

The complaint

Mrs S complains that Bank of Scotland plc trading as Halifax have unreasonably declined to refund transactions that she sent to a fraudster as part of a scam. She'd like the money refunded.

What happened

In September 2022, Mrs S was contacted via a social media platform by someone posing as her friend, asking Mrs S to vote for her as a part of a competition. Mrs S said she truly believed this was her genuine friend as she was communicating in her normal manner and therefore, she had no reason to suspect anything fraudulent. The conversation changed to a discussion about investments, and from this, the individual convinced Mrs S to register for several cryptocurrency wallets, purchase cryptocurrency and then, tricked Mrs S to send it on to them. Mrs S did this for £6,850.00, made up of four separate transactions, but later discovered her friend's social media account had been hacked, and she had actually been speaking with a fraudster. Sadly, Mrs S discovered she'd lost all of her money.

Mrs S contacted Halifax the day after the payments had been made to see if she could get her money back. Mrs S explained the contact she'd had with the fraudster, and asked the bank to help her. After numerous telephone calls across a three month period, and a complaint raised, Halifax declined to refund her. It did, however, offer £100 compensation for customer service issues.

Unhappy with this Mrs S referred her complaint to our service. One of our investigators looked into what happened but didn't think Halifax was responsible for Mrs S' loss. They said it wasn't disputed that Mrs S made the transactions herself. The investigator didn't think the transactions were significantly out of character enough that Halifax should've taken steps to intervene or prevent them. So, they didn't think Halifax should be liable for refunding them. However, the investigator felt £300 compensation in total, rather than the £100 offered for the customer service issues was more appropriate in the circumstances.

Halifax agreed with the investigators' findings, but Mrs S did not. She said she felt it was unfair and questioned why the bank didn't pick up on the unusual nature of the transactions she'd made, all on the same day for large amounts. She sent some further evidence of the communication she had with the fraudster. But this didn't change the investigator's mind. As no agreement could be reached the complaint was passed to me to decide.

I issued a provisional decision on 13 November 2023. This said:

I was very sorry to hear of the difficulties Mrs S has faced since this scam took place. This can't have been an easy time for her at all. I've no doubt this experience has been very upsetting for her. But having reviewed the evidence I can't say that Halifax should be responsible for refunding her all of the money that she's lost to the fraudster. However, I'm currently minded to require Halifax to refund £2,000 of the money she's lost, plus interest. I'll explain why.

In broad terms, the starting position in law is that a bank is expected to process payments

and withdrawals that a customer authorises it to make, in accordance with the terms and conditions of their account. And I've taken that into consideration when deciding what is fair and reasonable in this case.

But the matter doesn't end there, I've also taken into account the law, regulator's rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time. And I consider Halifax should, fairly and reasonably:

- Have been monitoring accounts and any payments made or received to counter various risks, including money laundering, the financing of terrorism, and 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 (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.

So, I need to decide whether Halifax acted fairly and reasonably in its dealings with Mrs S when she authorised the payments to the cryptocurrency wallets, or whether it should've done something more.

It's not in dispute that Mrs S authorised the payments and, as I've explained above, Halifax had an obligation to follow her instructions. But I think Halifax should also have been on the lookout for unusual and out of character transactions.

With this in mind, I've looked at Mrs S's bank statements for the months leading up to the disputed transactions. Having done so, I don't think the payments made as part of the scam were particularly unusual or out of character given the way Mrs S tended to use her account. In the months leading up to the disputed transactions, she made a number of faster payments using her online banking facility which were similar in value. So, while the payments were made to companies Mrs S hadn't used before, the payments were not significantly different or unusual such that I think they ought to have been a cause for concern and prompted Halifax to intervene for the first three transactions of £1,000, £800 or £1,050.

