

## The complaint

Mr S complains that Bank of Scotland plc trading as Halifax (Halifax) won't refund money he lost in an investment scam.

## What happened

### *What Mr S says:*

Mr S was looking online for investment opportunities and was contacted via social media by someone purporting to be an investment manager working for an investment firm (which I will call firm 'A'). He didn't have any previous crypto trading experience. He was promised high returns.

The investment manager encouraged him to send money to a cryptocurrency exchange in Mr S' name, and from there Mr S purchased cryptocurrency and sent it to firm A.

Mr S says he checked firm A online and with the Financial Conduct Authority (FCA)'s website and nothing came to light or caused any concerns. It was only later, in January 2023 – that the FCA published a warning regarding firm A.

Mr S borrowed £25,000 from Halifax on 19 September 2022 – said to be for home improvements.

Mr S made the following payments (and received some credits):

Date	Payment	Amount
16 August 2022	Faster payment to crypto wallet	£1,000
17 August 2022	Faster payment to crypto wallet	£1,000
23 August 2022	Faster payment to crypto wallet	£500
23 August 2022	Faster payment to crypto wallet	£8,000
24 August 2022	Faster payment to crypto wallet	£500
25 August 2022	Faster payment to crypto wallet	£650
26 August 2022	Faster payment to crypto wallet	£1,900
30 August 2022	Faster payment to crypto wallet	£2,000
31 August 2022	Faster payment to crypto wallet	£1,300
20 September 2022	Faster payment to crypto wallet	£5,000

20 September 2022	<i>Declined Faster payment to crypto wallet</i>	£12,400*
20 September 2022	Money in from crypto exchange	(£57)
18 October 2022	Money in from crypto exchange	(£1,094)
20 October 2022	Faster payment to crypto wallet	£50
20 October 2022	Faster payment to crypto wallet	£500
20 October 2022	Faster payment to crypto wallet	£550
22 October 2022	Faster payment to crypto wallet	£1,000
22 October 2022	Faster payment to crypto wallet	£1,000
22 October 2022	Faster payment to crypto wallet	£1,000
22 October 2022	Faster payment to crypto wallet	£1,000
22 October 2022	Money in from crypto exchange	(£1,000)
22 October 2022	Faster payment to crypto wallet	£1,000
22 October 2022	Money in from crypto exchange	(£1,000)
22 October 2022	Faster payment to crypto wallet	£1,000
22 October 2022	Money in from crypto exchange	(£1,000)
24 October 2022	Faster payment to crypto wallet	£350
26 October 2022	Faster payment to crypto wallet	£8,000
31 October 2022	Money in from crypto exchange	(£162)
31 October 2022	Faster payment to crypto wallet	£13,670
31 October 2022	Faster payment to crypto wallet	£15,000
1 December 2022	Money in from crypto exchange	(92.90)
<b>Total net loss</b>		<b>£61,564</b>

The scam came to light when Mr S asked to make a withdrawal, and he was told he had to pay more to do that. He then realised he'd been scammed. The investment firm's website was fake.

Mr S says he didn't get any warnings from Halifax at all. The payments were unusual compared to his normal banking history. He made payments to a crypto wallet – which was unusual. And the frequency and value of payments should've caused Halifax to intervene. He did get some warnings, but these were sent after most of the payments had been made.

As a result, Mr S says he's lost £87,900 which Halifax should've prevented.

He says Halifax should refund the money.

*What Halifax said:*

Halifax said the payments weren't unusual for Mr S compared to the way he used his account. The bank stopped a payment on 20 September 2022 to question it. Mr S told the bank it was for a payment to a builder. The bank questioned why he would pay a builder in cryptocurrency, but Mr S said that was how the builder had asked to be paid. Halifax weren't happy with the explanation and asked Mr S to go back to the builder and ask to pay by a different method.

The Contingent Reimbursement Mode (CRM) code didn't apply – as the payments were to Mr S' account in his own name.

Halifax said that if Mr S had been truthful about the payment on 20 September 2022, they may have been able to protect him and the outcome may have been different.

Halifax declined to refund any money.

*Our investigation so far:*

Mr S brought his complaint to us. Our investigator didn't uphold it. She said the payments were not unusual for Mr S compared to his normal account usage. She could see he had made similar large payments in the past – for example: payments for £25,000, £4,000, £18,000, £13,840, £12,399 and other payments for around £4,500 had also been made.

