

The complaint

Ms F complains Bank of Scotland plc trading as Halifax didn't do enough to protect her when she fell victim to an investment scam.

What happened

Ms F has an account with Halifax and has done so for over 20 years. She also has an account with another business who I'll refer to as "R" throughout the rest of this decision. She says she opened that account on 11 March 2023 – in the course of this scam – at the suggestion of the scammer.

Ms F says she saw an advert online featuring well-known figures endorsing a cryptocurrency investment company. She says one of her sons had successfully invested in cryptocurrency in the past so she clicked on a link in the advert and entered her details. Ms F says she was subsequently contacted by someone claiming to represent the company in question and that she agreed to an initial investment of €200.

Ms F says she was introduced to a financial advisor after making her initial investment. She says her financial advisor asked her to download remote access software so she could show her around the investment platform where her money had gone and also show her how she was doing. Her financial advisor also suggested that she open an account with R and a cryptocurrency wallet saying that this would make it easier for her to send money to her trading account and to manage her money and keep her profits separate. Ms F says she did both with the help of her financial advisor. Ms F was, in fact, speaking to a scammer.

Ms F says she received a message from the scammer on or around 21 March 2023 saying that she'd need to invest more if she wanted her account to grow more. Ms F says the scammer suggested she take out a loan to fund the investment and that she said no. Ms F says she subsequently started receiving letters from a company saying that she owed them money and that when she checked she noticed two loans from two different companies – each for £10,000 – had been paid into her account with Halifax, transferred to her account with R and then transferred to the platform. Ms F says she realised she'd been scammed at this point. She says she confronted the scammer – who denied any wrongdoing – and then contacted Halifax and R having taken advice. She also contacted the two loan companies.

Halifax looked into the scam and said that she should speak to R. Ms F did and R said that it wasn't able to refund Ms F nor was it able to uphold her complaint. Ms F was unhappy with Halifax's response and complained to our service. She complained to us about R's response and the two loan companies involved too.

One of our investigators looked into all four of Ms F's complaints. Having done so, our investigator said that they weren't recommending that her complaints against the two loan companies be upheld as they were satisfied that Ms F was aware of the loans and had consented to them. That meant our investigator didn't think it was unfair for those two companies to pursue Ms F for the capital borrowed or unfair for one of those companies to charge interest and fees – the second company offered to waive interest and fees.

Our investigator recommended that Ms F's complaint about Halifax be upheld as they thought it should have intervened and, had it done so, believed that the scam would have come to light. But because Ms F could have done more, and R could have done too, they recommended that a 50% deduction for contributory negligence be made and that the remaining losses be split equally between Halifax and R. In other words, they recommended that Halifax refund half of the loss it could have prevented less 50% for contributory negligence and that R do the same. In terms of the payments Ms F had made, that meant our investigator recommended Halifax refund £5,000 – in other words, half of the payments Ms F had made less a 50% deduction for contributory negligence.

Ms F was happy with all of our investigator's recommendations and so was Halifax. R wasn't. R said that the payments Ms F had made weren't unusual and were payments to an account in her own name and that it wouldn't be fair to hold R liable for a loss that happened after Ms F's money had successfully arrived in her cryptocurrency wallet.

Ms F's complaints against Halifax and R were referred to an ombudsman for a decision because all parties hadn't agreed, and her complaints against the loan companies were closed. Her complaints against Halifax and R were 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.

Earlier on this month I issued a provisional decision in which I said the following:

"I'm satisfied that four payments went from Ms F's account with Halifax to Ms F's account with R. The first of these payments was for £15 and was sent on 15 March 2023. The second and third payments were for £9,500 and £500 and were sent on 21 March 2023. And the final payment was for £10,000 and was sent on 29 March 2023. The last three payments transferred the loan proceeds that had been paid into Ms F's account with Halifax that day to Ms F's account with R. I can see that Ms F had made large payments in the previous six months from her account with Halifax, but these payments were still relatively unusual. I wouldn't, however, necessarily have expected Halifax to have done more had it not been for what I am about to say.

I'm satisfied that Halifax's systems had detected remote access software immediately before these payments were made, and that there was a "compromise suspected". I do think this additional information – given the large payments coming into Ms F's account and immediately going out – should have been cause for concern and should have prompted Halifax to do more checks before the second payment went out. I agree with our investigator that in this case Halifax ought to have contacted Ms F. Had Halifax done so, I agree that it would have been able to establish relatively easily that Ms F was dealing with a company which not only had a lot of negative reviews online – as a scammer – but was also the subject of a recent FCA warning saying that it was likely scamming people. In short, I agree that the scam would have come to light and that Ms F's losses would have been prevented had Halifax contacted Ms F when she tried to make the second payment.

Our investigator recommended that Ms F's complaint about Halifax be upheld. But because Ms F could have done more, and R could have done too, they recommended that a 50% deduction for contributory negligence be made and that the remaining losses be split equally between Halifax and R. In other words, they recommended that Halifax refund half of the loss it could have prevented less 50% for contributory negligence and that R do the same. Those losses include the interest and charges one

of the loan companies has charged. Both Halifax and Ms F accepted that recommendation. I think the outcome recommended by our investigator is broadly speaking right, but it's not in line with our approach these days. I'll explain what this means.

In a case like this where we think a customer should share liability because of contributory negligence and two other businesses are equally at fault then our starting point would be to split liability on a 34 / 33 / 33 basis. I see no reason to depart from that approach in this case. That means Halifax will need to refund 33% of Ms F's losses rather than 25%. In a case like this ideally we would have left the complaint about the loan companies open. We haven't, but I don't agree that asking Halifax to pay 25% of the interest and charges on one of the two loans is the right approach. So I'm minded to require Halifax to instead pay the usual 8% simple per annum interest on the refund that relates to the loan on which interest and charges continues to be applied."

Both parties were invited to reply. Both accepted my provisional decision – and Halifax was particularly helpful when it replied to me.

Having reconsidered everything again, I remain of the view that the outcome in my provisional decision is fair and reasonable for the reasons I gave.

Putting things right

Given what I've said, I'm going to require Bank of Scotland plc to refund 33% of the loss it could have prevented. In addition, I'm going to require Bank of Scotland plc to pay 8% simple per annum interest on the refund that relates to the loan on which interest and charges continues to be applied.

My final decision

My final decision is that I'm upholding this complaint and require Bank of Scotland plc to refund 33% of the loss it could have prevented. In addition, I require Bank of Scotland plc to pay 8% simple per annum interest on the refund that relates to the loan on which interest and charges continues to be applied.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms F to accept or reject my decision before 13 December 2024.

Nicolas Atkinson
Ombudsman