

The complaint

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

What happened

What Mr K says

Mr K saw an investment advert on a well-known social media platform. The company (F) offered investment services, described by Mr K as *"It was a simple investment of \$250 and the company owned a "robot" of some sort that would invest in stocks and shares every day based on trends and sophisticated calculations and guaranteed profits."*

Mr K said his friends had made some money investing in shares and he was interested so he carried out some "basic research" into F. He concluded that the information he'd been able to gather "stacked up" and their reviews were positive.

He explained that he didn't register at that point and was called the following day by an employee of the business – I'll refer to them as P. They went into more detail about their "robot" and how their services worked. Mr K decided to make the initial investment with a payment using his debit card.

Mr K was given access to an online trading account where he explained he could see how his investment was performing. He was then asked to open an account with a legitimate cryptocurrency ('crypto') broker who I'll refer to as M. He was asked to download software to his computer that enabled P to take control of it to "assist" Mr K with the investments and transfers.

Mr K saw small profits every day from his initial investment and was in contact with P via a messaging app. P maintained regular contact with Mr K and continually offered other opportunities for making money. After a few weeks, Mr K made a £2,000 payment from his Halifax account to his account with M. For ease I'll list all the payments made by Mr K:

Date	Amount
23/12/2020	£251.84
12/01/2021	£2,000
25/01/2021	£5,000
23/02/2021	£17,000

Once the payments had been made to Mr K's account with M, the funds were turned into crypto assets. He was assisted by P using the downloaded software to move his funds to F's "wallet". What this meant was that Mr K's funds had now been transferred to the scammers.

Mr K continued to receive regular requests for more funds with ever increasing opportunities to make money and continued to see his profits grow on the trading platform. P told Mr K that he was transferring some of this "profit" back to him and moved £2,000 worth of crypto

assets back to his account with M. Mr K was convinced his investment was working and decided to return the crypto assets back to F and also made a further payment of £5,000 to add to his investment.

It was at this point that he received a call from Halifax about this payment and Mr K explained that P had told him the bank may contact him, he said:

“P had already said i may need to speak to my bank to notify them that I wanted to make this payment, and advised at the time what to say, i.e. this was an investment into shares. I spoke to the bank and said i wanted to make the payment to M to purchase shares and it was acknowledged and subsequently approved. At the time i had P advising me on every detail and i must admit he made me feel very comfortable and had ways of convincing me what we were doing was absolutely fine and there was nothing to worry about.”

The payment was released, and Mr K continued to chat with P and eventually saw that his initial investment of just over £7,000 had now reached about \$100,000. Mr K was told he'd have to move to a different trading platform and pay £17,000 because he had to show he'd invested a certain amount of his profits. He was told this payment would be returned to him in about 20 minutes and would ensure he didn't have to pay any future “tax” linked to his investment.

Mr K didn't have those funds and persuaded his wife to give him the money. He described her as being reluctant to do that but was persuaded by P that it was necessary to release his profits. Mr K made the payment, and the crypto funds were transferred to F. After this Mr K was unable to get his investment paid to him and P continued to ask for further payments needed to “insure” his investment. Mr K was unable to raise these funds and eventually realised he'd been scammed.

Mr K approached Halifax about the scam and asked for a refund.

What Halifax says

Halifax identified an unusual payment being made from Mr K's account when he tried to transfer the £5,000 payment and prevented it leaving his account until they discussed it with him. During a call with Mr K, the following was discussed:

- Halifax asked what the payment was for and described various scams to Mr K, including crypto investment scams that often originate via social media platforms.
- Mr K was told that he shouldn't hold anything back during the discussion and he should answer honestly.
- Halifax said the vast majority of these opportunities turn out to be fake and there is no intention of providing the advertised services.
- Mr K explained that he'd found out about it through friends who'd been doing it for a while.
- He said that he'd approached M about the account which was the same process as his friends had gone through and hadn't gone via a third party.
- Mr K was asked if he'd received any funds back and Mr K said he hadn't but was in the process of doing so.
- He confirmed he'd carried out a “fair bit of checks and background checks”, including checking that F was registered with the Financial Conduct Authority ('FCA').
- Mr K confirmed that he'd not been told to lie (by a third party) to Halifax and was happy to go ahead with the transaction, then Halifax released the payment.

When Mr K approached the bank for a refund, they declined because his funds had been

lost from his account with M. Halifax did acknowledge that they hadn't dealt with Mr K's scam report as effectively as they might have and sent a payment of £100 to recognise the poor service.

The investigation so far

Mr K remained unhappy with how Halifax had handled this situation and brought his complaint to the Financial Ombudsman Service for an independent review. It was looked into by one of our investigators who asked both parties for information concerning the scam. Mr K provided details of the conversations he'd had with P and an explanation of what happened. Halifax provided details of the accounts used by Mr K and various reports about the transactions and their assessment of the situation. A recording of the call held with Mr K about the £5,000 payment was also provided.

