

## **The complaint**

Mr B complains that Bank of Scotland plc trading as Halifax won't refund the money he lost when he fell victim to a scam.

## **What happened**

The details of this complaint are well known to both parties. So rather than repeat them all again here, I'll briefly summarise the key points.

In late 2020, Mr B received a cold call from an alleged investment company (E) and started trading with them. Unfortunately, E were a scam. Mr B says they used remote access to assist with the payments. He made a series of payments to two different cryptocurrency wallets (with L and X) that I understand were set up in his name, in order to purchase cryptocurrency to send on to the scam platform. In total, he lost over £18,000.

Mr B says he realised E were a scam when he asked to make a large withdrawal from the platform, which was showing substantial profits, and he was ordered to pay more for taxes.

In early 2022, Mr B contacted Halifax about the scam. He said that, as he had fallen victim to a previous scam, it should have done more to protect him – and so should refund him for his loss. Halifax didn't agree so he referred his complaint to our service.

Our investigator didn't uphold the complaint. They said Mr B was liable for the payments he had authorised. They didn't think the payments looked concerning enough to have warranted further intervention by the bank at the time, and also pointed out that Mr B had told us (and Halifax) that he had concerns. So they weren't convinced a further warning from the bank would have stopped his loss. For those payments made by card, they said a chargeback claim couldn't be raised as Mr B raised his dispute outside the relevant time limits.

Mr B appealed the investigator's findings. He said he didn't continue paying when he realised it was a scam. And he thought it should have looked suspicious that he paid such a large amount over a small period of time when he hadn't before. He also disputed that he had contacted Halifax too late for a chargeback claim.

The case was passed to me. I let Mr B know I agreed with the investigator that a chargeback claim would not have succeeded – not only because of the time limits, but also because the funds were paid directly to legitimate merchants. I also asked him about a (relatively) small credit received from L during the scam, and he explained this was an inducement from the scammers to invest more.

Earlier in August 2023, I issued a provisional decision explaining I was minded to direct Halifax to refund some, but not all, of Mr B's loss. Halifax responded to accept my findings. Mr B hasn't responded by the deadline I set. And so I'm now proceeding to finalise my 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.

Without anything further to consider in response to my provisional findings, I see no reason to depart from them. And so, for the following reasons, I'm upholding this complaint:

In line with the Payment Services Regulations 2017, the bank is expected to execute authorised payment instructions without undue delay. It's not in dispute that Mr B was scammed. But nor is it in dispute that he authorised the payments. So the starting position is that he's liable for them.

But there are some situations where we believe that banks—taking into account relevant rules, codes and best practice—ought to have identified a fraud risk, so should have looked at the wider circumstances surrounding the transaction before making the payment. If Halifax failed to do so, and that failure led to a fraudulent loss, it might be fair to hold it liable.

Looking at Mr B's account use, he didn't have a history of making high value payments. There were a few over £500, but these were few and far between. And he had no history of cryptocurrency payments.

Then on the first day of the scam, Mr B paid almost £1,700, over two payments, to a new cryptocurrency payee (X). Followed by a further £4,700 the next day over three payments; two to X, and one to another new cryptocurrency payee (L). So, in the course of two days, having no prior cryptocurrency payments, he'd paid two new cryptocurrency payees around £6,400. And he went on to make two further cryptocurrency payments the next day which brought the cryptocurrency payments up to almost £11,000 in three days. There were further payments made, over a two week period.

I appreciate why the payments didn't immediately flag as suspicious. But by the time of the third payment on day two (the fifth payment overall), for £3,000, I think Halifax ought to have been concerned that Mr B might be at risk.

There is no indication Mr B was coached by the scammers. So I've no reason to doubt he would have answered honestly if questioned about the payments. And I think it would have been clear to Halifax that he was being scammed. He had been cold called by the company, who directed him to download remote access software so they could complete trades. The amount he thought he was making, according to the trading platform, sounded suspiciously high. He also says he thought the company were offering stocks and shares trading, so would have been concerned to learn the payments involved cryptocurrency. I therefore think Halifax would have succeeded in uncovering the scam and preventing further losses.

However, I've also considered whether Mr B should hold some liability for his loss by way of contributory negligence. As he has told us that he had some concerns. While he has gone so far as to say he realised it was a scam, this was in relation to him continuing to engage with E after the payments were made, in the hopes of recovering some funds.

Mr B's testimony still persuades me he had, or ought to have had, some reservations. For example, he says he didn't realise the payments related to cryptocurrency. But that should have been apparent from the payees – which I would have expected him to check as part of his due diligence when making such a large investment. So I think he missed some warning signs. Equally, I think Halifax would have uncovered the scam if it had intervened in response to the change in how the account was being operated. In the circumstances, I've concluded it would be fair for Halifax to refund 50% of Mr B's fraudulent loss from payment five onwards.

For those payments which I've not found Halifax should have prevented, I've considered whether it could have done more to recover Mr B's loss. Some were made by faster payments. Halifax wouldn't have been able to recover these from the recipient accounts – as those were Mr B's own accounts with L and X, and we know the funds had already been moved on to the scam.

For the card payments, they are covered by VISA's voluntary chargeback scheme. VISA, as the card scheme provider, sets the rules for any chargeback claims. The earliest record I have of Mr B contacting Halifax about his dispute is January 2022 – which would have been out of time to claim, given the payment dates and when things went wrong.

Regardless, the scheme would only look at any failings by the merchants paid directly – in this case L and X. They provided the expected service by loading the funds to the wallets in line with Mr B's requests; the underlying dispute is about the scammers who the funds were transferred on to. And that is outside the scope of a chargeback claim. So even if Mr B had contacted Halifax in time, there wouldn't have been prospects for successful chargeback claims.

### **My final decision**

For the reasons given, my final decision is I uphold this complaint and direct Bank of Scotland plc to refund 50% of the funds Mr B lost to the scam, via his Halifax account, from the fifth scam payment (£3,000 paid to X on 30 December 2020) onwards.

Bank of Scotland plc should pay 8% simple interest per year on this amount from the dates of payment to the date of settlement. If it considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr B how much it's taken off. It should also give Mr B a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Bank of Scotland plc must pay this compensation within 28 days of the date on which we tell it Mr B accepts my final decision.

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

Rachel Loughlin  
**Ombudsman**