

## The complaint

Mrs K complains that Bank of Scotland plc trading as Halifax won't refund in full the money she lost when she fell victim to an investment scam.

Mrs K is being represented by a claims management company in this complaint.

## What happened

The full details of this complaint are well known to the parties and have been previously set out by the investigator. So, I'll provide an overview and focus on giving my reasons for my decision.

In March 2022, Mrs K made the following payments in connection with an investment opportunity with "F" which later turned out to be a scam.

	Date	Type	Merchant/Payee	Amount
Payment 1	2 March	Debit card	F	£166.74
Payment 2	2 March	Transfer	Mrs K's account with crypto provider	£3,000.00
Payment 3	3 March	Transfer	Mrs K's account with crypto provider	£2,000.00
Payment 4	4 March	Transfer	Mrs K's account with crypto provider	£5,000.00
Payment 5	7 March	Transfer	Mrs K's account with crypto provider	£10,000.00
Payment 6	14 March	Transfer	Mrs K's account with crypto provider	£7,000.00
Payment 7	15 March	Transfer	Mrs K's account with crypto provider	£2,400.00
Payment 8	17 March	Transfer	Mrs K's account with crypto provider	£4,000.00
Payment 9	25 March	Transfer	Mrs K's account with crypto provider	£2,000.00
Payment 10	30 March	Transfer	Mrs K's account with crypto provider	£7,150.00
			<b>Total loss</b>	<b>£42,716.74</b>

Halifax refunded 50% of the last five payments along with interest. It said Payment 6 triggered as suspicious on its systems and it could have carried out a better intervention at the time which likely would have uncovered the scam. But the bank also believed that Mrs K should share responsibility for what happened. It also paid £30 compensation in recognition of the poor customer service Mrs K received due to its poor intervention.

Unhappy with this, Mrs K referred the complaint to our service. Our investigator concluded that Halifax ought to have intervened earlier than it did – when Mrs K made Payment 5. They were satisfied that a suitable intervention one payment earlier would have also uncovered the scam. The investigator agreed with Halifax that a 50% deduction for contributory negligence was warranted in this instance. So, they recommended the bank to pay an additional refund of 50% of Payment 5 (along with interest). The investigator also thought the compensation paid was fair.

Mrs K didn't agree that a deduction should be made from the loss Halifax had already refunded and had been asked to refund following the investigator's assessment.

The complaint came to me for a decision. After reviewing the file, I contacted Halifax informally and explained why I thought it was liable from Payment 1. I said that the FCA had published a scam warning about F more than a month prior to Mrs K's debit card transaction to it on 2 March 2022. And so, I expected that transaction to have triggered as suspicious on Halifax's fraud detection systems. Had the bank intervened then, on balance I was satisfied that the scam would have been uncovered and losses prevented.

Halifax agreed with my provisional findings and said it was willing to refund 50% of Payments 1-5 along with interest.

I then contacted Mrs K's representative informally. I said that bank had agreed to provide a refund from the first payment. I also explained why I agreed with the bank and our investigator that it was fair to make a deduction of 50% for Mrs K's role in what happened.

Mrs K's representative has asked if I can issue a formal decision as, despite several attempts, it has been unable to contact Mrs K.

### **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.

Halifax has already accepted that it should have intervened when Mrs K made Payment 1. It also accepts that had it done so the scam would likely have uncovered, and Mrs K's loss prevented. What's left for me to decide is whether it's fair for the bank to make a deduction for contributory negligence when refunding Mrs K's loss.

I've carefully considered the appeal that has been put forward on this point. But I'm not persuaded to reach a different conclusion to the investigator (and the bank). I'll explain why.

I don't discount what Mrs K has told us about her circumstances in the year leading up to the scam. Clearly, this has been a difficult period for her and her family. While I appreciate that this might have impacted her decision-making ability, I don't think it would be fair or reasonable for me to hold Halifax fully liable for what happened.

It is my understanding that this wasn't the first time Mrs K had dealings in cryptocurrency. While I'm not suggesting that prior investment experience means an investor ought to know they should check the FCA's website for scam warnings, I don't think it's unreasonable to expect basic due diligence to be carried out. For example, independent research on the internet for obvious warning signs or publicly available adverse information.

In this instance, an online search on F would have resulted in Mrs K coming across the scam warning the FCA had published at the start of 2022. I simply can't ignore the fact that she didn't carry out any research before parting with her funds. This isn't a case of time pressure being applied, say to move funds to keep them safe. Mrs K's payments were spread across an entire month.

Mrs K's representative has shared some past published decisions to support its view that Mrs K shouldn't be assigned contributory negligence due to her vulnerability. As the investigator explained, and I agree, we consider each case on its merits. More generally, I would add that the decisions that have been shared go back several years, beyond Mrs K's payments. Along with fraud, the public's awareness of it has also evolved over time.

Finally, the provisions of the Lending Standards Board's Contingency Reimbursement Model Code (where, in some situations, a customer may be entitled to a full reimbursement if they

are considered vulnerable) don't apply to Mrs K's case. This is because that code doesn't apply to debit card payments or payments going to an account in the customer's name. So, I can't say that Mrs K should be refunded in full for that reason either.

### **Putting things right**

Halifax has already refunded 50% of Payments 6-10. The bank now needs to refund 50% of Payments 1-5, adding simple interest at 8% per year from the date of those payments to the date of settlement.

### **My final decision**

For the reasons given, my final decision is that I uphold this complaint. Bank of Scotland plc trading as Halifax needs to put things right for Mrs K as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K to accept or reject my decision before 30 December 2024.

Gagandeep Singh  
**Ombudsman**