But for the fourth payment of £4,000, which was made the same day as the other three listed above, I do find that Halifax should've contacted Mrs S to discuss the pattern of the transactions and her intentions with the £4,000. By the time this transaction was attempted to be made by Mrs S, she'd made credits into her Halifax account from an external account to then fund the payments to cryptocurrency wallets. I think this pattern was unusual enough for Halifax to intervene. And, had it done so, I think Halifax would've been concerned that Mrs S was caught up in a scam and warned her of such.

I say this as I've no reason to believe that Mrs S wouldn't have been honest with Halifax about her reasons for the £4,000 payment. She genuinely believed that she was speaking with her friend and investing in cryptocurrency, receiving high returns on her investment. And by the time the £4,000 payment was being made, believed she'd received returns on her money by around 170%.

If Mrs S had explained all of this to Halifax, including the method in which she was speaking

with the fraudster, which I think would've happened had Halifax asked her appropriate questions about the reason for the intended payment, and the other payments she'd made that day; Halifax, being the experts here, could've told Mrs S to contact her friend using other channels, rather than just the social media platform to verify she was in fact speaking with that person. Also, the returns on the investment were far too good to be true, and Halifax is aware that this, as well as contact about cryptocurrency investments via social media, have the hallmarks of a typical scam and could've warned her as such. Had this happened, I'm satisfied Mrs S would've followed Halifax' advice and the scam would've been uncovered, therefore preventing the £4,000 loss.

Should Mrs S bear some responsibility by way of contributory negligence?

In view of this, I think Halifax could've prevented Mrs S' £4,000 loss here. But I also have to consider whether Mrs S ought to bear any responsibility for the loss she has incurred too. This is because there is a general principle that consumers must take some responsibility for their decisions. In this instance, I do think that Mrs S is partly responsible for her loss. And I am minded to say that it would be fair and reasonable to make a deduction from the £4,000 because of this.

I say this firstly because I do think Mrs S ought to have completed due diligence prior to sending large sums of money to cryptocurrency platforms on the instructions of someone via social media. I appreciate that Mrs S genuinely believed she was speaking with her friend, I don't know if Mrs S had had investment advice before, from a 'friend' or otherwise, but I would've expected her to have completed more diligent research before parting with her money – or at least recognised that there was a risk in not doing so.

And, I would've expected Mrs S to have recognised warnings that she could be dealing with a fraudster – I see from the chat's she's provided to us that she did question the process and the supposed returns when speaking with the person, such as the very high rate of return and that she was told to send more funds to 'upgrade her account' to protect her returns and be able to withdraw them.

I can also see that when attempting to make some of the payments from another bank, they were blocked as a fraud risk. Whilst no phone call was made from that bank to discuss the payments with Mrs S, I think the prevention of the transactions should've raised another flag, and she said herself to the fraudster when referring to the cryptocurrency platform, 'this has to be a scam, how can they say one thing and then something else. I knew this was too good to be true.' Mrs S says she moved past this as at the time she still believed she was speaking with her friend and trusted what they said, but I can't ignore the fact that Mrs S appears to have identified that something was amiss with the situation, but continued anyway.

The comments above from the chat that Mrs S has provided were made before the £4,000 payment and given all of these red flags, including the fact that another banking provider had concerns about the payments and identified them as potential fraud, I think it would've been reasonable for Mrs S to have done further independent checks such as looking online or talking to a trusted person or organisation about the investment scenario that was unfolding. This is particularly so given the large sums of money she was being asked to send and the unexplained reasons for them, as well as supposedly needing to change the cryptocurrency wallet provider a couple of times, which would seem unusual for a legitimate investment. Unfortunately, Mrs S took what she was being told as reassurance by the fraudster at face value and proceeded with the £4,000 payment.

So, having taken into account all of the circumstances of this complaint, I think a fair and reasonable deduction would amount to 50% of the losses that I consider eligible for

refunding (the £4,000). I feel that this deduction takes into account that Halifax ought to have done more to be satisfied that Mrs S was not at risk of financial harm from fraud, but at the same time, takes into account Mrs S' own actions and the role she played in the success of the scam.

