

## The complaint

Mr E complains that Bank of Scotland plc (trading as “Halifax”) won’t refund £16,000 he lost to an employment scam beginning in June 2022.

## What happened

The details of this complaint are well known to both parties, so I won’t repeat everything again here. In brief summary, Mr E fell victim to an employment scam after he was contacted on Telegram by someone posing as a recruiter (“the scammer”) offering a remote working opportunity on 11 June 2022.

Mr E was shown a website where he would have to complete certain tasks to “boost products” which would earn him commission. However, he was told that if the balance of his account turned negative, he would need to deposit funds via his cryptocurrency account to top it up. Over the course of Mr E completing the tasks, he made the following payments to his cryptocurrency wallets from his Halifax account (where the funds were subsequently transferred on to the scammer) in order to “top up” his trading account or to pay taxes:

Date	Payee	Amount	Method of payment used
07/07/2022	Skrill Ltd	£10,000.00	Faster payment outwards
07/07/2022	Skrill Ltd	£6,000.00	Faster payment outwards

Mr E reported the fraud to Halifax, but it said it wouldn’t reimburse the money he’d lost. Halifax said that it had spoken to Mr E about some of the transactions at the time, but he didn’t disclose that he was making the payments as part of an employment opportunity. So, it didn’t think it could’ve done anything more to prevent the scam. Unhappy with this, Mr E referred the matter to our service.

Our investigator upheld the complaint. He didn’t think Halifax’s intervention went far enough and thought it could’ve done more to question Mr E about what he was doing. If it had done so, he thought the scam could’ve been prevented, so he asked Halifax to refund the money Mr E lost from the £10,000 payment made on 7 July 2022 onwards. Halifax disagreed, so the matter was escalated to me to determine.

I issued my provisional decision in January 2024. I said I didn’t intend upholding it and set out the following reasons:

*It isn’t in dispute that Mr E authorised the disputed payments he made to his Binance*

wallet from his Halifax account (where his funds were subsequently transferred on to the scammer from his crypto wallet). The payments were requested by him using his legitimate security credentials provided by Halifax, and the starting position is that banks ought to follow the instructions given by their customers in order for legitimate payments to be made as instructed.

However, I've considered whether Halifax should've done more to prevent Mr E from falling victim to the scam, as there are some situations in which a bank should reasonably have had a closer look at the circumstances surrounding a particular transfer. For example, if it was particularly out of character.

It isn't in dispute that some of the payments Mr E made were unusual given that they did trigger the bank's fraud prevention systems and were automatically blocked pending further enquiry – such as those made on 14 June 2022, and again on the 7 and 8 July 2022. I note that Mr E was also referred to his local branch at one point as well, where he spoke to the bank's fraud team over the phone. Accordingly, it's just a question of whether Halifax went far enough in all the circumstances with its interventions.

I accept that Halifax could have arguably gone further in its questioning of Mr E on the calls it had with him. But even accepting this as the case, I'm not persuaded any such further questioning would've ultimately uncovered the scam and prevented his loss in any event. I say this because, having seen a transcript of the calls Mr E had with Halifax, I do not think he would have been forthcoming with the true nature of the payments he was making or the reasons for doing so if he had been questioned further. I'll explain why.

I can see from Mr E's messages with the scammer that he was told he would need to verify his Binance account, and he was also asked on occasion to show his Binance account to the scammer. He was shown the steps he'd need to take to buy the cryptocurrency through the P2P network, was told to click on certain links and was given specific instructions on how he could then deposit this into his trading account to top up his negative balance so he could continue completing his tasks. So, it's clear he was being guided by the scammer in relation to the deposits he was making.

However, when Mr E was questioned by Halifax, I can see he was asked on several occasions whether anyone was instructing him to deposit money into the crypto accounts, to which he consistently said that they weren't. But as can be seen, this wasn't truthful, as he was in fact being instructed by a third party to make the payments.

During one of the phone calls Mr E had with the bank, I can also see that he was specifically asked what he was planning to do with the cryptocurrency. He didn't say he was buying it to top up a trading account that was being used as part of his employment, but instead told the bank that "I will hold it until I find [sic] certain crypto currency is making a profit I will invest". So, he was not upfront with his true motives when questioned by Halifax and instead provided a misleading answer to the bank's questions.

