

The complaint

Mrs H complains that Bank of Scotland plc trading as Halifax ('Halifax') won't refund all the money she lost in a romance scam.

What happened

Mrs H says that in 2020 she started to chat to someone she met on a dating site. I'll refer to this person as K in this decision. The chat moved from the dating site to a messaging app. Mrs H had several video calls with K and he told her he was doing a sports coach management course. Mrs H told us that she met with K on two occasions in August 2022 and December 2022.

After some considerable time chatting K told Mrs H that he needed money for school fees, university transfer to the UK, a computer and also to show authorities he had enough money to travel to the UK.

I have set out in the table below the payments Mrs H made to K.

#	Transaction Date	Amount	Refund
1	21/04/2022	£2,200	
2	04/05/2022	£2,000	
3	09/05/2022	£380	
4	17/05/2022	£1,700	
5	08/06/2022	£6,000	
6	28/06/2022	£1,000	
7	05/07/2022	£8,900	£4,450.00
8	29/07/2022	£4,500	£2,250.00
9	23/08/2022	£1,500	£750.00
10	30/08/2022	£5,300	£2,650.00
11	02/09/2022	£9,700	£4,850.00
12	20/09/2022	£2,000	£1,000.00
13	28/09/2022	£1,360	£680.00
14	03/10/2022	£5,000	£2,500.00
15	06/10/2022	£8,900	£4,450.00
16	13/10/2022	£16,000	£8,000.00
17	18/10/2022	£16,000	£8,000.00
18	26/10/2022	£100	£50.00
19	26/10/2022	£410	£205.00
20	26/10/2022	£16,225	£8,112.50
21	31/10/2022	£1,000	£500.00
22	31/10/2022	£4,000	£2,000.00

23	07/11/2022	£8,000	£4,000.00
24	14/11/2022	£12,000	£6,000.00
25	29/11/2022	£8,000	£4,000.00
26	07/12/2022	£3,000	£1,500.00
27	13/12/2022	£1,000	£500.00
28	29/12/2022	£1,000	£500.00
29	03/01/2023	£500	£250.00
	Total	£147,675	£67,197.50

Halifax agreed to refund 50% of the payments Mrs H transferred from the seventh transaction onwards.

Our investigator thought Halifax should refund from an earlier point (from the fifth transaction). Initially she asked Halifax to also refund the 50% it had deducted. However, upon reviewing both parties' further representations she felt the 50% deduction was fair.

Mrs H did not agree. She felt that as the bank accepted it had not done enough – it should refund her in full.

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; regulatory rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

Where the evidence is unclear or in dispute, I reach my findings on the balance of probabilities – which is to say, what I consider most likely to have happened based on the evidence available and the surrounding circumstances.

There is no dispute that Mrs H has been a victim of a cruel and callous scam and I am deeply sorry for that, but it doesn't automatically mean Halifax is liable for some or all of her losses. In fact, the relevant regulations (and the terms of her account) make her responsible for payments she's made herself in the first instance.

In broad terms, the starting position in law is that an account provider is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the terms and conditions of the customer's account. And a customer will then be responsible for those transactions that they have authorised.

It's not in dispute here that Mrs H authorised the payments. She accepts she made them herself, as instructed to by the scammer. So, while I recognise that she didn't intend the money to go to a scammer, the starting position in law is that Halifax was obliged to follow her instructions and process the payments. So, Mrs H isn't automatically entitled to a refund.

However, taking into account the law, regulatory rules and guidance, relevant codes of practice and good industry practice, there are circumstances where it might be appropriate for a bank to take additional steps or make additional checks before processing a payment in order to help protect customers from the possibility of financial harm from fraud.

Halifax accepted it could have done more and refunded 50% of the transfers Mrs H made from the seventh payment onwards. Having considered Mrs H's account activity for the period before the scam I agree with the investigator that the first four payments didn't stand out given their value (although I appreciate it is a lot of money to Mrs H). And the individual payments were quite spread out. Mrs H had made similar sized transfers out in the months prior to the scam, and I don't believe there was an unusual pattern of transactions at this point.

