

## **The complaint**

Mr D complains that Bank of Scotland plc trading as Halifax didn't do enough to protect him from losing money to a scam.

## **What happened**

The details of this complaint are well known to both parties, so I won't repeat everything here. In brief summary, Mr D says that in November 2022 he fell victim to a 'recovery scam'. As part of the scam, he was instructed to open an account with an electronic money institution (EMI) I'll refer to as 'R'. He was told to pay a sum of around £2,879 from his account with Halifax to his account with R. He was told this sum was a tax payment that was due on his recovered investment. Mr D made three debit card payments (on the same day) totalling £2,879 to R. These funds credited Mr D's account with R, and from there they were ultimately lost to the scammers (except for £504 which has since been returned by R).

Mr D asked Halifax to refund his remaining loss. Halifax didn't agree, and Mr D referred the matter to our service. Our Investigator concluded that, in his opinion, as there hadn't been a failure by Halifax, it didn't need to do anything further to resolve Mr D's complaint. Mr D did not accept the Investigator's assessment and asked that an Ombudsman review his case.

## **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, there's not much more I can add to what the Investigator has already said. I know this will come as a disappointment to Mr D, but I cannot see a basis upon which I can fairly instruct Halifax to refund his loss or do anything more. I will explain why.

Firstly, it is accepted that the disputed payments were made by Mr D using the security credentials associated with his Halifax debit card. So for the purposes of the Payment Services Regulations 2017 (PSRs) these payments are considered 'authorised'. Therefore, the starting position is that liability for them rests with Mr D, even though he was tricked into making them.

But taking into account longstanding regulatory expectations and requirements and what I consider to have been good industry practice at the time, Halifax should also fairly and reasonably have been on the lookout for transactions which are suspicious, unusual or out of character – that could involve fraud or be the result of a scam.

In circumstances such as these where debit card payments were authorised by the cardholder (Mr D), being the victim of a scam, doesn't automatically entitle him to a refund from Halifax. It would only be fair for me to tell Halifax to reimburse Mr D's loss (or part of it) if I thought Halifax reasonably ought to have prevented all, or some, of the disputed payments, or if it had unreasonably hindered the possible recovery of funds after Mr D had notified it that he'd been the victim of a scam.

Of course, in hindsight and now knowing the payments were made as a result of a scam it's easy to say Halifax ought to have intervened and done more and that it missed an opportunity to prevent Mr D's loss. But taking into account the volume of transactions that take place daily, it simply wouldn't be practical for a bank to stop and check each and every one of those payments – especially if it's not suspicious or unusual in the context of the typical account activity. It has to strike a balance between monitoring accounts and preventing fraud without unduly hindering its customer's use of their accounts.

From what I've seen there was no interaction between Halifax and Mr D (other than him authenticating payments through his mobile app) when the three disputed debit card payments were made. So the question really is whether Halifax ought to have done more before it processed these payments. With the above in mind I agree with the Investigator that in the context of Mr D's normal spending and prior account usage, I'm satisfied here, that it wouldn't be fair to say that the amounts and/or type of payments (including the merchant the payments were made to) should have appeared sufficiently unusual or suspicious to Halifax such that it ought to have questioned and provided warnings to Mr D before processing the card payments. Having looked through Mr D's bank statements for the twelve months leading up to the scam, I can see that he has made both debit card payments and transfers for similar, and even larger sums than the three disputed debit card payments. Also the merchant paid here, R is a legitimate EMI so I can't say that the disputed payments (individually or collectively) would have stood out to Halifax or that there were factors at play here where it would be fair and reasonable to say that Halifax ought to have done more and/or should have refused to make these payments altogether.

I've also thought about Halifax's actions after Mr D reported that he'd been the victim of a scam. Ultimately the funds which debited Mr D's Halifax account were credited to an account held in his name with R, that he had access to. And from what Mr D told Halifax at the time, the scammer had moved those funds on from that account. And even if that wasn't the case, they would be in Mr D's control to access as, and when, he wishes. So, I can't say that Halifax acted unfairly by not attempting to recover Mr D's funds from R when he reported the scam.

And as these were debit card payments the other potential avenue for recovery available to Halifax would've been through a chargeback scheme. But in such circumstances, a chargeback claim wouldn't have had a reasonable prospect of succeeding either, as the merchant, here R, has provided a genuine service of crediting the funds to Mr D's account. So I also can't say that by not raising a chargeback claim Halifax have acted unreasonably or that it has hindered Mr D's prospects of recovering his outstanding loss.

I'm sorry to hear Mr D has lost money to a scam. But for the reasons set out above it wouldn't be fair to ask Halifax to refund Mr D's loss or do anything more to resolve this complaint.

### **My final decision**

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 22 April 2024.

Sonal Matharu  
**Ombudsman**