After assessing the information, the investigator didn't uphold the complaint, believing that Halifax couldn't have done any more when they spoke to Mr K on the telephone and pointed out the circumstances of similar scams. They said that based on Mr K's answers, it was apparent that he wanted to make the transaction despite what Halifax had said. It was also noted that Mr K said he'd checked the FCA website and at the time, it held a warning record about F. Our investigator felt that if Halifax intervened on the last payment of £17,000 (it didn't) then Mr K would still have gone on to make it.

Mr K disagreed with the investigator's outcome and in summary said:

- Halifax failed to protect him and referred to the BSI PAS: 2017 17271 and other fraud prevention regulations.
- Halifax failed to adhere to the Contingent Reimbursement Model ('CRM') and the Authorised Push Payment ('APP') scam code.
- If Halifax had asked probing questions – he would have answered them.
- He believed that his case was being judged differently from other similar cases.
- He believed he was vulnerable which Halifax didn't take into account.
- Mr K accepted that he'd authorised the transactions himself.

As no agreement could be reached, the complaint has been passed to me and I issued a provisional decision where I said:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice (including those referred to by Mr K in his submissions to this service); and, where appropriate, what I consider to have been good industry practice at the time.

The CRM referred to by Mr K doesn't apply in this case. That's because it only applies to payments made to another person and Mr K paid into his own crypto account.

It is accepted that Mr K 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 K is presumed liable for his loss in the first instance. And under the terms and conditions of the account, where a valid payment instruction has been received Halifax's obligation is to follow the instructions that he provides.

However, 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 customers make an informed decision about whether they want to continue with the payment.

That's the case even though Mr K was sending funds to an account in his own name. By January 2019, banks like Halifax had, or ought to have had, a good enough understanding of how crypto 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.

The first two payments made by Mr K (one by card and one by bank transfer) weren't unusual when compared to the activity on Mr K's accounts, so I wouldn't expect them to be identified by Halifax as suspicious and I think it was reasonable for the bank to process them.

The third payment (£5,000) was stopped by Halifax and the circumstances were discussed with Mr K. The call (which I've summarised above), identifies that the payment to M isn't the first time that Mr K transferred money to them. He was asked to be honest and confirmed he hadn't been asked to lie. But in the call, Mr K omitted to tell the call handler that he was being advised by F and they were investing his funds. Mr K gave the impression during the call that it was M that he was solely dealing with which wasn't the complete picture.

Mr K explained his reasoning for the way he handled the call, that P briefed him about the call and how to answer the bank's questions. Mr K was left feeling "very comfortable" about the situation. I asked Mr K for some more information about the call and why he didn't mention his arrangement with F. He later said:

"I was under the scammers' spell, acting on their instructions, most of the time. They would tell me what to do, and do everything on my behalf and just have me confirm and nod all the time, thinking that my money is safe with them because they would show me on the trading account that I was actually making money.

These people brainwashed me by giving me a cover story which I should tell the bank if they asked about the purpose of the transactions, which is "that I was investing in Crypto Currency, and buying to hold." Also, they were telling me how the bank doesn't want to release the money even though it's mine because they are using it for other purposes. So, they manipulated me and convinced me that the bank will try to stop the transactions. So, the scammers told me to ignore the bank because they don't want you to release the money."

In relation to the £5,000 payment that was later released by Halifax, I think that they attempted to probe the reasons for the investment Mr K was involved in and the omissions made their job that much more difficult. I don't think it was unreasonable that Halifax released the payment based on what they were being told by Mr K.

Mr K was subject to continued messaging by P. Reading through those messages, Mr K was resistant to some of the schemes suggested to him, mainly because he didn't have the funds available. At one-point Mr K was offered an opportunity to purchase gold which was described by P as a "trick". Mr K would invest £5000 and receive \$4500 profit from it in a single transaction. He was then offered an investment of £15,000 which would see his return

doubled in two hours and was only turned down because Mr K was out of funds and didn't think he could persuade his wife to loan him the money. Mr K was later told his investment had reached about \$23,000 and P told him he'd give him £25 - \$30,000 of his own money and the following week make it up to \$100,000. Overall, I can see how Mr K was on the receiving end of continued attempts to get him to invest – although I think some of these schemes sounded too good to be true.

Mr K has described how his trading account showed profits and when it hit about \$100,000, he was told he had to make a further payment to avoid taxes at a later date. Mr K didn't have those funds and persuaded his wife to give him the money. It was transferred into his account before Mr K sent it to M and onwards to F's wallet once it was turned into crypto funds.

Halifax didn't identify that payment as suspicious and I think they should have done. I accept they'd previously spoken with Mr K about payments to M, but this latest payment was the last in a series of increasing payments to M, which is often a factor in crypto scams. This payment was triple the previous one and made only a month or so after the last one.

I think the circumstances of this last payment should have alerted Halifax to contact Mr K and further discuss the situation. It's not unreasonable to expect Halifax to have a proportionate response to the activity they see on their customer's accounts. I think the tripling of payments to M was something that warranted a more in-depth conversation with Mr K.

