

The complaint

Miss F complains that Bank of Scotland Bank plc trading as Halifax won't refund the money she lost when she fell victim to a scam.

What happened

The background to this complaint is well known to both parties, so I won't repeat it in detail here. But in summary and based on the submissions of both parties, I understand it to be as follows:

Miss F has said that she fell victim to a sophisticated cryptocurrency trading scam. She says she heard about the 'investment opportunity' through a meeting with one of her company's clients. The client mentioned that she had been investing in a trading company which I will refer to as "S". This intrigued Miss F, so she carried out some research into the company. After her initial deposit, the account manager helped Miss F set up a cryptocurrency wallet to make further deposits. Miss F says her investment seemed to be performing well, so she invested a further £20,000. Miss F says she was pressured to take out a business loan and the account manager also applied pressure by saying share prices would increase.

Due to the fact Miss F felt her investments were performing well she continued to invest. In April 2023, she expressed that she wanted to withdraw some money from the platform. At this point, the account manager 'went on holiday' and never returned. As such, Miss F was assigned a new account manager who began pressurising her further, it was at this stage she became uncomfortable. She asked to make some withdrawals and was able to do so. When she attempted to make larger withdrawals, she was told her business partner's account (who was also investing in the platform) would be liquidated. When Miss F questioned this the account manager stopped responding, so she realised she had been a victim of a scam. The transactions were as followed:

Date	Payment	Type of payment	Amount
26/10/22	Payment 1	Debit card	£5,000
9/11/22	Payment 2	Faster payment	£10,000
9/11/22	Payment 3	Returned	(£10,000)
10/11/22	Payment 4	Faster Payment	£10,000
10/11/22	Payment 5	Returned	(£10,000)
11/11/22	Payment 6	Open banking	£20,000
18/11/22	Payment 7	Open banking	£20,000
17/01/23	Payment 8	Open banking	£17,300
18/01/23	Payment 9	Open banking	£17,300
17/02/23	Payment 10	Open banking	£15,000
20/02/23	Payment 11	Open banking	£15,000
20/03/23	Payment 12	Open banking	£20,000
3/04/23	Payment 13	Credit	(£958)
14/04/23	Payment 14	Open banking	£25,000
24/04/23	Payment 15	Credit	(£1,079.07)
15/05/23	Payment 16	Credit	(£5,304.14)

		Total	£147,258.79
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Miss F complained to Halifax who issued a final response stating they didn't uphold the complaint. It said, it did intervene on some payments when it felt there was unusual activity on the account. It said it provided investment scam education and explained the FCA has publicly stated that investing in crypto assets, generally does involve high risks and if consumers do invest in these types of products, they should be prepared to lose their money. As such, Halifax didn't agree it failed to intervene.

Miss F remained unhappy with Halifax's response and brought the complaint to our service. Our investigator didn't agree that the complaint should be upheld. Miss F remained unhappy and asked for the complaint to be passed to me.

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.

Having done so, I've come to the same outcome as the investigator, for largely the same reasons. I'll explain why.

I'm very aware that I've summarised this complaint briefly, in less detail than has been provided, and in my own words. No discourtesy is intended by this. Instead, I've focussed on what I think is the heart of the matter here. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual point or argument to be able to reach what I think is the right outcome. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts.

In broad terms, the starting position in 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.

I'm satisfied that although Miss F didn't intend for her money to go to a fraudster, she did authorise the payments. I understand she wouldn't have authorised the payments if she had known this was a scam, but Halifax is expected to process payments that a customer authorises or instructs it to make, and that is what it did. The Payment Services Regulations (PSRs), state that payments are authorised if the payer consented to them and, in this case, I'm satisfied Miss F consented to the payments. However, where the customer has been the victim of a scam, it may sometimes be fair and reasonable for the bank to reimburse them even though they authorised the payments.

Taking into account the law, regulatory rules and guidance, relevant codes of practice and what I consider having 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 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.

