifax reason to speak with Ms M.

However, Halifax's fraud prevention systems were triggered after Ms M made the first

payment to Blockchain on 15 June 2022. Ms M tried to make further payments after this, but her account was blocked by Halifax, prompting Ms M to call in.

Halifax has sent us a copy of this call recording. Ms M had called in as she was unable to make payments using her card. She confirms it is her first-time using the websites and that her friends had used the exchanges before, so they were safe.

Ms M also confirms no one's doing the payments for her and that no one had told her to make the payments.

I don't think the responses Ms M gave to Halifax's questions were accurate. X had asked Ms M to make payments to him via the exchanges so that he could trade on her behalf. Had Ms M given a more accurate answer to this question asked by Halifax I think it's likely the scam could have been uncovered.

The answers Ms M gave to Halifax led Halifax to believe the payments Ms M was making were legitimate and not part of a scam. So, I don't think it would reasonably have been aware a scam was taking place or have been able to prevent it.

Halifax is not responsible for Ms M's loss and does not have to refund any of the payments she made.

My final decision

I don't uphold this complaint,

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or reject my decision before 13 April 2023.

Terry Woodham
Ombudsman