As well as this, having looked into the service that Halifax provided to Mrs S when it was looking into her claim of fraud, I think the £300 it has already agreed to pay is a fair and reasonable amount to cover Mrs S' trouble and upset for the way it handled her claim.

My provisional decision

Currently, I'm minded to require that Halifax:

- Refund 50% of the losses (£2,000) from the payment on 28 September 2022 onwards; and
- Pay 8% simple interest from the date of the loss until the date of settlement.
- If it has not already done so, pay Mrs S £300 (in total) compensation.

Both Mrs S and Halifax responded to my provisional decision.

Halifax explained it had only considered the first three payments within its fraud investigation and complaint response, and therefore would like the opportunity to address the £4,000 payment separately. I accept Halifax, for whatever reason, didn't consider the £4,000 payment at the time of the fraud report, but I find it has had enough time since then to do so. This is since Mrs S approached our service with her complaint, and also because in September, I asked Halifax for its comments on the £4,000 payment and it responded with its reasons why it didn't believe it should refund this amount. It said the payment was made willingly by Mrs S, to a legitimate cryptocurrency wallet, and if it had tried to reclaim the money via a chargeback, this wouldn't have been successful. So Halifax has already had a chance to comment on the £4,000 payment and I've considered these comments when reaching my final decision.

Mrs S provided a detailed response setting out the difficulties she's faced since the scam took place, and the impact it has had on her life. I won't comment on everything she's said, but I really sympathise with the situation Mrs S has found herself in and I thank her for her response. Mrs S made many comments about the way Halifax' fraud investigation impacted her, the time it took to give her an answer, including chasing the bank numerous times herself for an update, and how she was so taken in by the scammer that she really had no reason to believe she was speaking with anyone other than her friend who she was very close with. She said any comment she made about the situation being a scam was in relation to her ability to withdraw her funds from the cryptocurrency wallet, rather than the overall conversation with her 'friend.'

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.

I'm in agreement with Mrs S that Halifax could've handled her fraud report better. It could've kept her better informed which would've avoided the need for her to chase it a number of times, and it could've taken action sooner too. I note Mrs S wasn't informed that once a payment has been authorised and 'pending' it cannot be stopped, and I agree that overall,

Halifax' handling of the situation caused Mrs S trouble and upset at a time when she was already processing the fact she'd been the victim of fraud.

But, having considered all of the available evidence in relation to the way Halifax handled Mrs S' fraud claim, I still find that £300 is appropriate compensation. So I won't be asking Halifax to increase this further.

In relation to the £4,000 payment, Mrs S accepts that some questioning from Halifax could've prevented the payment from being made. I maintain my position that Halifax should've been alerted to the pattern of transactions that day and intervened at the £4,000 payment as I've previously explained. Regardless of the payment being made willingly to a genuine cryptocurrency wallet, or whether or not a chargeback would've been successful, if Halifax had intervened at that point, I find, on balance, that the £4,000 loss would've been prevented as the payment wouldn't have been made. Therefore, in the circumstances of this complaint, I find that considerations around chargebacks or the way the payment was authorised are irrelevant.

But, even though I accept that Mrs S genuinely believed she was speaking with a close friend, I still find that many red flags should've raised alarm bells for her and caused her to question the situation that was unfolding. So because of this, for the reasons I've explained previously, I maintain my position set out in my provisional decision, and find that a 50% deduction of the £4,000 is a reasonable outcome to this complaint.

Putting things right

In order to fairly resolve this complaint, Halifax should:

- Refund 50% of the losses (£2,000) from the payment on 28 September 2022 onwards; and
- Pay 8% simple interest from the date of the loss until the date of settlement.
- If it has not already done so, pay Mrs S £300 (in total) compensation.

My final decision

My final decision is that I uphold this complaint in part.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 28 December 2023.

Lorna Wall

Ombudsman