

## **The complaint**

Mr P complains that Bank of Scotland trading as Halifax hasn't refunded him after he reported falling victim to a scam. He doesn't believe Halifax should have allowed the payment in the first place.

## **What happened**

The background to this complaint is well-known to all parties and so I won't go into detail here.

Mr P took a loan of £20,000 with Halifax in January 2022. He told the bank the money was to be used for a wedding. But Mr P later changed his mind and decided, once he'd received the loan funds, to invest the money.

Mr P's friend had referred him to a company – I'll refer to it as Y – which was offering investment into cryptocurrency technologies. He expected a regular return on his investment and had decided to invest £15,000.

Halifax asked Mr P what the £15,000 payment was for when he tried to make it. Mr P confirmed the money was going to an account (a cryptocurrency wallet) in his own name and that he wasn't being pressured to make the payment. Mr P says he was told by a member of bank staff that he shouldn't really be allowed to use loan funds for investment purposes, particularly high-risk ones like cryptocurrency. But both Mr P and Halifax agreed for the payment to be made.

Several months went by and Y wasn't delivering what was promised. Mr P started looking online and saw that some people were labelling Y as a scam company.

Mr P raised a complaint with Halifax. He said the bank should never have allowed him to make such a payment, a fact that was reflected by the conversation he had with the member of staff. He thought Halifax should have blocked the payment and unwound the loan, given what he was trying to use the proceeds for.

Halifax responded to the complaint to say it was up to Mr P how he spent the loan funds and he remained responsible for repaying the balance. It said it discussed the payment with him at the time and highlighted the risk that he might lose all his money.

Mr P brought his complaint to the Financial Ombudsman Service as he was unhappy with Halifax's response. One of our investigators considered what had happened and didn't uphold the complaint, saying Halifax had acted fairly and reasonably in allowing Mr P to use the loan money as he wished.

She went on to consider whether Halifax should refund Mr P on the basis he'd fallen victim to a scam. She said it didn't need to as she felt there was sufficient evidence to show Mr P had fallen victim to a scam. Instead, she said Mr P appears to have a civil dispute with Y, with it having not delivered what was promised.

## **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'm reaching the same outcome as our investigator, for broadly the same reasons.

Mr P is considered responsible for any payments made from his account which he authorises. This position is set out in the Payment Service Regulations (2017). There's no dispute here that Mr P authorised the £15,000 payment, and so the starting point is he's responsible for it.

Mr P's argument is that the bank shouldn't have let him make the payment because it knew he was using borrowed money for a high-risk investment. But I don't agree that leads to a position where Mr P ought not be accountable for his own actions, and where Halifax ought to bear the loss.

Mr P decided to take the loan with the bank and supplied sufficient information to grant the lending. I do think it's highly unlikely the bank would have granted such a loan had Mr P said from the outset he intended on investing the proceeds into cryptocurrency technologies. But that isn't what he said at the time.

Once the money was in Mr P's account it was his to do with as he saw fit. It seems the bank became aware he was intending to use the money in a risky way and gave some warnings against it. Mr P decided to continue anyway, as was his choice. Even if Mr P had been stopped from sending the money from Halifax to his own cryptocurrency wallet, I'm not persuaded he wouldn't have sought out an alternative way for getting the money where he wanted it, perhaps by going via another account.

It's true bank's ought to be on the lookout for transactions like this that bear a high scam risk. And that scam risk, including how the proposed opportunity comes about and what money is being used, ought to influence the warnings a bank like Halifax gives. But this is moving into scam prevention and protection territory, rather than talking about the wisdom of using funds in a certain way. Mr P has said that he now knows Y is a scam. And so such considerations could be relevant to his complaint. However, I'm not persuaded they do apply here, because I've not seen sufficient evidence to persuade me Mr P was the victim of a scam.

In making that finding I'm not saying Mr P hasn't lost money or that he hasn't been treated badly by Y. It seems quite clear he's not been given what was promised. But the available evidence doesn't persuade me that's because Y scammed him over other reasons for it failing to fulfil the agreement.

Whilst not an absolute rule, it's typical in cryptocurrency scams to see the supposed firm behind it completely disappear. But that hasn't happened here. Y does appear to have become less active than it once was. It's explained this is as a result of the value of cryptocurrency crashing, the same reason it gave for not delivering for its customers.

But it's clear there is still an active website and updates are being supplied. There are also active social media profiles. These aren't attempts to draw in new investors, only to keep existing ones updated.

It seems Y can also be traced to a parent company and other affiliate companies it is working with. The parent company looks to have been established for years and also still seems to be a going concern. That same parent company also appears to have made a filing with the US court system, bringing a civil case against a group that labelled Y as a scam. These don't appear to be the actions of a scammer or scammers that deliberately set out to deceive people.

Prior to Mr P's investing there were hundreds of positive reviews online. It is true that some people have now said this is a scam. Most appear to be investors in a similar position to Mr P. But there are also positive reviews that continue to be posted.

Y claims it has had to restructure and reposition as a result of the cryptocurrency crash. It gives these as the key reasons for being unable to honour promises given to investors. I've not seen sufficient persuasive evidence to show that isn't true, or that the intention was to scam Mr P from the outset. And so I can't say that considerations for an APP scam, in terms of intervention, warnings, and customer protection, apply to the payment made by Mr P.

### **My final decision**

I don't uphold this complaint against Bank of Scotland trading as Halifax.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 2 April 2024.

Ben Murray  
**Ombudsman**