

The complaint

Miss C complains that Bank of Scotland plc trading as Halifax won't refund money she lost when she fell victim to an investment scam. She's also unhappy that the bank is holding her liable for a loan that she didn't apply for, as well as a money transfer from her Halifax credit card which she didn't authorise.

What happened

The full details of this complaint are well known to the parties and have also been set out by the investigator previously.

Briefly, Miss C fell victim to a cryptocurrency investment scam at the start of 2023. She came across an advertisement on a popular social media platform and the company appeared to be endorsed by prominent broadcasters. Miss C registered her interest and, following a discussion with the company's representative, was persuaded to invest. Encouraged by the profits seemingly being made, Miss C requested a withdrawal. The scammer told her that she needed to prove liquidity in order to withdraw her profits. Miss C was instructed to open an account with an electronic money institution (EMI), as well as a cryptocurrency platform. The use of remote access software was also involved.

Between 16 January and 6 February, Miss C made several transactions from her Halifax account in relation to the scam. The funds were moved between Halifax and the EMI, and from the EMI onto the cryptocurrency platform. Two loans were also applied for during this time, one with Halifax and another with a third-party lender, which were paid into Miss C's Halifax account. Money was also transferred from Miss C's Halifax credit card to her current account – a money transfer – before being sent on to the EMI.

Some of the later payments flagged as suspicious and Halifax discussed them with Miss C before processing them. When concerns remained on one of those occasions, and the bank asked her to visit a branch to discuss the payment further, Miss C discovered that she'd fallen victim to a scam. She told Halifax that although she was tricked into sending the earlier payments (between 16 January and 3 February), she had no knowledge of the subsequent ones (6 and 7 February). She also said she wasn't aware of, and didn't consent to, the loans and the money transfer.

Halifax declined to refund Miss C's loss and she raised a complaint which was subsequently referred to our service. One of our investigators considered the matter and ultimately concluded that Halifax hadn't acted unfairly in declining the claim. They were satisfied that Miss C had authorised all the disputed transactions and was aware of the money transfer as well as the Halifax loan. The investigator also noted that Miss C wasn't honest with Halifax when it discussed the first few payments that had flagged as suspicious. So, the bank couldn't reasonably have identified that she had fallen victim to a scam. It wasn't until the final intervention and the subsequent branch visit that led to the scam being uncovered.

Miss C didn't agree with the investigator's findings and asked for an ombudsman's decision. The complaint was passed to me, and I wrote to Miss C informally setting out why I intended agreeing with the investigator's outcome. I said I'd listened to recordings of the calls between

her and Halifax from 6 and 7 February. She confirmed her awareness of the payments – she told the bank that the payments were made without anyone’s assistance. This includes the payment that was funded by the money transfer from her Halifax credit card. In another call, Miss C confirmed her awareness of the Halifax loan – she told the agent that she took it out and confirmed some of the loan details.

I explained that although it’s clear Miss C was tricked into taking the steps that she did (she was coached to lie to the bank if it intervened), it didn’t automatically follow that Halifax should refund her losses or write off the funds borrowed.

Miss C replied and said that she still disagrees with the outcome. She’s said that although she has no recollection of applying for the loan through Halifax, the call recordings do prove that she had knowledge of it. Miss C says she recalls the scammer telling her that the loan was just for an equity check and it wasn’t actually being applied for. She states she received an email from Halifax the following day telling her that the loan had been declined.

In her appeal, Miss C also states that the Halifax should have been on alert right from the first intervention call. For instance, when she said she was on the phone to the EMI, but the EMI doesn’t offer that service. Or, when she said she was making the payment to get a premium account with the EMI.

Miss C is also unhappy with the reassurances Halifax gave her, regarding recovering her money, when she first realised that she’d been scammed. She says this gave her a false sense of hope. Miss C has also explained the impact the scam has had on her mental and physical health ever since.

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’d like to start by thanking Miss C for the detailed information she’s shared with me. It’s given a real insight into the devastating impact this incident has had on her.

Having carefully considered everything, while Miss C has undoubtedly been the victim of a cruel scam, I don’t find there were any failings on Halifax’s part that would lead me to uphold this complaint. I recognise that this will be very disappointing for Miss C, but I’ll explain why I’m not upholding this complaint.

In line with the Payment Services Regulations 2017 (PSRs), the starting position is that Miss C is liable for payments she’s authorised, and Halifax is liable for unauthorised payments. Miss C hasn’t disputed my conclusion that she authorised all the payments made from her Halifax account. But for completeness, based on the available evidence (particularly the intervention calls), I remain satisfied that the payments were authorised. And as the first payment that flagged for additional checks was funded by the money transfer from Miss C’s credit card, I think she would have been aware of the money transfer as well.

