

The complaint

Miss M complains about Bank of Scotland plc (trading as Halifax). She says that Bank of Scotland didn't do enough to protect her when she became the victim of a scam and would like Bank of Scotland to refund her the money she has lost as a result.

What happened

In April 2022, Miss M was approached by someone through the social network Telegram with an offer to earn extra money by completing 'missions'. She was persuaded to part with money to purchase cryptocurrency to fund her 'account' and complete the missions.

Miss M began paying money from an account with a different bank, and then went on to pay £12,429.84 from her account with Bank of Scotland.

Miss M also transferred a further £3,000 to an account she opened with Revolut from Bank of Scotland. I understand that £2,000 of this transfer was lost as part of the scam.

However, Miss M realised she had fallen victim to a scam when the person who contacted her began to apply pressure on her to pay more and more money, eventually blackmailing her.

Miss M complained to Bank of Scotland, but it didn't uphold her complaint, although it paid her £40 in recognition of the poor service it provided.

Unhappy, she brought her complaint to this Service. Our Investigator considered things but didn't think that the complaint should be upheld.

I have previously issued a provisional decision on Miss M's complaint explaining that I intended to partially uphold her complaint.

Bank of Scotland agreed with my provisional decision, but Miss M has not responded, so I now need to issue my final 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.

Having done so, I've decided to partially uphold Miss M's complaint. I'll explain why.

Was Miss M the victim of a scam?

It isn't in dispute here that Miss M has been the victim of a scam – the actions of the individual who contacted her are not those that would be displayed by anyone working for a reputable company and are highly immoral. I know that the whole incident has been incredibly distressing for Miss M, and I am very sorry to hear what she has been through.

Did Miss M authorise the payments?

In line with the Payment Services Regulations 2017 (PSRs), Miss M isn't liable for payments she didn't authorise, unless she failed with gross negligence or intent to comply with the terms of the account or keep her personalised security details safe. Accordingly, I've considered whether Miss M authorised the payments in question here.

Having done so, I'm satisfied that Miss M did authorise the payments in question here. They were made by her using her debit card. I understand that Miss M had been tricked by the scammer into instructing Bank of Scotland to make the payments – but while Miss M never intended the payments to go to the scammer, this doesn't change the fact that she authorised them and is therefore presumed liable for the loss in the first instance.

Recovery of the payments Miss M made

After the payments were made, I wouldn't reasonably expect Bank of Scotland to do anything further until it had been notified there was a scam. The only recourse for potential recovery of the funds for the payments would be via the chargeback scheme. Chargeback is a process by which disputes are resolved between card issuers (here, Bank of Scotland) and the merchant (here, C).

However, a chargeback in these circumstances would likely never have been successful. This is because C is a legitimate crypto exchange and provided the services that Miss M had requested of it – the purchase of crypto. The subsequent transfer of the crypto to a wallet of Miss M's choosing is therefore a separate matter – and so I don't think that these payments were recoverable once they had been made.

Should Bank of Scotland have reasonably prevented the payments from being made in the first place?

I can only uphold this complaint if I think that Bank of Scotland reasonably ought to have prevented some or all the payments Miss M made in the first place – therefore preventing the loss before it happened. Miss M authorised the scam payments in question here – so as I've explained above, she is presumed liable for the loss in the first instance.

That said, as a matter of good industry practice, Bank of Scotland should have taken proactive steps to identify and help prevent transactions – particularly unusual or uncharacteristic transactions – that could involve fraud or be the result of a scam. However, there is a balance to be struck: banks had (and have) obligations to be alert to fraud and scams and to act in their customers' best interests, but they can't reasonably be involved in every transaction.

Taking into account the law, regulatory rules and guidance, relevant codes of practice and what I consider having been good industry practice at the time, I consider Bank of Scotland should fairly and reasonably:

- Been monitoring accounts – including payments made and 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 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; and
- 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.

So, I've carefully considered what this means for Miss M and the payments in question here.

Miss M made seven payments from her account as part of the scam. While they started off at a relatively low value, so I wouldn't have expected Bank of Scotland to intervene at this point, however, I know that Bank of Scotland contacted her on 28 April 2022 to discuss the transactions that she was making.

Bank of Scotland has provided a transcript of this call to me. I can see that during this call Miss M was asked if anyone else was involved in making the payments, or if she had decided to do this off her own back. Miss M told Bank of Scotland that she had decided to do this herself, and that there was no one else involved.

