

## The complaint

Mrs R complains about Bank of Scotland plc trading as Halifax.

She says that Halifax didn't do enough to protect her when she became the victim of a scam and would like Bank of Scotland to refund her the money she has lost.

## What happened

Mrs R was contacted by an individual by phone offering investment in 'shares' with Binance. Initially, Mrs R said she wasn't interested, but was contacted again and persuaded to invest.

Mrs R paid into the supposed investment for several months, but then when she wanted to make a withdrawal was told that she needed to pay more money in order to access her supposed investment and profit. Mrs R then realised she had been scammed and had been buying cryptocurrency which she had moved on to the scammers under their instruction, and not shares.

Mrs R made the following payments as part of the scam.

Date	Payee	Payment type	Amount
24 June 2022	Smithkent.com	Online	£210.46*
1 July 2022	Binance	Debit card	£500
14 July 2022	Binance	Debit card	£800
15 July 2022	Binance	Debit card	£400
19 July 2022	Binance	Debit card	£500
22 July 2022	Binance	Debit card	£500
26 July 2022	Binance	Debit card	£800
28 July 2022	Binance	Debit card	£1,000
5 August 2022	Binance	Debit card	£500
15 August 2022	Binance	Debit card	£600
16 August 2022	Binance	Debit card	£700
19 August 2022	Binance	Debit card	£1,000
20 August 2022	Binance	Debit card	£400
27 August 2022	Binance	Debit card	£500
29 August 2022	Binance	Debit card	£500
31 August 2022	Binance	Debit card	£2,000
6 September 2022	Binance	Debit card	£350
12 September 2022	Binance	Debit card	£800
19 September 2022	Binance	Debit card	£500
20 September 2022	Binance	Debit card	£1,000
22 September 2022	Binance	Debit card	£1,000
26 September 2022	Binance	Debit card	£2,000
27 September 2022	Binance	Debit card	£990.93
19 October 2022	Binance	Debit card	£1,800
24 October 2022	Binance	Debit card	£1,200
3 November 2022	Binance	Debit card	£1,500

16 November 2022	Binance	Debit card	£2,000
17 November 2022	Binance	Debit card	£2,300
22 November 2022	Binance	Debit card	£1,550
24 November 2022	Binance	Debit card	£1,480
29 November 2022	Binance	Debit card	£1,730
7 December 2022	Binance	Debit card	£2,200
19 December 2022	Binance	Debit card	£1,580
29 December 2022	Binance	Debit card	£1,100
		<b>Total</b>	<b>£35,991.39</b>

\*The initial payment was made from Mrs R's joint account

Mrs R made a complaint to Bank of Scotland, but it didn't uphold her complaint.

Unhappy, she brought her complaint to this Service. Our Investigator looked into things but didn't think that Mrs R's complaint should be upheld. Mrs R disagreed.

She said that Bank of Scotland should have intervened earlier in the payment journey, and that it had told her she would be able to get her money back.

As things weren't settled, the complaint has been passed to me to make a final decision.

### **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've decided not to uphold this complaint for broadly the same reasons as our investigator. I know this will be disappointing for Mrs R, so I'll explain why.

It isn't in dispute here that Mrs R has been the victim of a scam and has lost money as a result. However, even when it is clear that a scam has taken place, and an individual has been tricked out of their money, it doesn't necessarily follow that a business will need to refund the money that has been lost.

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; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider having been good industry practice at the time.

In broad terms, the starting position at law is that a banks, electronic money institutions (EMI's) and other payment service providers (PSP's) are expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations (PSRs) and the terms and conditions of the customer's account.

Mrs R authorised the payments in question here – so even though she was tricked into doing so and didn't intend for her money to end up in the hands of a scammer, she is presumed liable in the first instance.

But this isn't the end of the story. As a matter of good industry practice, Bank of Scotland should also have taken proactive steps to identify and help prevent transactions – particularly unusual or uncharacteristic transactions – that could involve fraud or be the result of a scam. However, there is a balance to be struck: banks had (and have) obligations to be alert to fraud and scams and to act in their customers' best interests, but they can't reasonably be involved in every transaction

Taking into account the law, regulator's rules and guidance, relevant codes of practice and what I consider having been good industry practice at the time, I consider Bank of Scotland 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 that 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.

In this case, I need to decide whether Bank of Scotland acted fairly and reasonably in its dealings with Mrs R when she authorised payments from her account or whether it could and should have done more before processing the payments.

Mrs R and her representatives say that Bank of Scotland should have noticed that Mrs R was making payments to Binance which was highly unusual for her, and it should have got in touch with her to check that everything was ok when she began making the payments.

But I disagree. I don't think that any of the payments Mrs R made were significantly unusual or uncharacteristic enough for Bank of Scotland to have first got in touch with her before processing the payments on her request. The payments were spread out, and relatively low in value. And while they were going to crypto, not every crypto payment is related to a scam – and Binance are a legitimate crypto exchange.

That said, even though I don't consider the payments to have required an intervention, Bank of Scotland did get in touch with Mrs R on 19 October 2022 when it blocked a payment she was trying to make. Bank of Scotland has provided a recording of this conversation.

Mrs R says that she wasn't told to lie about what she was doing – but during this call, she wasn't honest about the payments she was making. Bank of Scotland asked her if she was acting on her own – or if anyone else was involved with the transaction. They also asked her if she had used any applications and if she had full control of the crypto-wallet herself. She was also told about the risks involved with crypto.

Mrs R said that no-one else was involved – and that she had found the investment herself, which wasn't the case. She also didn't ask any further questions when the Bank of Scotland said that she wasn't purchasing shares in Binance, but actually purchasing crypto – and she confirmed that's what she meant.

I know that Mrs R and her representatives say that the scam could have been stopped had the intervention taken place earlier – but as I've explained above, I don't think that Bank of Scotland needed to intervene at all even though it did – and given that Mrs R went on to make 11 payments totalling £18,400 after the intervention, I can't say that any earlier intervention would have made a difference either.

So, I can't say that Bank of Scotland could have done any more than it did to try and prevent the loss Mrs R has suffered.

I've also considered what Mrs R has said about Bank of Scotland telling her that she would receive a full refund of the payments. I'm sorry that Mrs R seems to have been given the wrong information here, but this is not the case. While Bank of Scotland could have tried to get her money back via the chargeback scheme, this would never have been successful as Mrs R purchased genuine crypto from Binance which was provided to her – so the service she paid for has been provided.

I am very sorry for the situation Mrs R now finds herself in. She has been the victim of a cruel scam which has resulted in a big financial loss. However, the loss she has suffered is due to the scammer themselves – and not Bank of Scotland.

### **My final decision**

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R to accept or reject my decision before 16 May 2024.

Claire Pugh  
**Ombudsman**