

The complaint

Miss B complains that Bank of Scotland plc trading as “Halifax” won’t refund £25,000 she lost as part of an investment scam.

What happened

The details of this complaint are well known to both parties, so I won’t repeat everything again here. In brief summary, Miss B fell victim to a cryptocurrency investment scam after she was contacted by a broker (“the scammer”) who instructed her to open accounts with Binance and Safepal. She was told to make payments to Binance first, where she would then send the money on to her Safepal account before finally transferring it to the scammer.

As part of the scam, Miss B made the following payments from her Halifax account:

Date	Payee	Payment type	Amount
13/01/2022	Binance	Debit card	£1,000
17/01/2022	Cheng Hei Wai	Faster payment	£4,000
21/01/2022	Binance	Debit card	£5,000
21/01/2022	Binance	Debit card	£5,000
24/01/2022	Binance	Debit card	£5,000
24/01/2022	Binance	Debit card	£5,000

Miss B realised she had been scammed after she was unable to access any of her money and the scammer stopped responding. She reported the fraud to Halifax, but it refused to refund any of the money she had lost as she had authorised the payments.

Our investigator upheld the complaint in part. He didn’t think Halifax was liable to refund any of the payments that were not covered under the Contingent Reimbursement Model (CRM Code) as Miss B had misled the bank when it asked her about the payments. So, he didn’t think any further intervention would have likely revealed the scam. However, in terms of the payment covered under the CRM Code, the investigator thought that Halifax should refund 50% as he thought Miss B had a reasonable basis for believing the payments to be genuine.

Halifax accepted the investigator’s findings and agreed to settle the complaint by reimbursing 50% of the £4,000 payment covered under the CRM Code. Miss B disagreed. She thought that Halifax didn’t do enough to prevent her falling victim to the scam. As she didn’t agree, the matter has been escalated to me to determine.

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 and have decided to uphold it.

It isn't in dispute that Miss B has fallen victim to a cruel scam here, nor that she authorised the disputed payments she made from her Halifax account. The payments were requested 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. But I've considered whether there is any fair and reasonable basis for Halifax to reimburse any of the payments.

Payments not covered under the CRM Code

The vast majority of payments Miss B made as part of the scam do not fall within the scope of the CRM Code for reimbursement as they were made by debit card. However, I've considered whether Halifax should have done more to prevent Miss B from falling victim to the scam outside its obligations under the CRM Code, 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.

Having considered the first payment Miss B made on 13 January 2022, I don't think it would have appeared particularly unusual or out of character when compared with Miss B's account history, so I don't think there was any cause for Halifax to have been concerned here.

In terms of the remaining card payments, it's common ground that some were considered unusual given that they did trigger the bank's fraud prevention systems and were automatically blocked pending further enquiry, such as the £5,000 payment made to Binance on 21 January 2022. Accordingly, it's just a question of whether the bank went far enough in all the circumstances with its interventions.

Having listened to the call recordings of the occasions Halifax spoke to Miss B, I accept it's arguable that it could have gone further in its questioning. But even accepting this as the case, I'm not persuaded that any further questioning or earlier intervention would have ultimately uncovered the scam and prevented the loss in any event.

I say this because Miss B was not honest with Halifax when it asked her questions about the payments she was making. She said, for example, that she had not been asked to make the payments by any broker, and that no one had helped her to set up her Binance account or had asked her to use this company, despite this being untrue. She also said that no one had told her to lie to the bank.

I appreciate that Miss B may have been coached to lie to bank by the scammer. But it was based upon the answers Miss B gave that the bank was satisfied the payment wasn't likely being made as part of a scam. If she had answered the questions accurately and said she was in contact with a third-party broker and was investing in cryptocurrency, then I accept it would have been incumbent on Halifax to maintain suspicion about the payments and probe further into the circumstances. But seeing as Miss B was not forthcoming with these details, I don't think any further probing from Halifax would have likely revealed that she was being scammed.

So, in these circumstances, I don't consider it would be fair and reasonable to hold Halifax liable for Miss B's losses that are not covered by the CRM Code, because it seems more likely than not that she would have always made the payment to the scammers, notwithstanding any intervention made by the bank.

Payments covered by the CRM Code

As I've outlined above, the faster payment of £4,000 that Miss B made on 17 January 2022 would fall within the scope of the CRM Code for reimbursement.

In line with the investigator's view, Halifax has since accepted that Miss B had a reasonable basis for believing the payment to be genuine and has therefore agreed to reimburse 50% in line with the Code. As such, I do not intend exploring this point any further given it is no longer in dispute. What does remain in dispute, however, is whether Miss B ignored an effective warning.

Halifax hasn't been able to show that it did provide Miss B with an effective warning, so it's not clear that Halifax did meet its obligations under the Code. However, part SF of the Code provides that *"The assessment of whether a Firm has met a standard or not should involve consideration of whether compliance with that standard would have had a material effect on preventing the APP scam that took place"*.

As I've set out above, Miss B was not honest with the bank when it questioned her about the payments she was making. As a result, it's unlikely she would've revealed the true reason for making the faster payment as well, meaning that Halifax would have been prevented from providing a specific Effective Warning in relation to the scam she was falling victim to. As a result, I'm not persuaded its failure to provide such a warning would've had a material effect on preventing the scam, so I'm satisfied it can rely on the exception to reimbursement, such that it wouldn't have to pay anything over and above the 50% it has already agreed to reimburse.

Halifax has also said that it will pay 8% simple interest on this amount from the date the payment was made until the date of settlement, so I don't consider it necessary to make any further finding on how it should pay interest, and I'm satisfied that its offer of settlement in this case is fair.

I also note that Halifax has also paid Miss B £200 for the delay in responding to her complaint. However, complaint handling isn't a regulated activity and therefore falls outside the jurisdiction of this service to consider, so it's not something I can comment on, though I'm pleased to see that Halifax has made an offer to put things right in any event.

My final decision

For the reasons given above, I uphold this complaint and direct Bank of Scotland plc trading as Halifax to:

- Refund 50% of the £4,000 payment Miss B made on 17 January 2022.
- Pay 8% simple interest per year from the date of payment to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 4 December 2023.

Jack Ferris
Ombudsman