

The complaint

Mr and Mrs P are unhappy with Bank of Scotland plc trading as Halifax ("Halifax") after Mr P fell victim to an investment scam.

Although this is a joint account, it was principally Mr P who fell victim to the scam, so I have mainly referred to him throughout this decision.

What happened

In July 2023 Mr P came across a cryptocurrency investment opportunity with a company I will refer to as T. T had an App which Mr P understood would automatically carry out quantitative trading on the block chain network of digital currencies assets and was allegedly driven by Artificial Intelligence (AI). Mr P told us that T promised a return of 2.5% on each trade. Mr P understood that T was founded in 2013 and had been trading in the UK since December 2022.

Between 15 July 2023 and 3 December 2023 Mr P transferred multiple payments to several different cryptocurrency wallets in his own name. From there he sent the cryptocurrency on to accounts with T. He also received and sent on money from other individuals. Mr P explained that these sums went into wallets/accounts with T in those individuals' own names.

Halifax intervened on a number of occasions and following a call on 22 November 2023, it cancelled the attempted payment and told Mr P he would need to make future payments from a different bank. However, Mr P called Halifax on 24 November 2023 and asked for the block to be removed. Following the block being removed, Mr P made a few more payments. But around December 2023 Mr P discovered he couldn't withdraw his funds and T (its staff, App and website) disappeared along with investors' money. It was at this point Mr P discovered he'd been involved in a Ponzi scheme.

The bank declined to refund the full loss of the scam but agreed to refund the loss of the payments made from 24 November 2023, totalling £430 along with 8% interest and £40 for the distress and inconvenience caused. This was because it removed a block when it had said it would not process any more payments to cryptocurrency.

Our investigator did not uphold the complaint. She didn't think Mr and Mrs P had suffered a loss. She also found that the bank intervened to discuss the payments and Mr P was provided with education around cryptocurrency scams but still wanted to proceed. Mr and Mrs P did not accept the investigator's conclusions, so the complaint has been passed to me for a 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.

There is no dispute that Mr P has been the victim of a scam and I am deeply sorry for that. But it doesn't automatically follow that Halifax is liable for all or some of a loss, just because a customer has been the victim of a scam. When I consider cases like this – I am looking at whether the bank – who was not party to the scam itself – should have done more and whether it could have prevented the payments from being made and any subsequent losses.

I have carefully noted the representations made by Mr and Mrs P, but I won't be addressing every single point that's been raised. It doesn't follow that the points haven't been considered, simply that I don't need to particularise every point in reaching an outcome I consider to be fair and reasonable in all the circumstances. I've instead concentrated on the issues I think are central to the outcome of this complaint.

In deciding what's fair and reasonable, I am required to take into account relevant law and regulations, regulators' rules, guidance and standards, and codes of practice; and, where appropriate, I must also take into account what I consider to have been good industry practice at the time.

Where I can't know for certain what has or would have happened, I need to weigh up the evidence available and make my decision on the balance of probabilities – in other words what I think is more likely than not to have happened in the circumstances.

Mr P says that he lost in excess of £50,000. Looking at Mr and Mrs P's bank statements, I have noted that the transactions to the various cryptocurrency exchanges amount to over £78,000. The money was moved to cryptocurrency wallets in his own name and from there onto the scammer. However, having reviewed Mr and Mrs P's bank statements (including statements from his other bank account) I can see that when he was making these payments, he received credits into his accounts from multiple named individual payers as well as returns from his own cryptocurrency wallets. These sums are in excess of the money he sent onto the various cryptocurrency exchanges. I can see he did pay some returns to at least one of those individuals. But overall, whilst I acknowledge there is a loss - I can't fairly say this is Mr P's own loss - as it is other people's money that he sent to the scammer.

Ordinarily, where losses to a scam have come from a different original source, we would ask those individuals to join the complaint so they could be made aware of any redress. The investigator requested further details from Mr P during a call on 17 May 2024 about the original course of the funds, but Mr P declined to provide any further detail. However, for reasons I will explain below I don't think this will be necessary in this case, as after careful consideration, I am not making any award in this case. This is because (for reasons I will come on to) I don't think Halifax could have prevented Mr and Mrs P's loss.

In broad terms, the starting position in law is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. However, where the customer made the payment as a consequence of the actions of a fraudster, it may sometimes be fair and reasonable for the bank to reimburse the customer even though they authorised the payment.

Taking into account relevant law, regulators rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider it fair and reasonable that Halifax should:

- have been monitoring accounts and any payments made or received to counter various risks, including 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 firms are generally more familiar with than the average customer;
- in some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, or provided additional warnings, before processing a payment;
- have been mindful of – among other things – common scam scenarios, how the fraudulent practices are evolving (including for example the common use of multi-stage fraud by scammers, including the use of payments to cryptocurrency accounts as a step to defraud consumers) and the different risks these can present to consumers, when deciding whether to intervene.

And from 31 July 2023, it should also have acted to avoid causing foreseeable harm to customers, for example by maintaining adequate systems to detect and prevent scams and by ensuring all aspects of its products, including the contractual terms, enabled it to do so.

Buying cryptocurrency is a legitimate activity and from the evidence I've seen, the payments were made to genuine cryptocurrency exchange companies. That said, Halifax ought to fairly and reasonably be alert to fraud and scams and these payments were part of a wider scam, so I need to consider whether it ought to have intervened to warn Mr and Mrs P when they made the payments.

I am aware that scams involving cryptocurrency have become increasingly prevalent and well known to banks. But I think it was reasonable for Halifax to take into account a range of factors when deciding whether to intervene or provide a warning. I am mindful that banks can't reasonably be involved in every transaction. There is a balance to be struck between identifying payments that could potentially be fraudulent and minimising disruption to legitimate payments.

Halifax did in fact intervene on a number of occasions and spoke to Mr P about cryptocurrency scams. I've listened to those conversations. Even if I did conclude that Halifax could have done more here, it isn't enough that Halifax failed to act unfairly or unreasonably. Its acts or omissions must be the immediate and effective cause of losses that were reasonably foreseeable at the time of any breach.

It's clear from these calls that Mr P fell for a sophisticated investment scam. He was in receipt of returns (which I can see entering his bank account) and told the call handler about the returns he was getting. Mr P was so convinced this was a genuine investment he even asked staff if they would be interested in investing too. On 22 November 2023 when Halifax cancelled the transaction Mr P was trying to make it told Mr P he would need to use his other bank account for such transactions going forward. Mr P was clearly very unhappy about Halifax's decision to the extent that he suggested he would be raising a complaint about its actions. Mr P called back two days later and asked for the block to be removed and continued to make payments.

I am therefore not persuaded that any further intervention from Halifax would have made a difference to Mr P's decision making to proceed with the payments.

I realise my decision will be a significant disappointment to Mr and Mrs P and I am sorry Mr and Mrs P have fallen victim to a scam and lost money on behalf of others, but I don't think it was caused by a failing on Halifax's part.

Halifax has already made an offer to pay totalling £430 along with 8% interest and £40 for the distress and inconvenience caused to settle the complaint. I understand that offer is still open to Mr and Mrs P. They should contact Halifax directly if they now wish to accept this.

My final decision

My final decision is that I do not uphold this complaint and I don't think Bank of Scotland plc trading as Halifax needs to do anything to settle the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P and Mrs P to accept or reject my decision before 1 January 2025.

Kathryn Milne
Ombudsman