

The complaint

Mr M complains that Bank of Scotland plc trading as Halifax (Halifax) is refusing to refund him the amount he lost as the result of a scam.

Mr M is being represented by a third party. To keep things simple, I will refer to Mr M throughout my decision.

What happened

The background of this complaint is well known to all parties, so I won't repeat what happened in detail.

In summary, Mr M was viewing an online news website when he found an advertisement for an investment opportunity with a business called Crypto-Engine (X). The advertisement was very convincing and professional stating it used AI to guarantee higher profits for investors. Mr M was also able to see positive reviews online which gave him confidence X was genuine.

Interested in the potential investment Mr M completed his personal information online.

Mr M was then contacted by three different investment agents who each suggested investing in a different area.

The first agent befriended Mr M and spent a long time talking with him on the phone about the investment process. The agent guided Mr M through the registration process and Mr M started to make payments as instructed.

Mr M could see his investment via a trading platform the agent had given him access to and had no reason to doubt the investment was genuine. However, when Mr M attempted to withdraw funds from the investment on 15 August 2022, the agent told him he would have to make various payments first. The agent even threatened Mr M with police action. Mr M realised this wasn't normal given the investment he was involved in, and it was clear Mr M had fallen victim to a scam.

The second person that contacted Mr M did so on 4 August 2022. This investment agent explained to Mr M that he could invest by sending the money into the investment to be traded on his behalf. The agent would then regularly update Mr M with the profits. Mr M agreed and sent a single payment of £5,000 as instructed. Mr M realised after a week of not being able to contact the agent that he had fallen victim to a scam.

The third person to contact Mr M explained they would get information from AI and tell Mr M when he should invest. The agent would guide Mr M on how and when to make payments into the investment. Mr M made the first payment into this investment on 5 August 2022 for the value of £4,500. Mr M could see his investments which again made him feel comfortable he was investing with a genuine business.

When Mr M tried to make a withdrawal from the investment, he was told he would have to make further payments first and realised he had fallen victim to a scam.

The following are payments and credits made in relation to the scam overall:

Date	Payee	Payment Type	Amount
3 August 2022	Skrill	Transfer	£4,905.00
3 August 2022	Coinbase	Credit	- £95.95
4 August 2022	Coinbase	Debit Card	£100.00
4 August 2022	Binance	Debit Card	£5,000.00
5 August 2022	Foris Dax	Transfer	£4,500.00
10 August 2022	Foris Dax	Transfer	£5,000.00
11 August 2022	Skrill	Transfer	£10,000.00
11 August 2022	Skrill	Transfer	£5,000.00
12 August 2022	Foris Dax	Transfer	£10,000.00
18 August 2022	Foris Dax	Transfer	£10,000.00
19 August 2022	Foris Dax	Transfer	£80.00
25 August 2022	Foris Dax	Credit	- £70.00
30 August 2022	Foris Dax	Transfer	£3,400.00
22 September 2022	Foris Dax	Transfer	£6,500.00
22 September 2022	Foris Dax	Credit	- £143.21

Our Investigator considered Mr M's complaint but didn't think it should be upheld. Mr M disagreed, so this complaint has been passed to me to decide.

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.

It has not been disputed that Mr M has fallen victim to a cruel scam. The evidence provided by both Mr M and Halifax sets out what happened. What is in dispute is whether Halifax should refund the money Mr M lost due to the scam.

Recovering the payments Mr M made

Mr M made payments into the scam via his debit card, and the method of transfer. When payments are made by card the only recovery option Halifax has is to request a chargeback.

The chargeback scheme is a voluntary scheme set up to resolve card payment disputes between merchants and cardholders. The card scheme operator ultimately helps settle disputes that can't be resolved between the merchant and the cardholder.

Such arbitration is subject to the rules of the scheme, meaning there are only limited grounds and limited forms of evidence that will be accepted for a chargeback to be considered valid, and potentially succeed. Time limits also apply.

Mr M was dealing with the scammers, which were the people that instigated the scam. But Mr M didn't make the debit card payments to the scammers directly, he paid separate cryptocurrency exchanges. This is important because Halifax would only have been able to process chargeback claims against the merchants he paid, not another party (such as the scammers).

The service provided by the cryptocurrency exchanges would have been to convert or facilitate conversion of Mr M's payments into cryptocurrency. Therefore, they provided the service that was requested; that being the purchase of the cryptocurrency.

The fact that the cryptocurrency was later transferred elsewhere – to the scammers – doesn't give rise to a valid chargeback claim against the merchants Mr M paid.

When a payment is made by transfer the only option Halifax has to recover the payments would be to ask the receiving payee to return any funds that remain in their account. As the funds were transferred to the scammers as part of the investment no funds would remain, and this would not be an option for the payments Mr M made.

Should Halifax have reasonably prevented the payments Mr M made?

It has been accepted that Mr M authorised the payments that were made from his account with Halifax, albeit on X's instruction. So, the starting point here is that Mr M is responsible.

However, banks and other Payment Services Providers (PSPs) do have a duty to protect against the risk of financial loss due to fraud and/or to undertake due diligence on large transactions to guard against money laundering.

The question here is whether Halifax should have been aware of the scam and stepped into question Mr M about the payments he was making. And if it had questioned Mr M, would it have been able to prevent the scam taking place.

I can see that Halifax did step in on several occasions and it has sent us recordings of calls that took place between Halifax and Mr M.

Halifax spoke to Mr M on 2 August 2022 before he made the very first payment related to the scam. Mr M had called Halifax as a payment he had attempted to make for the value of £4,905 had been stopped. Mr M confirmed he was sending money to his own account with Binance to buy cryptocurrency, he was not dealing with any brokers at all, that no one else had access to the account, and he was making the payment of his own accord with no coercion. Halifax was unable to put this payment through at the time and Mr M was warned that the payment was showing as having a higher-than-normal risk and that Mr M should consider the payment further before making it.

Halifax also spoke to Mr M on 11 August 2022 when Mr M attempted to make a payment for £10,000 to Binance. Mr M confirmed he had only recently started making the payments and that no one had been in contact asking him to make the payments.

Having listened to these calls it's clear that Mr M was not honest when he answered the questions posed by Halifax that are designed to uncover scams like that Mr M was experiencing. The incorrect information Mr M provided to Halifax disguised the fact that he was experiencing a scam and I don't think it was unreasonable based on the answers Mr M gave, that Halifax didn't uncover a scam was taking place.

Based on these calls I don't think Mr M would have been any more honest had Halifax stepped in on any other occasion to question him about payments he made. So, I don't think Halifax missed an opportunity to prevent the scam and it is not responsible for Mr M's loss.

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 8 March 2024.

Terry Woodham
Ombudsman