

The complaint

Mr S complains that Bank of Scotland plc (trading as Halifax) declined to reimburse over £6,000.00 that was lost when he fell victim to a cryptocurrency investment scam.

What happened

Our investigator upheld the complaint in part. She considered that some of Halifax's earliest interventions were proportionate but that it ought to have intervened on what she thought was the final disputed transaction of £1,330. She also considered there ought to be shared liability and recommended a refund of 50% of this payment plus 8% simple interest.

Halifax disagreed with the investigator's findings and provided the following reasoning:

- There were not three payments on same day as the £1,330. There were only two and in fact the payment of £1,330 was the first of two made on 22 November 2023 – not the final payment. It provided its audit records confirming the actual dates and times of the transactions.
- There were two earlier interventions. And after the second intervention the system was updated to confirm transactions to this merchant (Simplex) were genuine. Because of this there was no reason to intervene further.
- The value of the transactions frequently changed from lower to high amounts and did not incrementally increase in value.
- The merchant had altered slightly part way through the payments made.
- They don't consider the pattern of payments to be typical of a scam whereby the aim is to drain the account of funds quickly and getting the customer to invest more and more.
- As Mr S had authorised the payments using Strong Customer Authentication, the transactions didn't meet the required threshold to trigger any further intervention.

Mr S disagreed with the investigator's findings also and explained that:

- He was introduced to the scam by a friend before he saw the online article about the investment scam.
- He said his friend urged and convinced him that this was something genuine and it was an opportunity to improve the finances of himself and his family.
- He said his friend had also invested making a genuine income as they were able to make withdrawals after 21 days.
- He says he researched the investment scam online and at the time it had positive feedback. At the time he invested, there were no red flags or indicators at all that the investment scam wasn't genuine. The FCA's warning was only published after he invested.

Whilst the case was awaiting a decision, it came to light that the large majority of the disputed transactions Mr S was complaining about were payments he was making on behalf of friends and family. It was confirmed that Mr S's friends had complained to their own banks and were provided with full refunds (payments 3-8 in the table below). But two payments (payments 11 and 12) were made on behalf of a family member (R) who had decided not to pursue a complaint against their own bank.

It was also confirmed by Mr S that the two of the disputed transactions he made on behalf of R were payments which eventually reached R's own account with the investment scam company. As such R was asked to become party to the complaint.

Below I've set out a list of the disputed transactions being considered as part of this complaint. It should be noted that the order set out below differs from that provided by the investigator.

I'm satisfied my table below accurately reflects the order of the payments based on the audit records provided by Halifax. It's certainly not uncommon to find that transaction and statement dates differ. But the statement dates do not reflect a true picture of the sequence of payments.

	Transaction date	Statement date	Merchant	Type	Amount
1	15/10/2023	16/10/2023	Binance	Debit card	£50.00 dr
2	06/11/2023	07/11/2023	Binance	Debit card	£450.00 dr
3	18/11/2023	20/11/2023	Simplex Nevadaex	Debit card	£50.00 dr
4	18/11/2023	20/11/2023	Simplex Nevadaex	Debit card	£50.00 dr
5	18/11/2023	20/11/2023	Simplex Nevadaex	Debit card	£900.00 dr
6	19/11/2023	20/11/2023	Simplex Nevadaex	Debit card	£1,000.00 dr
7	19/11/2023	21/11/2023	Simplex Nevadaex	Debit card	£1,000.00 dr
8	20/11/2023	21/11/2023	Simplex Nevadaex	Debit card	£525.00 dr
9	21/11/2023	21/11/2023	Simplex NE*OKX	Debit card	£1,289.00 dr
10	21/11/2023	23/11/2023	Simplex NE*OKX	Debit card	£529.50 dr
11	22/11/2023	23/11/2023	Simplex NE*OKX	Debit card	£1,330.00 dr
12	22/11/2023	23/11/2023	Simplex NE*OKX	Debit card	£200.00 dr
	27/11/2023	27/11/2023	Binance fraud refund	Transfer	£450.00 cr
	27/11/2023	27/11/2023	Binance fraud refund	Transfer	£50.00 cr
				Total loss	£6,873.50 dr

I issued my provisional decision earlier this month explaining that I wasn't minded to uphold this complaint and set out the following reasons:

It isn't in dispute that Mr S has fallen victim to a scam here, and since bringing his complaint to this service he has confirmed he did authorise the disputed payments he made to his crypto exchange platform using his Halifax debit card (where the purchased crypto assets were subsequently transferred on to the investment scam platform).

That said, Mr S has provided conflicting testimony to this service when asked about the Binance transactions (already refunded by Halifax). Mr S was asked to provide clarity as to whether these transactions to Binance formed a part of the same investment scam. He initially explained that payments to both Binance and Simplex related to the same investment scam before advising they weren't.