I've taken into account the briefing(s) Mr K had received from P about what to say to the bank if it questioned the payments he was making, and it's not unreasonable to assume Mr K would take a similar approach to a call from the bank about the £17,000 payment as he did to the £5,000 payment. But the situation had changed somewhat since the previous call. Mr K had borrowed funds from his wife and she, according to Mr K, had some reservations about giving her husband these funds as they were her savings, and they had a young family at the time to think about. If Halifax had spoken to Mr K about the £17,000 payment and obtained the background to the tripling of the transfer, I think it would have been difficult for Mr K to give a cover story. There's no evidence he'd been given a specific and convincing one in the particular circumstances of the last payment (by P). He knew it wasn't for an investment and was told it was to avoid paying taxes at a later stage – so I think there's a good chance he would have said that to Halifax. He had no reason to lie about it at that point and given the misgivings of his wife, I don't think it would have taken much to break the scammer's spell here.

I think that Halifax had an opportunity to prevent the last payment and protect those funds. My current thinking is that they should refund it, but I also need to consider if Halifax should bear the whole loss or just part of it.

Should Mr K bear some responsibility for the final payment of £17,000?

I've thought carefully about this, and I accept that Mr K was an inexperienced investor, particularly in relation to crypto investing. It's apparent that the scammers were convincing and provided an investment account for Mr K to view, through which he could see that his investment was performing well. But I don't think that Mr K carried out some of the checks he referred to in his conversations with Halifax and our service – particularly in relation to the FCA.

If he had, he would have seen that F had a warning against it on the FCA website that was posted prior to his first payment to them and similarly the firm that he made the first debit card payment to had a wealth of warnings about them around the time he was investing. The

FCA first posted a warning about them prior to the last payment made by Mr K and there were negative reviews about them scamming people posted in January 2021. Although this was after Mr K had paid money to them, the fact that they were part of the firm he paid funds to remains relevant to the overall picture of the legitimacy of F.

Mr K hasn't provided or referred to any contracts or documents he was required to review/sign or submit as part of his arrangement. It's unusual for a legitimate firm to operate in this way and as far as I could see, the firm has no address on their website. All these factors should have been a red flag for Mr K.

A review of the type of offers Mr K was getting showed some unlikely investment opportunities, including doubling his money for a two-hour investment. I don't think they sounded at all realistic including his trading account which appeared to show he'd made \$100,000 in less than two months on an investment of around £7,000.

I've also taken into account the approach Mr K took with Halifax when he spoke with them. It's difficult to be certain what he was told at the time because his versions of what he was told by F have evolved, but what I have concluded is that Mr K omitted relevant detail from his conversation with them. He led them to believe he'd done more than he had and made checks when it's apparent he hadn't. I think if he'd have been open about the arrangement, Halifax could have advised him about the likelihood of being scammed.

I think that Mr K contributed to his own losses and should bear some of the responsibility. My current thoughts are that Halifax and Mr K should bear the loss evenly for the final payment of £17,000.

Funds recovery

I've thought about whether Halifax did enough to recover Mr K's funds when they were advised of his losses. Unfortunately, there weren't any because the funds he transferred to M had already been converted to crypto and sent to F's wallet. I don't think that Halifax could have reasonably done anything to recover them.

Regarding the first card payment made by Mr K, the only option available to Halifax for recovery of it would have been a chargeback request. This is a system operated by the payment processor (usually VISA or Mastercard) and is subject to strict rules. Where it's not considered likely that the application would be successful, we wouldn't usually insist that one was carried out. In this case, the firm receiving the payment was considered part of the scam, so I don't think that any chargeback request would have been successful, and it was reasonable for Halifax not to undertake one.

My provisional decision

Overall, my current thoughts are that the first two payments were unlikely to raise any suspicions from Halifax. They carried out a conversation with Mr K about the third payment and from the answers they received, I think it was reasonable for them to release it. I think they missed an opportunity to further question Mr K when the final payment tripled in value and I think they could have prevented this loss, but I also think that Mr K should bear some responsibility for this. I'm intending to uphold in part this complaint for a 50% refund of the final £17,000 payment to Mr K (£8,500). I'm not intending to award any interest towards this payment because it was effectively money borrowed from Mr K's wife, rather than funds from Mr K's own accounts.

I invited Mr K and Halifax to give me any more evidence and information they wanted me to

consider before issuing my final decision. Halifax accepted my provisional decision and Mr K wanted to further explain the impact this loss had on him and his family.

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, and as Halifax accepted my provisional decision and the impact on Mr K has already been taken into account, I see no reason to reach a different conclusion. So, this final decision confirms the findings set out in my provisional decision.

I read Mr K's comments concerning the impact this loss had on him and his family and I'd like to thank him for taking the time to explain the difficulties he and his family experienced.

Whilst Halifax have accepted they should have intervened, I don't think any further redress is warranted here. I've no doubt being caught up in such a scam was unpleasant and was also damaging financially, but I think it's worth reiterating that the real culprits are the scammers who persuaded Mr K to send them his (and his wife's) savings.

Putting things right

In order to settle this complaint, Halifax should now pay Mr K £8,500 for the loss he incurred from the scam. I'd also like to acknowledge that Halifax's response to the provisional decision was to make an offer to refund this amount.

My final decision

My final decision is that Bank of Scotland plc trading as Halifax are instructed to settle this complaint as outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 3 March 2023.

David Perry
Ombudsman