

## **The complaint**

Mr D complains that Bank of Scotland plc trading as Halifax ('Halifax') won't refund the money he lost to an investment scam.

## **What happened**

The background to this complaint is known to both parties. I won't repeat all the details here.

In summary, Mr D says that, in June 2023, he came across a social media advert for a scam company (I'll call 'X') which was seemingly endorsed by a well-known public figure. He thought X's website looked legitimate and saw that positive reviews had been posted about it online. After registering his interest, he was called by a 'representative' from X and was then assigned a 'financial expert'. He believed they'd be trading on his behalf.

He was told he'd make greater returns, the more he invested. As part of the process, he was asked to download remote access software and helped with opening new accounts with Halifax (and others) and with legitimate crypto-exchanges. Believing he was dealing with a genuine and professional individual he then went on to make a series of payments for 'investment' as instructed. Part of the money used to fund the scam came from savings. The rest came from loans taken out with Halifax and other lenders. He was told these loans were for payment of 'fees' required for him to access his funds and led to believe he could repay them once he'd withdrawn his 'investment' – which had apparently increased to £160,000.

To make the scam more convincing he was given a 'letter of guarantee' and tricked into thinking that some payment requests for 'fees' originated from, or were supported by, the Financial Conduct Authority (FCA). A tactic known as 'spoofing'. There was regular contact between him and the scammer as his 'profits' appeared to be increasing. But he never received any of his money. It was only when he contacted the FCA about the actions he was being asked to take that he realised he'd been scammed. By that time, over £102,000 had been sent from Halifax as part of the scam over July and August 2023.

The matter was reported to Halifax in August 2023. A complaint was raised and referred to our Service. Our Investigator didn't uphold it. In brief, he thought there was enough about some of the payments for Halifax to have been concerned Mr D was falling victim to a scam. But, on balance, he didn't think the scam would have been unravelled even if Halifax had gone further with its interventions. He wasn't persuaded further warnings or probing would have made a difference, and so, he couldn't recommend a refund of Mr D's losses.

As the matter couldn't be resolved informally, it's been passed to me to decide. To note, a complaint about the Halifax loan Mr D took out as part of the scam, which he says was lent irresponsibly, has been responded to by our Investigator under a separate reference.

## **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 reached the same conclusions as the Investigator and for similar reasons.

### *Authorisation*

It's not in dispute Mr D was scammed. It's also not in dispute he authorised the payments from his Halifax account. So, although he didn't intend his money to go to a scammer, under the Payment Services Regulations 2017, Mr D is presumed liable for his losses in the first instance. And as the Supreme Court reiterated in *Philipp v Barclays Bank UK PLC*, banks generally have a contractual duty to make payments in compliance with the customer's instructions.

### *Prevention*

There are, however, some situations where I consider that a firm (like Halifax) taking into account relevant rules, codes and best practice, should reasonably have taken a closer look at the circumstances of a payment – if, for example, it's particularly suspicious.

In this case, I think there was enough about Mr D's payments for Halifax to have intervened on concerns that he might be at a heightened risk of financial harm from fraud – considering, for example, the payment values, the account activity, and what Halifax ought to have known about the recipient. I agree it should have probably stepped in at different points in the scam journey. But I'm not going to go into detail as to when and why I think Halifax ought to have done more, because I'm not persuaded further probing or additional interventions would have made a difference – such that I can reasonably hold Halifax liable for Mr D's losses.

I say this for the following reasons:

- In correspondence with our Service, Mr D has said he was informed by the scammer *"not to tell the bank the payments were for investment purposes"*. This was on the basis that banks don't like cryptocurrency as it removed funds from their accounts. Mr D has also explained why he thought that was a reasonable explanation. But I think it's also fair to say it's generally more challenging for a firm to successfully unravel a scam without enough information to indicate if and what type of scam might be taking place.
- Halifax intervened and spoke to Mr D about his payments on 28 July and 3 August 2023. Like the Investigator, I don't think these calls went far enough in trying to establish if a possible scam was taking place. I agree the questioning lacked sufficient context and explanations around the elevated scam risks associated with the type of recipient.
- At the same time, I can't overlook that Mr D was prepared to give misleading answers to some of the key questions that were asked. I note, for example, that when asked if he'd downloaded remote access software, Mr D replied *"no"*. And that when asked if anybody was helping him to trade, Mr D responded *"no, not at all"*. He confirmed no third-party broker was involved; that no-one had convinced or pressured him into making the payment; and that no-one had asked him not to tell the truth about the payment.
- The sending bank (I'll call 'B') from which funds into Halifax originated intervened several times. A call between B's fraud team and Mr D on 5 July 2023 is particularly relevant. It's clear from that interaction that Mr D wasn't willing to reveal the truth about what he was really involved in. I'm satisfied that, despite considerable probing (on a call that lasted almost one hour), Mr D wasn't prepared to go beyond saying he was *"moving money out*

*of the way*” to set it aside for future spending (his daughter’s wedding). He repeated that it was his money to spend; there was no third-party asking him to make payments; and no investment.

- I also can’t ignore that Mr D was adamant no scam was taking place and still wanted to make the payment, despite having been told that: genuine responses were needed so B could protect his money; that scammers will speak to victims for weeks and months; and that his situation looked like a typical crypto-investment scam where victims are tricked into mistrusting and providing misleading information to banks, as well as opening new accounts, on the belief that who they’re dealing with will get them more for their money.
- To add, B had concerns before the above interaction and the Police was also called in with Mr D being asked to attend branch in June 2023. As referred to by the Investigator, Mr D later attempted to use the fact the Police had been called (and was satisfied that there was no scam) to help his payments go through without the need for additional checks. The messages Mr D exchanged with the scammer, however, show he reverted to them and was guided on what to say if questioned. Mr D has also told us the Police was not in any event given the real reasons for his payment. For completeness, I’ll add here that earlier payments from Mr D’s newly opened accounts with other firms were also only processed after he’d been shown some automated scam warnings. And I can’t see that any of the lenders involved were given the real reason for his borrowing either.

As before, I’m mindful Halifax should arguably have probed further at times and intervened more often than it did. But it’s important to note that for me to find that Halifax should provide Mr D with a refund, requires more than a finding that it ought to have done more. I’d need to be satisfied that – but for its failure – Mr D’s losses would have been prevented.

In my view, considering how things played out during all the interventions; the reasons Mr D has himself given as to why he believed in the ‘investment’; the extent to which he was seemingly under the scammer’s ‘spell’ and prepared to follow their instructions, I’m not persuaded the real scam would likely have been exposed even if Halifax had probed further and intervened more often. I’m not convinced Mr D wouldn’t have found a way around the truth for payments to go through. And I can’t rule out the possibility of him being guided to find other ways (other new accounts for example) to make payments if needed.

This isn’t a decision I’ve made lightly. I’m sorry Mr D was the victim of a cruel scam and I recognise that the whole experience has affected him deeply. But I can only direct Halifax to refund his losses if I’m satisfied any failings on its part made a material difference to what happened. For the reasons I’ve given, I’m not convinced that they did. And, in terms of recovery, there was little Halifax could have done. It’s accepted the payments were sent to Mr D’s account with a crypto-exchange before they were sent to the scammer. If any funds had remained to be recovered, Mr D would have been able to access them himself.

### **My final decision**

For the reasons I’ve given, I don’t uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr D to accept or reject my decision before 16 July 2025.

Thomas Cardia  
**Ombudsman**