- Have had systems in place to look out for unusual transactions or other signs that might indicate its customers were at risk of fraud (amongst 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.

Our service has referenced the relevant rules, codes of practice and good industry practice at the time, in many previous decisions published on our website.

Having considered the size of the payments, where they were going to and what Halifax would've reasonably known of them at the time, and comparing Miss F's previous expenditure on her account, I'm satisfied that the first payment Halifax should've intervened on, or had been concerned about, was payment six. I say this because it was a big increase in value compared to previous payments and identifiably going to a crypto exchange. I accept that some of the payments prior to this could be argued as out of character from Miss F's previous expenditure, but as I will come on to, Halifax did intervene on the payments prior to payment six. So, given the size of the payment, the date of the payment and where it was going to, in my view, there was enough about the characteristics of transaction six and the activity on the account that ought to have been concerning such that Halifax should have intervened.

However, I have listened to several calls between Miss F and Halifax, which occurred prior to Miss F transferring the £20,000 payment on 11 November 2022. On 9 November 2022, when Miss F attempted to transfer £10,000 it was blocked. So, she contacted Halifax to get the payment unblocked. Miss F was asked a series of questions, who was she transferring to, the purpose of the transfer, what was the platform, how did she come across the platform, how did she set up the platform account, had anyone asked her to move the money, did anyone have access to the application, who created the login details for the platform. The advisor said, when moving money to cryptocurrency, the FCA has published that investing in crypto assets involves taking high risks, which means you are not covered by the FCA and asked if Miss F understood. The advisor also enquired where the source of funds had come from.

On 10 November Miss F attempts to make a further payment of £10,000 to platform S. Again, this payment was blocked, so Miss F contacted Halifax to get the payment unblocked. She was asked what the purpose of her transfer was, and Miss F said:

"this is really difficult, I know you have protocols to follow, I just want to transfer my money so I can invest in some different things like gold, foreign exchange, crypto...."

During this call Miss F was asked, how she became aware of S, had she sent money to the account previously, had she carried out all relevant checks, and enquired what checks she had completed, and the advisor at Halifax specifically ask if the advisor was FCA regulated, and Miss F confirmed he was.

I appreciate Miss F's representative didn't feel the intervention calls were affective as it stated that banks need to ask open, probing questions when intervening and that they need to hold up their customers answers to a reasonable level of scrutiny. And, while I don't agree that Halifax took Miss F's answers at face value, and I do believe on some of the calls probing questions were asked, I would have expected further questions surrounding the purpose of the transfer and scrutinising Miss F's answers in regard to this. As Miss F's representative has highlighted, Miss F's answers in regard to what she was investing in, while not implausible, it was quite uncommon. As such, I think it would be reasonable to have expected the advisors at Halifax to have probed Miss F further on this point.

While I accept there was an intervention call regarding some of the payments, there wasn't any intervention regarding payment six, and as I have highlighted above, I am persuaded there was enough about the characteristics of transaction six and the activity on the account that ought to have been concerning such that Halifax should have intervened. With that in mind, I am satisfied that it would have been proportionate for Halifax to have contacted Miss F, similarly to how it intervened on the previous payments and asked open probing questions such as, what the payment was for, her investment experience, what she was investing in, where she saw it advertised, was there a broker involved and what research she had carried out.

However, I would have expected Halifax to have probed Miss F further around the purpose of the transfers and more questions around what she was investing in. But I also have to bear in mind that the level and depth of questioning has to be proportionate to the situation – I have to consider that Miss F should not have been subjected to an interrogation by bank staff.

I think it's reasonable to conclude if Halifax had intervened as I have highlighted above it wouldn't have unveiled the scam. I say this because while Miss F's representative has said Miss F told the advisors she wanted to invest in stocks and shares and she *"believed she was investing in"* stocks in shares, Miss F also said:

"this is really difficult, I know you have protocols to follow, I just want to transfer my money so I can invest in some different things like gold, foreign exchange, crypto...."