So, as Miss M wasn't truthful with Bank of Scotland, I don't think that it could have done any more than it did at this point to uncover the scam – and I'm satisfied it didn't miss an opportunity to stop Miss M from making the payment.

I understand that Miss M was also in contact with the scammer at the same time as she was speaking with Bank of Scotland – and that the individual was guiding her in what to say. However, Bank of Scotland wasn't to know this – so I don't think it can be blamed for not uncovering the scam and stopping the payment.

I know that Miss M went on to make further payments to the scammer after this call, but I am not persuaded that a further intervention from Bank of Scotland at this time would have persuaded Miss M to divulge any more than she already had to Bank of Scotland because at this time, she was still under the spell of the scammer and was being coached on what to say.

That said, Miss M did go on to attempt to make a payment of around £2,000 to the scammer, and this was again blocked by Bank of Scotland. She spoke with Bank of Scotland at this time, and I have been provided with a copy of the call.

It seems that by this point, Miss M did not have the scammer on the other line with her, and this time she divulged more information to Bank of Scotland than she had done previously. Initially, Miss M explained what she had been doing and how the 'missions' worked – she also told Bank of Scotland that she had been in touch with a broker.

At the beginning of this call, Miss M seemed to still be persuaded that what she was doing was legitimate – but Bank of Scotland told her it had concerns about what she was doing – and that what Miss M told it sounded like it could be a scam. This obviously concerned Miss M – and she asked Bank of Scotland for advice about what she should do.

The call in question is over two hours long, and having listened to the call in full I am concerned by what Bank of Scotland told Miss M.

While Bank of Scotland told Miss M that what she had told it sounded like a scam, it also repeatedly told her that she was 'stuck in a catch-22', as she would not be able to access the money she had already paid without completing the missions Miss M had committed to with the scammer. It also said that it wasn't able to give her advice on what to do although Miss M repeatedly asked it what she should do.

The information Miss M relayed to Bank of Scotland should have been enough for it to say to her that everything she said had the hallmarks of a scam – and given her a meaningful warning about sending more money. But I am not persuaded that Bank of Scotland did so. It

gave her contradictory information. On one hand it said that it sounded very much like a scam – but then that if she didn't complete the missions then she may lose all the money she had already paid.

Bank of Scotland should have known by what Miss M was telling it that there was little prospect of her retrieving her money, and that she shouldn't make any more payments – especially given that by January 2019, Bank of Scotland should already have had a good understanding about how scams like the one Miss M fell victim to work. It could have explained that it was common practice for a scammer to ask for more and more money, allow small withdrawals and then apply pressure to reach further and further goals before cutting contact with a consumer when it was clear there were no more funds available.

It should also have told Miss M that while she could 'see' her progress on the computer programme supplied by the scammer, that this was likely a fabrication constructed by the scammer and that this could be manipulated, and that in reality her money was likely lost as soon as she had transferred the funds.

Miss M was clearly asking for help and guidance here – and I think that Bank of Scotland could have done more than it did. Miss M was also looking for ways in which to pay the scammer as she was understandably worried that if she did not, then she would lose her life savings.

While she was on the phone with Bank of Scotland, she also opened an account with Revolut, and transferred £3,000 – which she told Bank of Scotland she would then pay on to the scammer. Again, it did not warn her against doing so.

Had Bank of Scotland provided better information to Miss M at this time, I think it's unlikely she would have continued to make this payment and stopped paying the scammer. So, while the funds were ultimately lost to the scammer via Revolut, I think that Bank of Scotland could have prevented this loss before it happened.

I know that Miss M made a payment of £3,000 to her Revolut account, however only £2,000 of this was ultimately lost to the scammer.

Therefore, I think that Bank of Scotland should repay Miss M £2,000.

Should Miss M bear some responsibility for the loss?

While I do consider that Bank of Scotland should have prevented the payment to Revolut, I do need to consider if Miss M should bear some responsibility for what happened here by way of contributory negligence. However, I'm satisfied that Miss M was clearly asking Bank of Scotland for advice on what she should do – and it did not provide her the level of support I would expect. Therefore, I am satisfied that no deduction for contributory negligence should be made here.

Putting things right

Bank of Scotland should pay Miss M £2,000.

On top of this, Bank of Scotland should also pay Miss M 8% simple interest on this amount from the date of payment until payment is made to Miss M (less any lawfully deductible tax).

It should also pay Miss M the £40 it has already offered to pay her.

My final decision

I uphold this complaint in part. Bank of Scotland plc trading as Halifax should put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 26 September 2023.

Claire Pugh
Ombudsman