In relation to the Halifax loan, Section 83 of the Consumer Credit Act (CCA) 1974 sets out that a person won’t be held liable for a debt if it was taken out by another person who wasn’t acting as their agent. However, our service also considers what’s fair and reasonable in each case. If the evidence shows that, on balance, the person knew that finance had been taken out on their behalf and if they knowingly received and then went on to utilise the funds, it might still be fair and reasonable to hold that person liable for the debt. This includes any interest charged.

I've considered the extent to which Miss C was involved in the loan application. I accept it's possible that she didn't complete the loan application herself, and that it could have been completed by the scammer. It is my understanding that remote access control was granted. During the relevant intervention call, Miss C confirmed the loan amount and the term of the loan. Given her awareness of this information, I'm satisfied she was aware that a loan had been taken out in her name and that she had some form of involvement in the application process.

Miss C says the only explanation she can think of for why she knew the details during the call is that she vaguely recalls the scammer told her it was equity check. The loan wasn't actually being applied for. But the loan had been applied for – Miss C confirmed in the call that she had taken it out. If she thought an application hadn't been made and funds paid in, I question how Miss C thought she funded the subsequent scam payment from her account. And given Miss C also told Halifax that she had made that subsequent payment when it flagged as suspicious, I also find it unlikely that the loan funds were moved out of her account without her involvement in some way.

I can see that Miss C says she received an email from Halifax telling her that her loan application had been declined. I've seen a copy of this email, and it was sent the day after the loan funds were paid into her account. It could be that a further loan application was made, and it was declined. But from the information I've seen, Miss C also received an email from Halifax on the day the loan she's being held liable for was granted. It contained a copy of the personal loan agreement she'd entered into.

So, even though Miss C consented to sending the loan funds as an unwitting victim of a scam, Halifax is fairly entitled to hold her liable for the debt.

I've also considered whether Halifax could have prevented Miss C from making any of the disputed payments. Under regulations and in accordance with general banking terms and conditions, banks should execute an authorised payment instruction without undue delay. But in accordance with the law, regulations and good industry practice, a bank should be on the look-out for and protect its customers against the risk of fraud and scams so far as is reasonably possible. If it fails to act on information which ought reasonably to alert it to potential fraud or financial crime, it *might* be liable for losses incurred by its customer as a result.

In my earlier correspondence to Miss C, I explained that I wouldn't have expected the first six payments to have triggered as suspicious, given the amounts weren't unusually large for the normal account spending. Miss C hasn't specifically disputed this finding, and I remain satisfied that there was no reason for Halifax to have had any cause for concern when these payments were attempted.

Arguably, Halifax ought to have questioned Miss C when she authorised Payment 7. It didn't. But it did on Payments 8 and 9 (the calls from 6 February which I've referred to earlier in the decision). Miss C has told us she was being coached by the scammer on what to say. As reassurances were given that there was nothing untoward happening when it attempted to establish the risk involved after the payments flagged as suspicious, I don't think Halifax could fairly have prevented any of those payments. It did manage to prevent the next payment and that is when the scam was uncovered. But I don't think this means that the bank could have stopped the earlier payments.

Miss C states that the agent she spoke with should have been on alert right from the first intervention call given she said she was on the phone to the EMI. Or, when she said she was making the payment to get a premium account with the EMI. Miss C states Halifax should have been fully aware that the EMI doesn't offer phone banking to its customers. She also questions if there's such a thing as a premium account. I acknowledge Miss C's strength of

feelings on the matter. But I wouldn't fairly expect one payment service provider's employee to be well versed with the offerings of another payment service provider.

Miss C states that the EMI should have stopped all the payments made from her account with it. If it had, then the losses from her Halifax account might have also been prevented. I understand the point that Miss C is making here, but the complaint I'm deciding is against Halifax not the EMI. I've explained why Halifax didn't act unfairly in executing Miss C's payment instructions. In the individual circumstances of what happened here, it wouldn't be fair to hold the bank responsible for the acts or omissions of another payment service provider – the legal chain of causation is broken.

In her submission, Miss C has referred to Halifax's *online guarantee* and questioned why the bank refuses to refund her losses in accordance with it. I thank Miss C for forwarding the email from Halifax which sets out its online guarantee. It does say that the bank promises its online banking customers won't lose out if they become a victim of online fraud. But Miss C was scammed into making the payments, these weren't taken out of her account fraudulently. As such, Halifax's online guarantee for victims of fraud doesn't cover the losses that Miss C suffered when she fell victim to a scam. The bank has also confirmed this position.

Finally, I acknowledge that Miss C has raised concerns about the service she received from Halifax after discovering that she'd been scammed. She states reassurances were given about her losses being refunded. As I wasn't present, I can't know for certain what discussions were had between Miss C and Halifax. I'm mindful that any conversation of this nature is likely to have been based on the information Miss C gave the bank at the time.

I'm sorry that Miss C has been the victim of such a cruel and manipulative scam. But for the reasons given above, I've concluded that Halifax isn't liable for her losses.

My final decision

For the reasons given, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept or reject my decision before 18 March 2025.

Gagandeep Singh
Ombudsman