

The complaint

Mr A complains that Bank of Scotland plc trading as Halifax (“Halifax”) won’t refund over £35,000 he lost to a fake job scam.

What happened

The details of this complaint are well known to both parties, so I won’t repeat everything again here. In brief, Mr A fell victim to a fake job scam after receiving a message via a messaging service - I will call the scammer ‘B’. B told Mr A that he would be paid for completing a number of tasks, but he would have to first send crypto to B to unlock these tasks.

Mr A made a number of transfers to a crypto exchange these were converted into crypto and then sent onto B.

Mr A realised he had been scammed after he was unable to withdraw money from B.

Following the investigator’s assessment, the complaint was passed to me and I issued a provisional decision on 9 February 2024 in which I said the following;

“I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

It isn’t in dispute that Mr A has fallen victim to a scam here, nor that he authorised the disputed payments he made to the scammer (where his funds were subsequently transferred on to the scammers from his crypto wallets). The payments were requested by him using his legitimate security credentials provided by Halifax, and the starting position is that banks ought to follow the instructions given by their customers, in order for legitimate payments to be made as instructed.

However, I’ve considered whether Halifax should have done more to prevent Mr A from falling victim to the scam, as there are some situations in which a bank should reasonably have had a closer look at the circumstances surrounding a particular transfer. For example, if it was particularly out of character for that account holder.

I understand the investigator considered that the payment of £7,560 made on 16 December 2022 ought to have been regarded as unusual, given that it was larger than the payments that Mr A usually made. In my view this really should have been flagged by Halifax as being unusual account activity especially as the payments the following day did flag on Halifax systems as unusual.

I note that Mr A had sent funds to that particular crypto exchange before but not the size or number of transactions that occurred on 16 December 2022. By the time the payment for £7,560 was made over £6,000 had already been transferred that day in three transactions. So, I think that when Mr A attempted to make the payment of £7,560 was made Halifax should have intervened.

I note that the investigator believed that an intervention at this point would not have unravelled the scam due to the answers that Mr A gave in a phone call the following day. I disagree. I have listened to the call in question and I don't think that Mr A was asked suitably probing question nor misled Halifax except for at one point mentioning that he had traded crypto in the past and had spoken to Halifax staff before. He also mentions that he is borrowing money from friends and family but he will send it back in a week. This really should have prompted further questions from Halifax.

I am satisfied that had Halifax contacted Mr A on 16 December 2022 and used the opportunity to ask suitably probing questions, there is no reason to suggest he wouldn't have been forthcoming about what he was doing. If Halifax had questioned Mr A about these payments, it would have likely discovered that he had been 'contracted out' by a company offering to pay Mr A for completing tasks, But Mr A had been told that he would first have to pay for these tasks.

This is not how companies normally operate and it has all the hallmarks of a job scam. I consider there would have been reasonable grounds for suspicion here. And Halifax ought reasonably to have provided a scam warning in light of all the information then known to financial professionals about the risks associated with this type of scam.

I'm satisfied that, had Halifax asked relevant questions of Mr A, it would have been apparent that he was falling victim to a scam. In other words, but for Halifax's failure to make reasonable further enquiries, it would have been on notice that there was a very high chance that Mr A was going to suffer financial harm from fraud and therefore this loss was foreseeable.

Had Halifax provided Mr A with a warning, it would have led Mr A to question whether he was in fact dealing with a legitimate business – especially as he had made a number of payments to B but had not received any funds back. The result of this is that, probing questions from Halifax about the nature of the payments would have likely stopped Mr A from making any further payments.

I note that Mr A was also in contact with Halifax in September 2022 about payments to the same crypto exchange and during that call he said he was investing on his own behalf but my understanding is that this was true at that point and the scam did not start until December 2022. So, I don't think the answers provided then are indicative of the answers that he would have provided in December 2022.

As a result, I believe Halifax should refund the payments Mr A lost to the scam from and including the transaction of £7,560 on 16 December 2022.

Contributory negligence

There's a general principle that consumers must take responsibility for their decisions. And I have duly considered whether Mr A should bear some responsibility by way of contributory negligence. In the circumstances, I'm satisfied he should do so in this case.

In the circumstances, I don't consider Mr A carried out sufficient due diligence to ensure that the company he was dealing with was genuine. Mr A was approached via a random message and was offered a job within a short amount of time. This is without signing a contact.

I also think Mr A should really have questioned why he had pay funds in order to unlock money that he had "earned" if he thought he was working for B. All of these things should really have made Mr A question whether B was a legitimate company

Therefore, I'm satisfied that Mr A's lack of due diligence and failure to question what he was being promised contributed to his loss, such that he should share responsibility with Halifax. Because of this, I'm satisfied a 50% deduction is fair and reasonable in the circumstances.

Recovery

I've also thought about whether Halifax could have done more to attempt to recover the payments but as they were sent to a crypto account in Mr A's own name before being sent on. I don't think that it could have recovered the funds via chargeback, the Contingent Reimbursement Model or any other means.

Halifax did not respond with any new points. Mr A agreed with the findings in my provisional 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.

In this instance, as no new points have been raised there is no reason to depart from the findings I made in my provisional decision so in summary, I think that Halifax should have intervened when the payment for £7,560 was made on 16 December 2022 that this would have stopped the scam. I also think that Mr A contributed to his own loss and therefore Halifax should refund 50% of the transaction after that point.

I also did not think that Halifax could have recovered Mr A's payments via any other means.

Putting things right

For the reasons given above, I uphold this complaint in part and direct Halifax to:

- Refund the payments Mr A lost to the scam from and including the transaction of £7,560 on 16 December 2022 onwards, less a deduction of 50% in recognition of Mr A's own contributory negligence towards his loss.
- Pay 8% simple interest per year on this amount, calculated from the date of each payment until the date of settlement, minus any applicable tax.

My final decision

I uphold this complaint in part and Bank of Scotland plc trading as Halifax should pay compensation to Mr A as directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 21 March 2024.

Charlie Newton
Ombudsman