On several occasions Miss F said she was aware of the risks associated with cryptocurrency and refers to her profession assuring the advisors she was aware of the risks. Miss F's representative told our service that the scammer *"helped our client set up a cryptocurrency wallet"*. So, with this in mind I am not persuaded that Miss F was unaware that she was dealing in cryptocurrency, especially considering how a cryptocurrency account is opened, and the verification process required to open an account.

When Miss F referred the complaint to our service her representative said:

"she heard about the investment opportunity through a meeting with one of her company's clients. The client mentioned she had been investing in a trading company called S. Our client did not know the client personally and it was not discussed in detail."

However, having listened to the intervention calls that were prior to payment six, when Miss F was asked how she had heard about the investment platform, she had said she knew about the platform as her friend had been investing for over a year. She also said she had spoken to her friend and seen her investment and the money she got back from it. So, I think it is fair to say there are inconsistencies in Miss F's version of events.

Thirdly during the intervention calls the advisor at Halifax asked Miss F what kind of checks she had done for the financial advisor or the company. The advisor from Halifax asks if the advisor was FCA regulated and Miss F confirmed he was, the advisor at Halifax then asked if Miss F had checked the FCA website and Miss F says she had and that she was convinced he was a genuine FCA regulated advisor.

However, there is evidence on file of correspondence from Miss F's representative stating that, Miss F didn't carry out any checks on the financial advisor, but rather relied on S' word that they were in fact regulated. Which again, highlights inconsistencies in Miss F's versions of events. As part of the submissions from Miss F's representative, it has said Miss F didn't understand the importance of FCA regulation. I disagree. Having listened to the calls on

several occasions the advisors at Halifax draw Miss F's attention to the fact crypto isn't regulated and the risks involved with cryptocurrency. On several occasions Miss F confirms she understands how it works, the associated risks and also explains her profession and reassures the advisors due to this she is aware of associated risks.

Miss F's representative has said that Miss F had taken out a business loan in order to fund some of the 'investments. Having reviewed the loan documentation, I am aware that the reason outline for the purpose of the loan was 'carpets and furniture'.

Taking this all into account, I am not persuaded, that if Halifax had completed an intervention call on the sixth payment, and probed Miss F further, it would have unveiled the scam. I say this because, on balance, given the inconsistent and inaccurate information Miss F provided the advisors at Halifax on previous calls, taking out a loan to fund the scam, showing her commitment to the scam, time between transfers to carry out further due diligence, her confidence and continued reference to her profession, I am satisfied, that Miss F would have continued to provide Halifax with inaccurate information denying it an opportunity to unveil the scam. I am satisfied that Miss F's was more persuaded by her friends/client's circumstances and the returns Miss F believed she had made to the extent Halifax wouldn't have been able to break the spell and unveil the scam. Therefore, I can't reasonably hold Halifax responsible for this.

I have gone on to consider if Halifax took reasonable steps to try and recover the funds. I'm satisfied that had Halifax contacted the receiving bank as soon as it was aware of the fraud (bearing in mind when Miss F realised, she had been scammed) this wouldn't have made a difference in the circumstances. This is because, unfortunately, at the time Miss F reported the fraud, the money had already been removed from the receiving accounts.

For the payment by debit card the chargeback process is relevant here. The chargeback scheme is a voluntary agreement between card providers and card issuers who set the scheme rules and is not enforced by law.

A chargeback isn't guaranteed to result in a refund, there needs to be a right to a chargeback under the scheme rules and under those rules the merchant or merchant acquirer can defend a chargeback if it doesn't agree with the request. Unfortunately, the chargeback rules don't cover scams.

We would only expect Halifax to raise a chargeback if it was likely to be successful. Based on the available evidence this does not look like a claim that would have been successful.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss F to accept or reject my decision before 15 April 2025.

Jade Rowe
Ombudsman