

The complaint

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

What's happened?

Mr N has fallen victim to an investment scam. In summary, he's explained that he wanted to invest in cryptocurrency but had no experience, so he carried out some general research and came across a company I'll refer to as 'E'. He received some positive reviews about E from his associates and he saw that E had a professional website and a worldwide client base. He says that E used technical and sophisticated language and came across as confident and knowledgeable. Overall, he believed E to be legitimate and genuine.

On 11 November 2021, he transferred £10 then £3,810 from his Halifax account to his own cryptocurrency wallet before sending it on to the scammer.

Mr N realised he'd been scammed when E asked him to pay a fee to withdraw from his investment. He reported the fraud to Halifax and asked the bank to reimburse him. He said that he had to contact Halifax to authorise the £3,810 payment and it didn't do enough to prevent the scam at that time.

Halifax declined to reimburse Mr N. It said that the two payments Mr N made went into an account in his own name, so there was no loss from his Halifax account and no route to recover the funds. The bank also said that it clearly advised Mr N about the risks involved in investing in cryptocurrency when it spoke to him about the £3,810 payment.

Our investigator didn't uphold Mr N's complaint about Halifax to this Service, and Mr N asked for his complaint to be referred to an ombudsman for a final decision.

My provisional decision

I issued my provisional decision on 15 June 2023. I'll set out my findings below.

When considering what is fair and reasonable, I'm required to take into account: relevant law and regulations; regulator's rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time.

It's common ground that the payments Mr N made to the scam were 'authorised' under the Payment Services Regulations. Halifax had an obligation to follow Mr N's payment instructions, and Mr N is presumed liable for his loss in the first instance. But that's not the end of the story. There are circumstances in which a bank should take additional steps before processing a payment, or in some cases, decline to make a payment altogether, to help protect its customers from the possibility of financial harm. I consider that Halifax should:

- Have been monitoring accounts and payments made or received to counter various risks, including fraud and scams, money laundering and the financing of terrorism.

- Have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (amongst other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer.
- In some circumstances, irrespective of the payment channel used, have taken additional steps or made additional checks before processing a payment, or in some cases declined to make a payment altogether, to help protect its customers from the possibility of financial harm.

Cryptocurrency scams often involve money passing through more than one account and they were not uncommon at the time. I think Halifax would've been aware of this. The Financial Conduct Authority and Action Fraud published warnings about cryptocurrency scams in mid-2018. By November 2021 when the scam payments were made, I think Halifax ought to have had time to digest these warnings and put mechanisms in place to detect and prevent this type of fraud. So, although Mr N's loss may not have predominantly arisen from the initial transfers, I'm satisfied they ought to have been within the contemplation of, and foreseeable to, Halifax. And I'm satisfied that Halifax can fairly be held responsible for the loss if it could have prevented it.

The first scam payment of £10 didn't trigger Halifax's fraud detection systems and I wouldn't have expected it to. The payment was not particularly unusual or suspicious in consideration of the normal account activity. So, I'm not persuaded that Halifax ought to have intervened with the payment or that it could've prevented it from being made. But the second scam payment for £3,810 did trigger the bank's fraud detection systems and it spoke to Mr N about the payment before approving it.

By November 2021, I think Halifax ought to have had a good enough understanding of how cryptocurrency scams work – including that the customer often moves money to an account in their own name before it is moved on to a fraudster – to have been able to identify the risk of harm from fraud. With its industry knowledge, I think Halifax ought to have asked Mr N some probing questions and given him information regarding the prevalence and typical features of cryptocurrency scams before processing the £3,810 payment. But I've listened to a recording of the telephone conversation between the parties, and I'm not satisfied that the bank did enough.

In summary, Mr N explained that the payment was “to go into cryptocurrency”. Halifax told Mr N that such an investment is very volatile so he could make or lose a lot of money. The bank asked Mr N if anyone was helping or guiding him with the investment and he replied that a friend was. Halifax explained that the reason it asked this question is because there are a lot of scams occurring in which customers are approached by brokers claiming to be helping them invest in cryptocurrency, but they are fraudsters.

I don't think that Halifax asked Mr N enough probing questions to get into the detail of the payment and/or the investment opportunity and/or E and satisfy itself that he wasn't falling victim to a scam, and I'm not persuaded that it gave Mr N impactful information about cryptocurrency scams in order to bring them to life and enable him to recognise any fraud risk. If the bank had done enough, I think it would most likely have become obvious to the parties that there was a risk of harm from fraud and the scam would've unfolded without the payment being made.

I've thought about whether Mr N should bear some responsibility for the loss of the £3,810 payment by way of contributory negligence, and, in the circumstances, I think he should. I say this because Mr N has said:

- He did some general research about investing in cryptocurrency prior to making the payment.
- He received some positive reviews about E.
- E's website looked professional.
- He was told that E had a worldwide client base.
- E used technical and sophisticated language and came across as confident and knowledgeable.
- There weren't any red flags.

I've been unable to locate E's website, and Mr N hasn't provided any evidence of the reviews he saw about E or his conversations with E. So, I can't see whether E came across as professional and legitimate as Mr N has said. But I've noted that Mr N doesn't appear to have taken any substantial steps to verify the legitimacy of the investment opportunity and/or E before he made the payment as I think he ought reasonably to have done in order to protect himself from financial harm.

To conclude, I'm persuaded that Halifax ought to have done more to protect Mr N from the risk of harm from fraud when it spoke to him about the £3,810 payment and, if it had, I think it's likely that the scam would've unravelled without the payment being made. But I think that Mr N ought reasonably to have done more to protect himself from financial harm too. So, I think it's fair for the parties to share responsibility for the loss of the £3,810 payment in equal proportions – each being responsible for 50% of the loss.

Halifax should pay interest at a rate of 8% per annum on the 50% of the loss it is responsible for, from the date of the loss to the date of settlement, to compensate Mr N for the time he has been without that money and so unable to spend it on other things.

Responses to my provisional decision

Both parties accepted my provisional 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.

As both parties have accepted my provisional findings, and neither party has provided any new information or evidence for me to consider, I see no reason to depart from the conclusions set out in my provisional decision.

My final decision

For the reasons I've explained, my final decision is that I uphold this complaint in part. Bank of Scotland plc trading as Halifax should refund 50% of the £3,810 payment Mr N instructed as part of the scam and pay interest at 8% simple per annum from the date of the payment to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 27 July 2023.

Kyley Hanson
Ombudsman