

The complaint

Miss J complains that Bank of Scotland plc trading as Halifax is refusing to refund her the amount she lost as the result of a scam.

What happened

The background of this complaint is well known to all parties, so I won't repeat what happened in detail.

In summary, Miss J found and started to follow accounts on Instagram of individuals (X) offering investments. The investments offered to trade funds transferred by individuals and then return a profit.

Miss J was not provided with a name for the investment company but tells us that the Instagram accounts were persuasive with many followers and published testimonials from individuals claiming to have had success with their investments. Miss J tells us she checked with other followers of X before deciding to invest.

X explained to Miss J how to make payments into the investment and Miss J followed the instructions starting with a small payment.

Miss J has not been consistent with the information she has given about the scam, having initially said she didn't make all the payments into the scam herself, and that her bank account was hacked/accessed by X sending the payments. Miss J also said that she didn't take out loans to fund the investment herself.

During a call with Halifax (that I have listened to) Miss J accepted she did make all the payments herself and took the loans herself. However, Miss J says she was being blackmailed by X at the time to make payments otherwise it would publish personal information about her that she had previously provided it with.

After making all the payments requested by X, X contacted her again for her to make a further payment which she refused to make. Miss J then complained about the scam to the businesses involved and the police.

Some of the payments made in relation to this scam have been considered under a separate complaint. This complaint will deal with the following payments:

Date	Payee	Payment Method	Amount
22 May 2022	Remitly	Debit Card	£203.99
28 May 2022	Remitly	Debit Card	£203.99
28 May 2022	Remitly	Debit Card	£353.99
28 May 2022	Remitly	Debit Card	£653.99
1 June 2022	Remitly	Debit Card	£83.99
3 June 2022	Remitly	Debit Card	£483.9
4 June 2022	Remitly	Debit Card	£483.99
5 June 2022	Remitly	Debit Card	£83.99
7 June 2022	Remitly	Debit Card	£233.99
7 June 2022	Remitly	Debit Card	£303.99
8 June 2022	Remitly	Debit Card	£235.99
9 June 2022	Remitly	Debit Card	£153.99
10 June 2022	Remitly	Debit Card	£1,003.99

Our Investigator considered Miss J's complaint and didn't think it should be upheld. Miss J disagreed, so this complaint has been passed to me to decide.

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.

It has not been disputed that Miss J has fallen victim to a cruel scam. The evidence provided by both Miss J and Halifax sets out what happened. What is in dispute is whether Halifax should refund the money Miss J lost due to the scam.

Based on the information available I think it's likely Miss J made the payments into the scam herself and that she also took out the loans herself. I say this based on Miss J's own explanation of the scam to Halifax including that she never gave details of her debit card to X from which all the payments were made.

Recovering the payments Miss J made

Payments were made into the scam via Miss J's debit card. When payments are made by card the only recovery option Halifax has is to request a chargeback.

The chargeback scheme is a voluntary scheme set up to resolve card payment disputes between merchants and cardholders. The card scheme operator ultimately helps settle disputes that can't be resolved between the merchant and the cardholder.

Such arbitration is subject to the rules of the scheme, meaning there are only limited grounds and limited forms of evidence that will be accepted for a chargeback to be considered valid, and potentially succeed. Time limits also apply.

Miss J was dealing with X, which were the individuals that instigated the scam. But Miss J didn't make the debit card payments to X directly, she paid a separate currency exchange (Remitly). This is important because Halifax would only have been able to process chargeback claims against the merchant she paid (Remitly), not another party (such as X).

The service provided by Remitly would have been to convert or facilitate conversion of Miss J's payments. Therefore, Remitly provided the service that was requested.

The fact that the funds were transferred elsewhere – to the scammer – doesn't give rise to a valid chargeback claim against the merchant Miss J paid.

Should Halifax have reasonably prevented the payments Miss J made?

As I said above, I think it's most likely Miss J authorised the payments that were made from her account with Halifax, albeit on X's instruction. So, the starting point here is that Miss J is responsible.

However, banks and other Payment Services Providers (PSPs) do have a duty to protect against the risk of financial loss due to fraud and/or to undertake due diligence on large transactions to guard against money laundering.

The question here is whether Halifax should have been aware of the scam and stepped into question Miss J about the payments she was making. And if it had questioned Miss J, would it have been able to prevent the scam taking place.

The payments Miss J made in relation to the scam were all for relatively low values to a legitimate business. It would not be reasonable for me to suggest Halifax should step in every time one of its customers makes a relatively low payment to a legitimate business that they have not previously paid.

I don't think it was unreasonable that none of the payments Miss J made in relation to the scam triggered Halifax's fraud prevention systems prompting it to question Miss J.

As I don't think it was unreasonable that Halifax did not step into question Miss J, I don't think it missed an opportunity to prevent the scam and it is not responsible for her loss.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss J to accept or reject my decision before 5 April 2024.

Terry Woodham
Ombudsman