I'm satisfied both the payments made to Binance and Simplex formed a part of the same investment scam. I say this because aside from the close proximity of the Binance and Simplex payments, during a telephone call Mr S had with Halifax (which resulted in it refunding the two Binance payments) he clearly explains the detail of the investment scam as well as the name of the scam company involved. These are the same details Mr S has provided to this service in relation to the disputed transactions made to Simplex (which were not subsequently refunded by Halifax). Mr S has also provided some supporting evidence naming the same investment

scam when bringing his complaint to this service. I think it's most likely that that once Mr S encountered issues with making debit card payments to Binance, he then moved to using a different crypto exchange in Simplex so that he could continue making payments towards the investment scam. I've highlighted the above as Mr S will see below I've made reference to interactions that took place with Halifax in relation to the Binance transactions.

The disputed payments were requested by Mr S using his legitimate security credentials provided by Halifax, and the starting position is that banks ought to follow instructions given by their customers in order for legitimate payments to be made as instructed.

Halifax is aware, taking longstanding regulatory expectations and requirements into account, and what I consider to be good industry practice at the time, that it should have been on the look-out for the possibility of fraud and made additional checks before processing payments in some circumstances. At the time, rules had also come into force around firms acting to avoid foreseeable harm to customers.

The payments Mr S made from his account were for values that were typical of his historic account usage. And even though payments were being made to cryptocurrency exchanges that doesn't mean payments should automatically be treated as suspicious. They were legitimate businesses being paid and it wouldn't be reasonable for me to suggest Halifax should step in every time one of its customers makes relatively low value payments to a legitimate business. Furthermore, I'm not satisfied there were any other concerning factors about the payments and I don't think it was unreasonable that the payments Mr S made in relation to the scam didn't prompt Halifax to question him in depth about them.

What we do know is that Halifax had two interactions with Mr S during the period of the scam. The first of these took place when Mr S was attempting a payment of £450.00 to Binance on 6 November 2023. The Halifax call agent explains to Mr S that 'Visa was not happy with how the merchant was processing that payment – so they blocked that payment themselves'. The call agent advises Mr S that it has no controls over Visa when they block a transaction and they can only override this once they have spoken to the account holder. The agent asks Mr S some further security questions before confirming the block has been removed. I don't think it was unreasonable that Halifax didn't intervene further here.

A second interaction took place on 18 November 2023 when Mr S had attempted to make a £950 payment to a different crypto exchange Simplex. Mr S was asked whether he was making the payment and to confirm no one had contacted him or influenced him to make the payment. He responded no and also explained that he faced this issue previously referring to the first interaction. The agent explains that these transactions are considered high risk so whilst making sure it's Mr S who is making the payment it was to also highlight that a lot of people get tricked into moving money by scammers. The agent did go on to explain that 'because these payments do count as an investment, we do warn and advise if there is any loss, that won't normally be covered by our side so we just need to let you know about the risks involved in that'. Mr S acknowledges this statement before the account is unblocked and Mr S is able to use his account again.

The investigator explained that whilst the interactions didn't go as far as they could have, given the amounts involved, they deemed them to be proportionate at the time and that Halifax didn't need to do anything further. I consider that Halifax took proportionate checks to satisfy itself that all was above board. And it's arguable

whether any further intervention would've resulted in Halifax identifying Mr S might be falling victim to a scam when he misled them with his response to a question about whether he was being influenced to make the payment.

Having reviewed the accurate order of the disputed transactions, Mr S's account and payment history, when they were made, their values and who they were made to, I'm not persuaded Halifax ought to have found any later payments suspicious, such that it ought to have made further enquiries of Mr S before processing them. Mr S's account regularly shows use of his debit card to make multiple payments a day. And as I've explained previously, it also shows activity regularly in excess of the disputed transaction values. The disputed transactions didn't completely deplete his available balance and there remained a healthy balance even after all of the disputed transactions were completed.

I accept the payments were to a crypto provider, but that doesn't mean payments should automatically be treated as suspicious, particularly when I don't consider there were any other concerning factors about the payments.

Whilst Mr S has undoubtedly been the victim of a cruel scam, I don't find there were any failings on Halifax's part that would lead me to uphold this complaint.

I invited further comments and evidence from both parties.

Halifax responded in acceptance of the provisional decision. And during a recent call with our investigator, Mr S provided some commentary around why he'd provided contradictory answers during the original investigation. Mr S was still invited to respond in writing before the deadline given. However no further response was provided in writing for me to consider.

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 thank both parties for their responses. I've carefully considered the comments made by Mr S regarding the contradictory answers provided during the investigator's original investigation. I explained in my provisional decision that I was satisfied payments made to Binance and Simplex formed a part of the same investment scam. And whilst I acknowledge the impact the scam has had on Mr S both during and after the events that occurred, his recent comments don't alter how I'd originally reached a decision not to uphold his complaint.

As such I see no reason to depart from the conclusions set out above.

It follows that my outcome remains unchanged and that I do not uphold this complaint.

My final decision

For the reasons given above, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 19 February 2025.

Mark O'Connor

Ombudsman