

## The complaint

Mr G and Mrs K complain that Bank of Scotland plc trading as Halifax ('Halifax') won't refund them the money they lost when Mrs K fell victim to a scam.

## What happened

Mr G and Mrs K hold a joint account with Halifax and are represented in this case. As Mrs K was involved in the scam, I will mainly refer to her in this decision.

Both parties are aware of what happened in this case, so I won't set out all the detail here. Mrs K says she received a generic marketing email followed by a call from someone who claimed to be from a company I'll refer to as A to discuss investment opportunities. She was advised to begin with a minimum investment of £250 which it seems she paid from another account. Mrs K was advised to install a screen sharing application to allow the representative of A access to her computer to make trades and to create an account on a money management app I'll refer to as S. She also says she provided identity documents to register on the website.

The representative of A called Mrs K regularly and she was able to see that her trading was going well on a platform. Mrs K was told that to make more profit she needed to invest more. I understand that Mrs K made payments from other accounts but I'm only considering the ones she made from her Halifax account in this decision.

On the instructions of the representative of A Mrs K made the following transactions using her debit card. Each payment was to S (but Mrs K said she didn't have access to the account, although it was in her name) and from there to a cryptocurrency wallet.

Payment no.	Date	Amount
1	05/08/20	£1,800
2	06/08/20	£2,000
3	06/08/20	£2,000
4	06/08/20	£4,000
5	06/08/20	£4,000
6	14/08/20	£1,500
7	14/08/20	£2,500
8	21/08/20	£5,000
<b>Total</b>		<b>£22,800</b>

Mrs K says she didn't complete any checks before making the payments.

Mrs K realised she'd been the victim of a scam when she logged into her account and saw she had a zero balance. She then found that A's website was no longer available and her

calls to A weren't answered. Mrs K didn't report what had happened until her representative complained on her behalf in November 2022.

Halifax said it had no reason to intervene when Mrs K made the first payment. It spoke to Mrs K before processing the second payment, and she confirmed that nobody had asked her to send the money. Based on the information Mrs K provided, Halifax allowed Mrs K to make the second and subsequent payments.

Mrs K wasn't happy with Halifax's response and brought a complaint to this service. She said she didn't receive any warnings from Halifax in spite of transferring over £22,000 over a nineteen-day period.

#### *Our investigation so far*

The investigator who considered this complaint initially upheld it in full. In response, Halifax accepted that it could have done better in its call with Mrs K on 6 August 2020. But Halifax felt that Mrs K hadn't completed any checks before investing, and understood enough English to follow the scammer's instructions, so should share responsibility for her loss from the second payment onwards. Mrs K didn't accept Halifax's offer and asked for a final decision. She said that Halifax should have done more to protect her account and her limited English during the call ought to have caused Halifax concern.

The 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.

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

The Lending Standards Board's Contingent Reimbursement Model Code doesn't apply to card payments so isn't relevant here.

In broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. And I have taken that into account when deciding what is fair and reasonable in this case.

But that is not the end of the story. Taking into account the law, regulators' rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider Halifax should fairly and reasonably:

- Have been monitoring accounts and any payments made or received to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams.
- 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 (among 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 customers from the possibility of financial harm from fraud.

I don't consider Halifax needed to intervene when Mrs K made the first payment. In the period before the scam, she had made larger value payments so it didn't look unusual, and Halifax can't reasonably intervene in every payment journey.

Halifax chose to intervene when Mrs K made the second payment in the table above. Its debit card fraud advisor said in a call with Mrs K at the time that Halifax sees a lot of fraud with payments to S. She went on to say that she wanted to double check nobody asked Mrs K to make the payment and she knew the person she was sending funds to. These were the only questions Mrs K was asked. I accept she gave an incorrect answer but agree with the investigator that Mrs K was asked two questions at once. I also think that if Halifax felt the need to intervene it needed to go further than asking these two questions rolled together. It didn't take any steps to establish the payment purpose, for example, so that it could provide a tailored warning. So, I'm pleased that Halifax has offered to refund 50% of all transactions from payment two onwards.

This means the only outstanding point to decide is whether it's fair to make a deduction to take account of Mrs K's own actions. On balance, I agree with the investigator that Mr G and Mrs K should receive 50% of payment two onwards and will explain why.

- Mrs K has said that she didn't complete any research before deciding to invest as she was only investing £250 (from another account). Whilst Mrs K might have been prepared to risk this initial sum, I'm not satisfied she acted reasonably in investing much more significant sums without completing any research into A or its representative. And if Mrs K chose to take a risk I don't consider it fair that Halifax should take full responsibility for this.

The fact that Mrs K says she was put under pressure to invest greater amounts doesn't remove her responsibility to do what she could to check that the opportunity offered was genuine.

- Mrs K allowed an unknown third-party remote access to her device. In doing so she placed a lot of trust in someone she hadn't verified. Mrs K had no reason to believe that A was genuine or that the representative she was talking to actually worked for A.
- Mrs K wasn't provided with a contract or other documentation as would be expected if the investment was genuine.
- Mrs K's representative says she provided identification documents but hasn't evidenced this.

Mrs K has said that Halifax should reimburse her and Mr G in full because it should have been clear from the call in August 2020 that her English was limited. Having listened to the call I think Mrs K understood what was being said and I note that she hadn't made Halifax aware that she might need support. And if Mrs K didn't understand what the scammer told her she ought reasonably to have sought assistance before deciding to 'invest'.

In light of what I've said above, I'm satisfied Mrs K should share responsibility for her loss from the second payment onwards.

As Mr G and Mrs K's funds were sent to a genuine company and from there to scammers there is no possibility of recovering their lost funds.

Overall, whilst I'm really sorry to hear about this cruel scam, I can't reasonably hold Halifax responsible for Mr G and Mrs K's full loss but consider Halifax should share responsibility from payment two onwards.

### **My final decision**

I require Bank of Scotland plc trading as Halifax to:

- Refund Mr G and Mrs K £10,500; and

- Pay interest on the above amount at the rate of 8% simple per year from the date of each transaction to the date of settlement.

If Bank of Scotland plc trading as Halifax considers that it is required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr G and Mrs K how much it has taken off. It should also provide a tax deduction certificate if asked for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G and Mrs K to accept or reject my decision before 21 December 2023.

Jay Hadfield  
**Ombudsman**