

The complaint

Mr M complains about Bank of Scotland plc trading as Halifax.

He says that Halifax didn't do enough to protect him when he became the victim of a scam and would like Halifax to refund him the money he has lost as a result.

What happened

In January 2021, Mr M was contacted through social media by an individual offering support in in cryptocurrency mining.

He was invited to create an account on a 'platform' and provided identity documents in order to begin trading. Mr M was impressed with the seemingly professional manner of the individual and the opportunity presented to him and decided to proceed with making payments.

Mr M made a total of 42 transactions, totalling £44,757.82 (plus £42.87 in fees).

Unfortunately, Mr M had fallen victim to a scam. He complained to Halifax and said that it hadn't done enough to protect him.

Halifax didn't uphold his complaint. Unhappy, he brought his complaint to this Service. Our Investigator looked into things but didn't think Halifax needed to repay Mr M the money he had lost.

Mr M asked for an Ombudsman to make a final decision, so the complaint has been passed to me.

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 in all the circumstances of a complaint, 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 having been good industry practice at the time.

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 (PSR's) and the terms and conditions of the customer's account.

Mr M authorised the payments in question here – so even though he was tricked into doing so and didn't intend for his money to end up in the hands of a scammer, he is presumed liable in the first instance.

But this isn't the end of the story. As a matter of good industry practice, Halifax should also 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, regulator's rules and guidance, relevant codes of practice and what I consider having 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.

In this case, I need to decide whether Halifax acted fairly and reasonably in its dealings with Mr M when he authorised payments from his account or whether it could and should have done more before processing them.

Looking at the first four payments that Mr M made, I am not persuaded that Halifax needed to become involved at this point - I say this because I don't consider they payments sufficiently unusual, uncharacteristic or suspicious to reasonably say Halifax should not have processed them without first getting in touch with Mr M to ensure they were legitimate and not related to a scam.

However, Halifax did block several payments Mr M was trying to make and has provided several calls it had with Mr M throughout the payment journey which I have listened to.

The first call that Mr M had with Halifax regarding the payments was after he had made several attempts which were declined. During this call, Mr M was asked if there was anyone else involved in the transaction at all – but Mr M didn't divulge that he was being helped by anyone, and several times told Halifax he was acting alone – and knew what he was doing.

Halifax explained that it saw a lot of scams relating to crypto – but Mr M expressed annoyance at the interruption to what he was trying to do, and that such an intervention was a waste of his time and getting in the way of time sensitive business.

Halifax spoke with Mr M five more times about the payments – I do think that during some of these calls more context could have been provided to Mr M about how crypto scams work – however, Mr M maintained throughout that he was acting on his own and was clearly very annoyed by Halifax blocking the payments which he was adamant he wanted to make.

I have also seen the conversations that Mr M had with the scammer – and on the 15 July 2022, Mr M expressed concerns that he may be being scammed and appears to have been told by a friend that he's likely being scammed. He asked the scammer to put themselves in his shoes and confirms that he will continue with the investment with 'trepidation'. I think that

this shows that Mr M had concerns here – but despite this, spent a further £14,923.79, and still didn't divulge further information to Halifax during the three calls that took place after this time.

I don't blame Mr M for what has happened here – scammers are well versed in manipulating individuals and can be very convincing. I also understand that by the time Mr M had his own suspicions, he would have been unwilling to face up to what was happening having already 'invested' so much money.

But because he didn't let Halifax know all the facts, I don't think there was any more Halifax could have done to prevent his losses here.

I understand that Mr M also believes that he is entitled to an automatic refund from his bank of the money he has lost as he has been the innocent victim of a scam – but while I can understand why he would feel this way, this is not the case.

The Contingent Reimbursement Model (CRM) code which was implemented on 28 May 2019 doesn't apply to the type of payment Mr M made, and the new Payment Services Regulator regulations are not yet in place.

I also don't think that there was anything Halifax could have done to recover the payments once they had been made – the payments had been made to legitimate crypto exchanges before being transferred on to the scammer, so there was nothing left for Halifax to recover by the time the scam was uncovered.

I am very sorry for the situation Mr M now finds himself in – he has been the victim of cruel and calculated scam lasting a considerable amount of time and believed he had formed a genuine friendship beyond merely a business relationship with the scammer, and as a result has lost a substantial amount of money. I know that this has also had a huge impact on his own mental health too.

But the loss here has been caused by the scammer themselves – not Halifax. And I can't ask Halifax to refund Mr M when I don't think that it did anything wrong.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 18 March 2024.

Claire Pugh
Ombudsman