

## The complaint

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

Ms K is being represented by solicitors in this complaint

## What happened

Ms K met an individual "L" on an online dating site in August 2020. She exchanged messages with them through an instant messaging service and subsequently learnt that they traded in digital currencies. Ms K was interested in that area and so was persuaded by L in trading starting with a small amount. Under their guidance, Ms K opened an account with the same trading platform L said they used. She also set up accounts with cryptocurrency exchanges.

After seeing her initial deposit make good returns, Ms K agreed to be guided by L in investing higher amounts. The following transactions were made by Ms K using her Halifax debit card in connection with this investment opportunity –

	Date	Merchant	Amount
1	21 August 2020	Simplex_Paybis	£100
2	29 August 2020	Simplex-Hfinance	£9,000 ( <i>initially blocked by Halifax</i> )
3	30 August 2020	Simplex-Hfinance	£2,500
4	5 September 2020	Simplex-Hfinance	£9,000
5	6 September 2020	Simplex-Hfinance	£200
6	6 September 2020	Simplex-Hfinance	£3,800
7	24 September 2020	www.binance.com	£4,500
8	24 September 2020	Simplex-Hfinance	£9,000
9	25 September 2020	www.binance.com	£4,200
10	25 September 2020	www.binance.com	£5,000
11	25 September 2020	www.binance.com	£5,000
12	25 September 2020	www.binance.com	£5,000
13	25 September 2020	www.binance.com	£5,000
14	26 September 2020	www.binance.com	£5,000
		<b>Total loss</b>	<b>£67,300</b>

I understand Ms K also used her Halifax credit card on at least one occasion. But only the transactions listed above have been complained about and so I've proceeded accordingly. The second transaction was initially blocked by Halifax, and the bank sent Ms K a text asking her to confirm the transaction was genuine which she did. Ms K eventually called up the bank when the transaction still didn't go through. The agent she spoke to informed her they had removed the block from a different system, and this allowed the transaction to go through.

On or around 14 September 2020, Ms K took out a further advance of £50,000 on her Halifax mortgage. When asked about the purpose for additional borrowing, Ms K told the bank she was paying majority of the amount to help her parents pay a local contractor. The remainder of the borrowing was to buy furniture. Her application for further advance was accepted and the amount was paid into Ms K's account with another bank, which she transferred to her Halifax account on 23 September. The disputed transactions made following that credit were funded by it.

In early October 2020, Ms K realised something had gone wrong when she couldn't access the trading website and L stopped responding to her. She reported the scam to Halifax, but it said it was unable to present a chargeback as the merchants she had made the payments to had provided the service (i.e., converting her funds into cryptocurrency).

In November 2022, Ms K complained to Halifax through her representative. The bank refused to refund her loss and the complaint was then referred to our service. One of our investigators looked into the matter and concluded that Halifax didn't make sufficient enquiries when the second payment flagged on its systems. Had it done so, the investigator was satisfied that Ms K would have explained the true purpose of the payment leading to the scam being uncovered.

The investigator concluded that Ms K should share equal responsibility for what happened in relation to transactions two through six, given she didn't carry out any research before deciding to invest. But as she'd lied about the reason for taking out the further advance, the investigator thought Ms K should bear full responsibility from transaction seven onwards. So, they recommended Halifax to refund 50% of transactions two through six (both inclusive) along with 8% simple interest.

Halifax accepted the investigator's recommendations, but Ms K's representatives didn't. In summary, they believe Ms K would not have been sucked into taking out an advance on her mortgage had Halifax asked appropriate questions when it blocked the second payment. The representatives state that the intervention was so ineffective that even a 50% reduction feels inappropriate, but to not continue that reduction all the way through to the final payment is unfair.

I issued a provisional decision last month and said I intended upholding the complaint, but the redress I planned on awarding was different to what the investigator had recommended. I gave both parties an opportunity to provide further comments for my consideration. We've now heard back from Halifax and Ms K's representative, and they both accept my provisional findings. So, what follows if my provisional decision made final.

### **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 reassuring both parties that although I've only summarised the background and main arguments, so not everything that happened is mentioned, I've read and considered everything that's been provided in its entirety.

Under the Payment Services Regulations 2017 (PSR) and in accordance with general banking terms and conditions, banks should execute an authorised payment instruction without undue delay. The starting position is that liability for an authorised payment rests with the payer, even where they are duped into making that payment. There's no dispute that Ms K made the payments using her security credentials, and so they are considered authorised.

