

The complaint

Mrs M complains that Bank of Scotland plc trading as Halifax (“Halifax”) hasn’t protected her from losing money to fraud.

What happened

The background to this complaint is well known to both parties, so I won’t repeat everything here. In brief summary, Mrs M has explained that in June and July 2023 she made four payments out of her Halifax account totalling £17,949 as a result of fraud. Mrs M realised she’d been defrauded and got in touch with Halifax. Ultimately, Halifax didn’t reimburse Mrs M’s lost funds, and Mrs M referred her complaint about Halifax to us. As our Investigator couldn’t resolve the matter informally, the case has been passed to me for a decision.

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 decided to not uphold Mrs M’s complaint for materially the same reasons as our Investigator.

I don’t doubt Mrs M has been the victim of fraud here. She has my heartfelt sympathy. Ultimately, however, Mrs M has suffered her loss because of fraudsters, and this doesn’t automatically entitle her to a refund from Halifax. It would only be fair for me to tell Halifax to reimburse Mrs M her loss (or part of it) if I thought Halifax reasonably ought to have prevented the payments (or some of them) in the first place, or Halifax unreasonably hindered recovery of the funds after the payments had been made; and if I was satisfied, overall, this was a fair and reasonable outcome.

I’m aware Mrs M has indicated she didn’t make the payments but the fraudsters did and they threatened her. But under The Payment Services Regulations, the authorisation of payments like this doesn’t depend on the account holder having made them. The account holder needs to have consented to the payments. But the concept of consent, under the regulations, is a formal one; it’s an objective test, such that even if Mrs M was coerced into making the payments, or deceived about their purposes, this wouldn’t make the payments unauthorised. And if Mrs M gave the fraudsters control to make the payments, in my view this would amount to “apparent authority” – such that by permitting a third party to appear as if they had her authority to make payments, those payments could be deemed as authorised (and consented to) by Mrs M. So I’m satisfied here that Mrs M authorised the relevant payments.

Halifax would generally be expected to process payments a customer authorises it to make. And under The Payment Services Regulations and the terms and conditions of the account, Mrs M is presumed liable for the loss in the first instance, in circumstances where she authorised the payments. That said, as a matter of good industry practice Halifax should have taken proactive steps to identify and help prevent transactions – particularly sufficiently unusual or uncharacteristic transactions – that could involve fraud or be the result of a scam. However, there are many payments made by customers each day and it’s not realistic or

reasonable to expect Halifax to stop and check every payment instruction. There's a balance to be struck between identifying payments that could potentially be fraudulent, and minimising disruption to legitimate payments (allowing customers ready access to their funds).

In this case Halifax intervened when Mrs M instructed the second payment from her Halifax account – the one for £1,800. Before allowing this payment through, Halifax spoke to Mrs M on the phone to ask her about the payment. I've listened to a recording of this conversation between Mrs M and Halifax, in which I note that Halifax told Mrs M that scams happened, and it asked her whether a third party was involved in her payments; Mrs M said no, and that she wanted the payment to go ahead.

Like our Investigator, I think Halifax's intervention ought to have gone further than this. For example, I think Halifax ought to have also asked Mrs M about the further payments she made for £6,100 and £9,800 before it followed the instructions to make them, to check she wasn't at risk of financial harm from fraud. Unfortunately, however, I don't think this is likely to have made a difference here.

I say this because Mrs M has said that she'd been threatened by the fraudsters, so I think it's unlikely she would have been upfront with Halifax (and I note that she wasn't upfront with Halifax when it spoke to her about the payment of £1,800). I also note that the three payments for £1,800, £6,100 and £9,800 were sent from Mrs M's Halifax account to an account in Mrs M's name set up with a third-party bank who I'll call "Bank C"; and Bank C has presented evidence showing that when a payment of almost £8,000 was instructed from Mrs M's account with Bank C, Bank C called and spoke with her. Having listened to these calls, I can see that Mrs M was intent on not being upfront with Bank C and that she was under the spell of the scam and scammers. This was despite Bank C asking her a number of questions and warning her about fraud, and the risk that she could lose all of her money. I'm therefore persuaded, from what I've seen, that even if Halifax had intervened further than it did, Mrs M would most likely have reverted to the fraudsters and simply told Halifax anything she needed to in order to get payments put through. This means in this case I'm not persuaded I can fairly say Halifax unreasonably failed to prevent the payments.

All of the payments, except one, were made to Mrs M's account with Bank C. Mrs M moved £1,200 from this account back to Halifax on 9 August 2023. But there wouldn't have been anything Halifax reasonably could have done to recover more of this money for Mrs M given it was already spent on from her account with Bank C before Mrs M told Halifax she'd been scammed. Likewise, with regards to the first payment which was a debit card payment, the only potential way to recover that would have been via the chargeback scheme, but I note that Halifax considered this but didn't feel able to pursue this without further information from Mrs M about this particular transaction. I don't think this was unreasonable, and I don't think I could fairly say Halifax unreasonably hindered recovery of these funds, nor that I'd reasonably expect it to have been able to prevent Mrs M's loss here.

I'm sorry Mrs M was scammed and lost this money. But despite my natural sympathy, I can't fairly tell Halifax to reimburse her in circumstances where I'm not persuaded it reasonably ought to have been able to prevent Mrs M's loss.

My final decision

For the reasons explained, I don't uphold this complaint.

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

Neil Bridge
Ombudsman