

## **The complaint**

Miss M complains that Bank of Scotland Plc (trading as Halifax) hasn't fully refunded her for the money she lost when she fell victim to a cryptocurrency investment scam.

Miss M brings her complaint with the assistance of a professional representative. But for simplicity I will refer to Miss M throughout this decision, even when referencing what her representatives have said on her behalf.

## **What happened**

Miss M was contacted on social media by an individual who claimed he could advise her on how to make money through investing in cryptocurrency. Miss M agreed to invest, but unknown to her at the time, she was dealing with a scammer, there was no legitimate investment opportunity.

Miss M tried to make an initial payment direct to the scammer for £5,000. Halifax stopped this payment, and asked her to make contact to discuss it. At this stage the scammer advised Miss M to open cryptocurrency accounts and to make payments to those instead. She did as instructed, and went on to make five card payments to a cryptocurrency provider over the next two days, for a total of £900.

A few days later Miss M spoke to Halifax, about the initial £5,000 payment that had been blocked. Halifax told her that the payment it had blocked was likely to be part of a scam and cancelled that payment.

Miss M then made a further £1,282 in payments, from her savings account and her current account, to a third party that the scammer told her would make investments for her. At least some of these payments appear to have been for fees Miss M was told she had to pay to get her money back. But when she wasn't able to withdraw her money, and was still asked to pay more fees, she realised she had been the victim of a scam and contacted Halifax.

Halifax contacted the bank that had received the transfers, in an attempt to recover Miss M's money, but the money had already been moved on and there was nothing left to recover. It did though look into whether Miss M was entitled to a refund of all or some of the payments she made under the Contingent Reimbursement Model (CRM) Code. This voluntary code requires firms to reimburse customers who have been the victims of APP scams in all but a limited number of circumstances, and Halifax is a signatory to the CRM Code.

Halifax told Miss M that the card payments were not covered by the Code, as it does not apply to card payments. But the transfers were covered by the Code, and Halifax said that it did not feel it had done enough to protect her regarding the payments made from her savings account, and so refunded 50% of those payments. But it didn't think Miss M had a reasonable basis for believing that the investment was legitimate, so it declined to refund any further payments to her.

Miss M didn't accept this. She thought Halifax should fully reimburse her.

One of our Investigators looked into her complaint. They thought Halifax was entitled not to fully refund Miss M all of the money she'd lost. They didn't think Miss M had held a reasonable basis for believing what she did when she sent the payments. They also did not think there was anything about the payments Miss M made that should have triggered any intervention or warning from Halifax. So, they thought Halifax had fairly assessed the claim under the Code and didn't think it needed to refund any more of the payments than it had already.

Miss M remained unhappy, so her case has now been referred to me to reach 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.

I'm sorry to hear about what happened to Miss M, but I have to recognise that the main cause of her losses here were the scammers who deceived her. I must also take into account that Halifax has an obligation to carry out the payment instructions its customers give it. As a starting point, a customer is therefore assumed liable for a payment they have instructed to be made.

But even with that in mind, where a customer has made the payment as a consequence of the actions of a fraudster, it may sometimes be fair and reasonable for a bank to reimburse its customer even though the customer authorised the payment.

Amongst other things, Halifax has a responsibility to exercise reasonable skill and care, pay due regard to the interest of its customers and to follow good industry practice to keep customer's accounts safe. Additionally, as I've mentioned above, the CRM Code can provide increased protection for the victims of APP scams. I'm satisfied that the faster payments Miss M made fall within the scope of the CRM Code. But despite offering additional protections, the CRM Code includes provisions allowing a firm not to reimburse APP scam losses fully in some circumstances. Those circumstances include where the customer made a payment without a reasonable basis for believing that the person they were dealing with was legitimate, was providing a genuine service, or that the payee was the person the customer was expecting to pay.

Halifax says this exception applies here. So while it had reviewed Miss M's claim against the Code, it didn't think it was required to reimburse her in full.

I need to determine whether Halifax has established this exception to reimbursement can be fairly applied – in other words, that Miss M made the payment without a reasonable basis for believing it was legitimate. In considering this point, I've carefully considered everything Miss M has submitted as well as the evidence submitted by the bank.