I accept it's possible that Mr E was told by the scammer to lie to the bank if he was questioned about the payments, which can be fairly common in cryptocurrency scams. But I also note that Halifax subsequently asked Mr E if anyone had told him to lie, to which he said they hadn't. When asked this question, he again reassured the Halifax representative that no one had contacted him or told him to make the payments.

*Having considered the questions Halifax asked during their intervention – as well as the responses given by Mr E – I’m not persuaded there was anything further the bank could have done to have prevented the fraud. Mr E consistently told the bank that no one else was involved or was telling him to make the payments, and he didn’t at any point mention he was doing it as part of his employment, despite having the opportunity to do so. He also assured the bank that no one was telling him to lie.*

*If Mr E had answered the questions accurately and said he was in contact with a third-party who was telling him to pay money as part of his job, then I accept it would have been incumbent on Halifax to maintain suspicion about the payments and probe further into the circumstances. But seeing as Mr E was not forthcoming with these details, I don’t think there was anything more the bank could’ve done to prevent the scam, because it seems likely that Mr E would’ve continued to provide misleading answers if Halifax had probed further into the circumstances.*

*As a result, I don’t consider it would be fair and reasonable to hold Halifax liable for Mr E’s loss, because it seems more likely than not that he would have always made the payments to the scammer, notwithstanding any intervention made by the bank.*

*I also don’t think there was anything more Halifax could’ve done to recover the money Mr E lost. There would’ve been no prospect of recovering the funds from the receiving accounts, given we know these accounts were controlled by Mr E, who had already transferred the cryptocurrency on to the scammer by the time the fraud had been reported.*

*I appreciate this will likely come as a disappointment to Mr E, and I’m sorry to hear he has been the victim of a cruel scam. However, I’m not persuaded Halifax can fairly or reasonably be held liable for his loss in these circumstances.*

I invited further comments and evidence from both parties. Halifax didn’t respond with anything further, but Mr E disagreed. In summary, he said:

- He acknowledges that he wasn’t honest with the bank but feels his mental health and difficult circumstances at the time should be taken into account.
- From Mr E’s recollection, he was not referred to a branch to discuss the payments further. If he was referred to branch, Halifax should’ve invoked the Banking Protocol.

### **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’ve also carefully considered Mr E’s submissions in response to my provisional decision, but they haven’t changed my conclusions on this complaint. I’ll explain why.

First, I’m sorry to hear about the tough time Mr E was going through when he was scammed and for the impact this had on his mental health. I don’t doubt that this would’ve been a very difficult time for him, and I appreciate he considers himself as having been vulnerable at the time. But even accepting that he was, I can’t see that Halifax had been given prior notice of any vulnerabilities, or that there was any suggestion that he might have been vulnerable when he spoke to it about the transactions he was making. As such, it wouldn’t have been reasonable for Halifax to refuse a payment mandate given by Mr E in such circumstances, particularly after he had assured it on multiple occasions that he had not been contacted by anyone and was simply buying cryptocurrency.

Mr E says he also doesn't recall being referred to his local branch to discuss the payment further. I understand he may not recall this as it was a while ago, but Halifax has shown records of Mr E going into branch and providing photographic ID, where he was then put through to a specialist cryptocurrency fraud agent on the phone while he was in branch. Halifax hasn't been able to provide a copy of the call recording, but it has provided a transcript of the call.

Mr E was asked by the agent if anyone was helping him with the trading, to which he said they weren't. He said he was buying cryptocurrency through the peer-to-peer system. He said he was familiar with cryptocurrency and that he wasn't investing; he was just buying it. Mr E was asked by the agent if anyone had asked him to lie to the bank for any reason, to which he said *"No, no, no, I'm being completely honest with this"*.

As I said in my provisional decision, it was Mr E's answers that provided Halifax with reassurance that he likely wasn't being scammed. And based on the answers he gave, I'm not persuaded there would've been any cause for Halifax to invoke the Banking Protocol. He hadn't been inconsistent with his answers and maintained that he was simply buying cryptocurrency, which no one had asked him to do or was helping him with. So there was no need for Halifax to maintain suspicion in those circumstances.

Therefore, Mr E's recent submissions have not changed the conclusions set out in my provisional decision, as I still consider it's more likely than not that he would have always made the payments to the scammer, notwithstanding any intervention made by the bank.

### **My final decision**

For the reasons given above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 28 February 2024.

Jack Ferris  
**Ombudsman**