

The complaint

Mr A complains that Bank of Scotland plc (trading as Halifax) refuses to refund money he lost to an investment scammer.

Mr A is represented by a third party, but for ease of reading, I'll refer to all the submissions as coming from him alone in this decision.

What happened

The background of this complaint is well known to both parties, so I'll only summarise key events.

Mr A received contact from an individual called Juliana ('the scammer') in January 2022. The scammer persuaded Mr A that they had a mutual friend which he accepted. The scammer built a friendly rapport with Mr A over social media and introduced him to forex trading with a company I'll call 'K'. The scammer advised Mr A that she invested on behalf of a lot of people and had a lot of inside information. Mr A asked the scammer questions and noted she had a large following on social media, so the investment appeared legitimate on the face of it – albeit he had little investment experience. Mr A decided to invest and opened a trading account with K, the scammer guided him on how to fund that account.

In the beginning, Mr A was able to withdraw small sums which gave legitimacy to the investment. He also opened a business trading account with the scammer to benefit his business. But the scammer pressured him to increase his deposits and he suffered huge losses. The scammer asked Mr A to increase his deposits so that he could recoup his losses, which he complied with. Around March 2022, a translator working with the scammers warned Mr A that he'd been scammed and lost funds, Mr A tried to contact the scammer but did not receive any correspondence.

Mr A sought legal advice before approaching Halifax for assistance. When he approached Halifax for assistance, he found the customer service he received to be poor. He made a data subject access request, which Halifax delayed in supplying and he subsequently complained to Halifax.

I've listed the payments disputed by Mr A below. These payments were made from Mr A's Halifax current account to a legitimate cryptocurrency exchange I'll call 'F', which was an account in his name. He purchased crypto with these funds and sent them to his trading account with K.

Transaction number	Date	Payee	Method of payment	Amount	Running total
1	11/01/2022	F	Faster payment	£100	£100
2	11/01/2022	F	Faster Payment	£3,388	£3,488
3	12/01/2022	F	Faster Payment	£10,400	£13,888
4	17/01/2022	F	Faster Payment	£21,000	£34,888
5	17/01/2022	F	Faster Payment	£4,000	£38,888

6	17/01/2022	F	Faster Payment	£5,000	£43,888
7	24/01/2022	F	Faster Payment	£25,000	£68,888
8	24/01/2022	F	Faster Payment	£60,000	£128,888
9	26/01/2022	F	Faster Payment	£6,900	£135,788
10	23/02/2022	F	Faster Payment	£20,000	£155,788
11	15/03/2022	F	Faster Payment	£17,700	£173,488
12	17/03/2022	F	Faster Payment	£15,600	£189,088

Mr A received a withdrawal of £100 on 13 January 2022 (paid to an external account). He also received a withdrawal of £797.46 on 15 February 2022 to his Halifax account, so the total amount he's claiming from Halifax is £188,190.54.

Halifax issued its final response on 20 January 2023 explaining that it wouldn't be refunding Mr A because he paid an account in his name which was legitimate. It explained he'd need to dispute the transactions with F. It further noted it did all it could to try to protect him and spoke to him on multiple occasions but Mr A wasn't truthful in his conversations with it. Unhappy with Halifax's response, he referred his complaint to this service.

One of our Investigators looked into things. She found that Halifax ought to have done more in some of its interactions with Mr A when it blocked some of his payments. But she didn't feel that he was entirely honest in his interactions with Halifax, so she didn't think it could have reasonably prevented his loss, even if it had better interactions with him. Our Investigator provided copies of calls to Mr A.

Mr A disagreed and asked for an Ombudsman to review his complaint. He said in summary that Halifax's intervention didn't go far enough. For example, when Mr A said he was paying a solicitors firm, Halifax should have found this concerning. He said if Halifax had invited him into a branch, a face-to-face conversation would have likely unravelled the scam. The complaint has therefore been passed to me for determination.

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 don't uphold this complaint and I'll explain why.

It is common ground that the disputed payments were 'authorised' by Mr A for the purposes of the Payment Services Regulations 2017 ('the Regulations'), in force at the time. This is because they were made by Mr A using the legitimate security credentials provided to him by Halifax.

However, taking into account the law, regulatory 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 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.

The first question I've considered is whether or not I'm satisfied Mr A fell victim to a scam. I've reviewed Mr A's complaint submissions and correspondence with the scammer. I've also noted that the Financial Conduct Authority ('FCA') published a warning about K on 9 May 2022. Based on this evidence, I'm persuaded on balance that K was most likely operating a scam and Mr A was the victim of that scam.

Now that I'm satisfied Mr A fell victim to a scam, I've considered whether any of the disputed payments were unusual or suspicious enough for Halifax to have reasonably intervened.

Transactions 1 and 2

Like our Investigator, I reviewed Mr A's account statements from December 2020. I don't think these payments were all that unusual when considering Mr A's normal account activity. For example, he made payments of £5,000 dated 14 April 2021 to a trading company and a faster payment of £3,525 dated 21 June 2021.

I therefore don't think Halifax missed an opportunity to intervene in relation to these payments.

Transaction 3 onwards

I think transactions 3, 4 7 and 8 were unusual when considering the normal operation of Mr A's account. I don't see that he made payments for more than £5,000 and certainly not large payments quite close together. I think these payments established an unusual pattern of spend, that I think Halifax ought reasonably to have been concerned that the operation of Mr A's account had dramatically changed - enough to have reasonably paused the payments so it could speak with Mr A to check that all was well.

By the time transactions 10 to 12 had happened, I think it would have been reasonable for Halifax to have assumed that F was now an established payee and it wouldn't have appeared all that unusual for Mr A to send large faster payments to this particular account. In other words, I think large payments to F would have appeared normal by February 2022 and March 2022.