She listened to the call on 20 September 2022 and considered the bank had given Mr S a warning about what he was doing – as it didn't make sense to pay a builder in cryptocurrency. If Mr S had said the payment was for an investment in cryptocurrency, the bank could've done more to protect him.

Mr S didn't agree. He said (through his representatives) that the call showed Halifax should've intervened – given that he was making payments to a builder in crypto currency – Halifax should've probed that more closely and that may have revealed what Mr S was doing. Mr S asked that an ombudsman looks at his complaint, and so it has come to me to make 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 that Mr S has lost money in a cruel scam. It's not in question that he authorised and consented to the payments in this case. So although Mr S didn't intend for the money to go to a scammer, he is presumed to be liable for the loss in the first instance.

So, in broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. And I have taken that into account when deciding what is fair and reasonable in this case.

But that is not the end of the story. Taking into account the law, regulators rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider Halifax should fairly and reasonably:

- Have been monitoring accounts and any payments made or received to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams.
- Have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer.
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or make additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

I need to decide whether Halifax acted fairly and reasonably in its dealings with Mr S when he made the payments, or whether it should have done more than it did. I have considered the position carefully.

The Lending Standards Board Contingent Reimbursement Model Code (CRM Code) provides for refunds in certain circumstances when a scam takes place. But – it doesn't apply in this case. That is because it applies to faster payments made to another UK beneficiary – and in this case, the payments were made to Mr S's own account – his crypto wallet.

I looked at Mr S' account history with Halifax. And I don't think the payments were unusual for him. For example, he made other large payments such as:

July 2022: £4,805; £12,399.

May 2022: £1,150; £2,200.

February 2022: £13,840.

December 2021: £18,000.

September 2021: £4,000; £1,313, £25,000.

July 2021: £4,757.

So – the payments to his crypto wallet weren't unusual. And because of that, I don't think it's reasonable to expect Halifax to have intervened.

And, I also have to bear in mind that there's a balance to be made; Halifax has certain duties to be alert to fraud and scams and to act in their customers' best interests, but they can't be involved in every transaction as this would cause unnecessary disruption to legitimate payments. Therefore, in this case, I think Halifax acted reasonably in processing the payments – I don't think that I could reasonably say that Halifax should have stopped the payment for further checks.

I listened to the call between Halifax and Mr S on 20 September 2022. Mr S told Halifax's call handler he was wanting to make a payment of £12,400 to his builder, and the builder wanted paying in cryptocurrency. Mr S then said he wanted to pay £1,240 and had made a mistake. The call handler could also see that Mr S had made a similar payment for £5,000 to his crypto wallet earlier that day – and Mr S said this was also for building work.

The call handler said Mr S should be concerned about this and to check it out – with a view to paying the builder in the normal way. Mr S said he would go away and check it with the

builder, and the payment was cancelled. The call handler also gave Mr S warnings about cryptocurrency – he said it wasn't regulated and there was a possibility of money being lost.

I asked Mr S (via his representatives) how the payments to his builder were made, and he said the builder was paid in cash. So – I'm satisfied that confirms he wasn't truthful on the call with Halifax.

If Mr S had been upfront about the purpose of the payment, then we would've expected Halifax to have probed further and then the scam may have been uncovered. But I consider he was evasive on the call, and where that happens, we can't reasonably expect Halifax to have done anymore.

After that point, Mr S made a series of fairly low value payments to firm A – which we wouldn't expect Halifax to prevent. And then, on and after 26 October 2022, Mr S made three further large payments – but they weren't unusual either compared to his normal spending patterns; and by that time, the payees were known and established as far as Halifax were concerned.

We expect firms to quickly attempt to recover funds from recipient banks when a scam takes place. I looked at whether Halifax took the necessary steps in contacting the bank that received the funds – in an effort to recover the money. I haven't seen evidence the bank did so.

But - given that the scam took place in the period up to December 2022, and Mr S complained to Halifax in August 2023 – there wasn't any point in trying to get any money back – as normally in such scams, funds are removed by the scammers immediately.

I'm sorry Mr S has had to contact us in these circumstances. I accept he's been the victim of a cruel scam, but I can't reasonably hold Halifax responsible for his loss.

### **My final decision**

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 27 June 2024.

Martin Lord  
**Ombudsman**