But the fifth payment was for £6,000. The amount was greater than previous transactions and was out of character. So I think this is the point at which Halifax ought to have intervened. For completeness I'm persuaded that had Halifax intervened I believe the scam would have been uncovered as I have no reason to believe Mrs H wouldn't have been honest. There were many hallmarks of a romance scam here that I think Halifax would have rapidly uncovered.

I turn now to whether Mrs H should be held partly responsible for her loss. It's not in dispute the bank could and should have done more. I think the difficulty here is that I do feel Mrs H should also share some responsibility for her decisions and actions. This is not a decision I've made lightly. I appreciate this is a significant amount of money to Mrs H and I realise it has a significant emotional attachment for her.

I've considered the matter carefully and have decided that a 50% liability split is fair. I'll explain why:

- Certainly initially – Mrs H was making considerable transfers to a person she had only met online and not in person. Whilst she did go on to meet K – this was limited to a visit to the hotel she had booked, and she wasn't invited to see his home or meet his family and friends. By her own admission Mrs H felt he was secretive and hiding things.
- The payments increased in size and frequency, sometimes multiple payments in a week or in a day. K never showed Mrs H what he was paying for despite her asking for proof.
- K said he was a student and an employee in a fast-food chain but also said he would be able to start paying Mrs H back when he moved to the UK. I appreciate this was based on him getting a job but it's not clear how he intended to pay her back such significant sums of money.

I appreciate that Mrs H has been through a lot (and no doubt this scam has impacted her further). I have no doubt this affected her decision making to some degree, but I think she placed a huge amount of trust in someone she had initially met online, transferring considerable sums with no real assurance she would get the money back. In the circumstances, I'm satisfied that Mrs H should share responsibility with Halifax for the payments.

It's important to emphasise that I'm only considering whether Halifax, which had no involvement in the scam itself, should be held fully responsible for what happened. My intention is not to further Mrs H's distress where she's already been the victim of a cruel fraud. But merely to highlight that I do find it fair and reasonable for her to share the responsibility for her losses.

Recovery of funds

I've also thought about whether Halifax took reasonable steps to recover Mrs H's funds once it was made aware she was the victim of a scam. In this case the funds were transferred to an international bank account. International banks aren't bound by the same rules and regulations as banks within the UK. The first scam payment was made in April 2022 and the last on 3 January 2023 and the scam was reported on 16 January 2023. I understand that Mrs H didn't know she was the victim of a scam before this, but the delay means any recovery action was most unlikely to be successful as scammers usually remove funds within hours.

Halifax contacted the receiving bank as soon as Mrs H reported it and asked for the funds to be returned to Mrs H. But Halifax is reliant upon the international bank choosing to return funds. It can't require or force them to and unfortunately no funds have been returned. From what I've seen Halifax has done what it should've to try and recover the funds for Mrs H but have been unable to obtain a refund for her this way.

Putting things right

Given that Halifax could have prevented the loss (but Mrs H should share in the responsibility for her loss) I think to refund 50% of the transaction from the fifth transaction onwards is fair and reasonable in this case. Halifax has already refunded 50% from the seventh transaction.

So Bank of Scotland plc trading as Halifax should put things right for Mrs H by refunding 50% of transactions 5 and 6.

As Mrs H has been deprived of the use of this money, it should add simple interest at the rate of 8% per annum from the date of the payments until the date of settlement.

If Halifax is legally required to deduct tax from the interest it should send Mrs H a tax deduction certificate so she can claim it back from HMRC if appropriate.

My final decision

My final decision is that I uphold this complaint in part and require Bank of Scotland plc trading as Halifax to put things right for Mrs H as outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 20 March 2024.

Kathryn Milne
Ombudsman