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 a prudent banker to potential fraud or financial crime, it might be liable for losses incurred by its customer as a result.

Like the investigator, I don't consider the first disputed transaction of £100 to be unusual such that I would expect Halifax to have asked Ms K further questions. It seems that Ms K's representative also agree on this point. The second transaction, however, wasn't in keeping with the normal account spending. And we know it flagged on the bank's system and it blocked it. Halifax asked Ms K to confirm whether it was indeed her making the payment.

But I don't consider checking if the transaction was authorised by the genuine customer went far enough in the circumstances of this case. The amount Ms K had authorised was significantly higher than her usual debit card spending. I consider a proportionate intervention in this case would have been to make enquiries about the payment purpose to satisfy itself that everything was above board. After all, the transaction had been picked up as potentially fraudulent.

Here, Ms K even phoned Halifax to discuss the block after replying to its text message. So, a natural opportunity to ask further questions was missed. Had the bank done so, I've no reason to believe Ms K wouldn't have been honest at the time about what she was doing. I've read the chat messages between her and L and it's clear that it was still early days in her getting to know them. While she told L her bank had stopped the payment, there's no indication that they coached or told her to lie. By that point, Ms K hadn't parted with huge sums of money and hadn't seen significant returns on her investment.

On balance, I'm persuaded that probing questions from her trusted bank – the purpose of the payment, how she'd come to know about the opportunity, what independent checks she'd carried out etc. – would have given cause for concern given the presence of typical hallmark of scams involving investments. I also think it's more likely than not that Ms K would have responded positively to a scam warning and not proceeded with that payment.

Judging from Halifax's acceptance of the investigator's assessment, the bank accepts it could have done more – and that an intervention would likely have limited Ms K's loss. What's left for me to consider next – and this is what Ms K's representative dispute – is whether it would be fair to make a deduction for contributory negligence. And if so, what that should look like.

Having reviewed the chat correspondence between her and L, it doesn't appear that Ms K carried out any independent due diligence on the legitimacy of the platform recommended to her, despite raising some concerns with L. For instance, at the time of registering for the trading platform, she questioned why she couldn't access the trading platform's terms and conditions. And, on 20 August 2020, Ms K said to L that there was still a chance of losing her money like any other investment. L said she wouldn't with their plan. Also, on 24 August 2020, Ms K said to L that she found it 'very surprising' that she could make £300 on a £2,000 trade in one or two nights. And L replied that they could guarantee she would make money. I don't find these answers particularly reassuring.

While it's unclear what information Ms K would have likely seen about the platform and other companies involved had she carried out independent research before going ahead with the transactions – the platform for the trading website no longer works and there's virtually no information available online about the company involved – I consider it reasonable to have carried out independent research into cryptocurrency investments in general. The guarantee

of not losing money and the return rate offered was simply too good to be true. Had Ms K done so, she would have realised that the answers L had given her weren't true. So, I think Ms K should share some of the blame for what happened. I consider a 50% deduction to be fair in the circumstances.

The investigator's view was that Ms K should be held fully responsible for the transactions she made using the funds borrowed through an advance on her mortgage (i.e., from payment seven onwards). It's not in dispute that Ms K lied about the reason for taking out the borrowing, knowing full well that lenders don't lend for investment purposes. In fact, she told L precisely that while weighing up her options. But I'm not convinced that that warrants a 100% deduction.

Where someone shows disregard for scam warnings and goes ahead with a payment that later turns out to be scam-related, it might be fair and reasonable to hold them fully responsible for what happened in relation to that payment. But that is not what happened here. Ms K lied about the reason for borrowing because she knew she wouldn't get the money to invest. She believed this was a genuine opportunity. That is different to someone lying to obtain (and later transfer) the funds despite knowing or highly suspecting that they're being scammed. So, while Ms K chose to obtain the funds by being dishonest about the loan purpose, I don't consider the deduction for contributory negligence for those transactions should be higher than the earlier ones.

### **Putting things right**

To put things right for Ms K under the circumstances of what happened here, Bank of Scotland plc trading as Halifax needs to –

- Refund all the disputed transactions from and including the second transaction, making a 50% deduction for contributory negligence; and
- Add simple interest at 8% per year to the individual refunded amount, calculated from the date of loss to the date of refund.

### **My final decision**

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms K to accept or reject my decision before 5 July 2024.

Gagandeep Singh  
**Ombudsman**