

## The complaint

Mr B complains about Bank of Scotland plc (trading as Halifax).

Mr B says that Halifax didn't do enough to protect him when he became the victim of a scam and would like Halifax to refund him the money he has lost as a result.

## What happened

Mr B met an individual on the dating app 'Tinder'. This person presented themselves as an authorised trader and cryptocurrency expert.

After speaking for a short while, Mr B was persuaded to invest in crypto, and made the following payments.

Date	Payee	Payment type	Amount
11/04/2023	Crypto.com	Card	£205.98
14/04/2023	Crypto.com	Card	£2,059.80
19/04/2023	Crypto.com	Card	£2,059.80
20/04/2023	Crypto.com	Card	£2,059.80
28/04/2023	Crypto.com	Card	£2,059.80
07/05/2023	Crypto.com	Card	£1,029.90
05/06/2023	Crypto.com	Card	£4,325.58
		<b>Total loss</b>	<b>£13,800.66</b>

Unfortunately, Mr B had fallen victim to a scam. He complained to Halifax, but it didn't uphold his complaint. Unhappy, he brought his complaint to this Service.

Our Investigator looked into things but didn't think that Mr B's complaint should be upheld either.

Mr B asked for an Ombudsman to make a decision, so the complaint was passed to me.

I have previously issued a provisional decision on the case, where I explained that I intended to uphold the complaint in part.

Both parties responded and accepted my provisional decision, so now I will issue my final decision which is unchanged.

## **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.

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Having done so, I've decided to uphold Mr B's complaint in part. I'll explain why.

It isn't in dispute here that Mr B has been the victim of a scam and has lost money as a result. However, even when it is clear that a scam has taken place, and an individual has been tricked out of their money, it doesn't necessarily follow that a business will need to refund the money that has been lost.

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider having been good industry practice at the time.

In broad terms, the starting position at law is that banks and other payment service providers (PSP's) are expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations (PSRs) and the terms and conditions of the customer's account.

Mr B authorised the payments in question here – so even though he was tricked into doing so and didn't intend for his money to end up in the hands of a scammer, he is presumed liable in the first instance.

But this isn't the end of the story. As a matter of good industry practice, Halifax should also have taken proactive steps to identify and help prevent transactions – particularly unusual or uncharacteristic transactions – that could involve fraud or be the result of a scam. However, there is a balance to be struck: banks had (and have) obligations to be alert to fraud and scams and to act in their customers' best interests, but they can't reasonably be involved in every transaction

Taking into account the above, 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 made 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.

In this case, I need to decide whether Halifax acted fairly and reasonably in its dealings with Mr B when he authorised payments from his account or whether it could and should have done more before processing the payments.

Having considered the payments in question, I think that Halifax should have got in touch with Mr B when he made the fourth payment as shown above. I say this because a pattern was emerging that should have alerted Halifax that Mr B may have been at risk of financial harm – the payments were going to a crypto platform, and had increased in frequency and amount, and by the time Mr B made the fourth payment, he had paid over £4,000 in 24 hours which was unusual for the way Mr B usually operated his account.

While I recognise that not all payments to crypto are made as part of a scam – such payments do carry an elevated risk, which Halifax should have been aware of at the time Mr B was making the payments. With this in mind, I think that Halifax should have provided him with an effective written warning, setting out the main features of crypto investment scams, but it didn't do so.

Had Halifax done this, I don't think that Mr B would have ignored such a warning from his trusted bank – and I think it's likely he wouldn't have continued to make the payments.

So, I think that Halifax missed an opportunity to prevent the loss from this point.

The only thing left for me to consider is if Mr B should bear some responsibility for the loss – and having thought about this carefully, I think responsibility should be shared between Mr B and Halifax.

I say this because Mr B doesn't appear to have taken enough care as he should have done before parting with his money. He agreed to send money to a crypto exchange and then on to another wallet with someone he had only began speaking with about a week before he began making payments and had never met in person, on the promise of substantial returns that were too good to be true, and he doesn't appear to have made any checks into the legitimacy of what he was doing.

### **Putting things right**

Bank of Scotland plc (trading as Halifax) should refund Mr B 50% of the payments from and including payment four.

I calculate this to be £4,737.55.

On top of this, Bank of Scotland plc (trading as Halifax) should pay Mr B 8% simple interest from the dates of the payments until settlement (less any lawfully deductible tax).

### **My final decision**

I uphold this complaint in part.

Bank of Scotland plc (trading as Halifax) should put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 16 August 2024.

Claire Pugh  
**Ombudsman**