Halifax explained that Mr A was provided with Account at Risk (AAR) warnings prior to making payments 3, 4, 7, 9 and 10.

Halifax also noted that payments 6, 8, 11 and 12 triggered its internal systems and it spoke with Mr A regarding his payments.

So it's clear Halifax also found that some of Mr A's payments were unusual and uncharacteristic.

As Halifax concluded some of Mr A's payments were unusual and uncharacteristic (more than I would have considered to be unusual), I'll go on to consider whether its interactions with him went far enough, or whether I think it could have reasonably done more.

I don't think Halifax's call with Mr A of 17 January 2022 was all that meaningful. It simply sought to confirm Mr A's transaction was authorised and in my opinion, this was a missed opportunity to intervene given the amount of payments that had already been made to F on the same day.

Halifax also spoke with Mr A on 24 January 2022. The adviser queried whether the previous payment of £25,000 was received and he confirmed it was. The adviser queried the payment he was attempting of £60,000. Halifax explained it couldn't verify the details were correct as the 'confirmation of payee' didn't match. But Mr A confirmed the payment was received. The adviser read a script to Mr A about common types of scams. Mr A confirmed 'it was all fine'. The adviser asked if it was a solicitors he was paying, Mr A said it was for goods and services. The adviser went on to ask what kind of goods and services Mr A was getting, he said 'one second', paused for a little while and said it was for barbecue related items. He said it was for business use. The adviser asked if anyone was listening to the conversation, he said no. The adviser asked if he's been asked to lie to the bank, he said no. A few more questions not pertaining to scams were asked and the adviser assisted Mr A with making the transaction.

On 15 March 2022, Mr A's payment to F was blocked and he had another conversation with Halifax. Mr A said he was paying a crypto wallet. Mr A was asked if he'd carried out research in relation to crypto. The adviser asked if it was a one-off or whether he'd done it for a while, Mr A said he'd done it for a while. The adviser explained the bank were seeing a lot of scams relating to crypto. The adviser asked if anyone is helping him like a broker, he said it was only him, he set it up himself. The adviser asked if anyone's asked Mr A to download anything so they can see what he's doing, he said no. The adviser asked where the money came from, he said he sold a car and he deposited it into his account himself.

In another call on the same day, Halifax queried who Mr A was sending a payment to. He said it was a crypto app. He repeated that it was his account. Halifax explained that sometimes consumers think they're speaking to traders but they're speaking to scammers. Halifax asked if anyone had contacted him saying they're an investor or broker. He said no. The adviser asked whether anyone had contacted him or asked him to lie about the purpose of his payments. Mr A said no.

On 17 March 2022, Halifax called Mr A in relation to transaction 12. He explained the purpose of the payment was for an investment that was going into his own account. He was asked if he was purchasing crypto. He said yes. The adviser asked if he was doing crypto for long, he said yes. The adviser explained there is a current scam where customers are being contacted by a broker which is a scammer. The adviser asked if he's been asked to download any software, he said no.

Whilst I don't think Halifax intervened in all the transactions that were unusual or out of character and could have done better in its early interaction with Mr A, I don't think this makes a difference to my conclusions. Having listened to the calls, Halifax did ask relevant questions to crypto scams and Mr A assured it that no one was assisting him, he was investing into his own account, he had sole access to his funds, he'd not been asked to download any software and he'd been investing for a while. I therefore am not persuaded that if Halifax had better interactions with Mr A earlier that it would have made a difference. I don't think Mr A's answers would have been concerning to Halifax enough for it to have invited him into branch for a face-to-face conversation. Mr A wasn't truthful with Halifax and I see no reasonable reason for him not to have been. For example, having reviewed his communication with the scammer, I can't see that he was coached into being dishonest with Halifax prior to those interactions. And even if he had been, I think he would have continued to maintain his 'cover story' even if the bank had intervened sooner.

I recognise in one of the earlier calls that Mr A told Halifax he was purchasing barbecue equipment for a business. And the adviser didn't appear to be familiar with F even though it's a well-known crypto exchange. Mr A thought this should have been a red flag but I don't necessarily agree. I accept the Halifax adviser ought to have reasonably been familiar with a popular crypto exchange. But the purchase and use of crypto is not all scam-related and

consumers can use crypto to purchase genuine items. Whilst Mr A paused before he answered the question, it sounded like he was moving to a quieter location (as there was background noise prior to his answer), which I don't think was unusual, particularly as he was discussing the use of his funds.

In other words, I am satisfied that even if Halifax had asked better probing questions to start with, or intervened in other transactions that were unusual, it probably would have made no difference to Mr A. During multiple calls I've listened to, Halifax did ask probing questions, explained common crypto scams and provided sufficient warnings to Mr A. I don't think it could have said anything differently to obtain the true purpose of Mr A's payments, it's clear this isn't something he wanted to disclose to Halifax. Therefore, any failings by Halifax were (in my opinion) not the dominant, effective cause of his losses; they were just part of the background history or occasion that led up to them.

In light of my conclusions above on whether earlier interventions would have made a difference (as I've concluded they wouldn't have), it is unnecessary for me to go on to consider whether Mr A himself was partly to blame for what happened (contributory negligence). Indeed, I have already concluded that he was responsible for his own investment decisions, and that such choices were the proximate cause of his losses.

In relation to recovery of the funds, as Mr A paid an account in his own name with F and sent the crypto he purchased from that account to K. I don't think Halifax would have had any reasonable prospect of success had it attempted to recover his funds. If Mr A had any funds available in his account with F, these would have been accessible by him.

My final decision

My final decision is, despite my natural sympathies for Mr A's losses, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 12 December 2023.

Dolores Njemanze
Ombudsman