There were some features of what happened here that I think should reasonably have caused Miss M to use greater caution before sending a large sum of money. Firstly, the returns on offer were high (300% over four months with no apparent risk of losing her capital). I think this was simply too good to be true. I understand Miss M's point that she didn't have prior investment experience, but I think even without prior experience this would have seemed an unusually high rate of profit – hence the attraction of the scheme. There were also issues with the way the 'adviser' presented himself that I think should have caused additional concern, his online presence did not seem like that of someone who might be providing legitimate investment advice. So, bearing in mind Miss M's inexperience as an investor, and the red flags that were evident regarding this scheme, I think it would have

been reasonable for Miss M to do more in-depth research before deciding to invest in the scheme, but it does not appear that she did so.

In addition, as Miss M's involvement in the scheme progressed, there were further details which I think should have raised a red flag. When setting up the transfers, she had already been told by Halifax that the first payment she had attempted was very likely part of a scam, but she proceeded with the payments anyway. And I can see from Miss M's records of her conversation with the scammer that, by this stage, she was clearly expressing some concerns that she might be being scammed, but she continued to make payments nonetheless.

In short, I find there were several indicators that all might not be legitimate. I've carefully considered Miss M's representations regarding her circumstances and lack of prior investment experience. But I don't consider that Miss M's circumstances meant she was unable to protect herself from this type of scam - I do not consider she was vulnerable in terms of the Code.

With all this in mind, I think Halifax has been able to fairly establish that when Miss M made the transfers that are covered by the Code, she did so without a reasonable basis for believing she was paying into a legitimate investment. This means that, as set out in the Code, Halifax does not need to fully refund her for her loss even though this was the result of a scam.

However, under the terms of the Code a bank may still be required to partially reimburse a customer in circumstances where it hasn't met the standards set for firms by the Code. That would include requirements in terms of funds recovery or in taking sufficient steps to protect the customer from falling victim to a scam.

Halifax has said it considers it didn't meet all of the standards required, as it didn't provide an effective warning about the payments from Miss M's savings account, and accordingly has refunded Miss M 50% of the payments she lost to the scam from her savings account – a refund of £500. I've thought carefully about this, and also about the other obligations Halifax had – aside from those set out in the Code.

At the time Miss M made the disputed payments – the card payments and the transfers – I'd expect Halifax to have had systems in place to look out for unusual transactions or other signs that might indicate a customer was at risk of fraud (among other things). If it had identified such a risk, then I might expect it to have intervened before processing a payment instruction in order to protect its customer from potential harm.

The card payments Miss M made were for relatively small amounts and not unusual in the context of the card payments she usually made. And given their low value I don't think the fact that they were to a cryptocurrency provider would have been enough to flag them as a potential scam risk to Halifax. I also think it's worth noting that, at the time of these card payments, Miss M had not yet discussed the blocked £5,000 payment with Halifax, so it had not yet been able to identify that blocked payment as a likely scam.

Miss M then began to make payments from her savings account, for between £100 and £500. I acknowledge that Miss M didn't regularly make payments from her savings to third parties, but she had done it before, and shortly before the payments in dispute here. So, given their relatively low value, I don't consider, overall, that these payments were unusual enough that Halifax should have intervened. I acknowledge that, by the time of these payments, Halifax had discussed the original £5,000 payment with Miss M and had identified it was likely part of a scam, but I don't think that it would have been clear to Halifax that the

transfers Miss M went on to make were likely part of the same scam. They were for much smaller amounts and were to a completely different individual.

In any case, given that Miss M continued to make payments even after Halifax told her that her initial payment attempt was very likely a scam, I don't think it's likely that any intervention would have made a difference here.

So, I'm not persuaded that Halifax was required to give a warning in this case or carry out any fraud checks. And it follows that I am satisfied that Halifax has done more than we would expect it to by refunding 50% of the transfers made from Miss M's savings account. I don't consider it would be reasonable to ask it to do anything more here.

I have also considered whether Halifax could have done more to recover Miss M's funds once she told it of the scam. But I'm satisfied Halifax could not have done more. Regarding the transfers Miss M made, Halifax contacted the beneficiary bank immediately, but by that time no funds remained in the recipient account. And the rules around when a chargeback can be done for a card payment means that there was no reasonable prospect of success for any chargeback for the card payments Miss M made, so again I don't think Halifax could have done anything to recover those funds for her.

With all of the above in mind, I don't consider that Halifax needs to do more than it has already done and so I am not recommending that it refund more than the £500 it already has paid to Miss M.

I understand that this will be very disappointing for Miss M, and I recognise what the loss of this money has meant for her. But I can reassure Miss M that I've carefully considered all the circumstances of his complaint before reaching what I consider to be the fair and reasonable decision in all of the circumstances.

### **My final decision**

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 25 March 2024.

Sophie Mitchell  
**Ombudsman**