

## **The complaint**

Mr A complains that Bank of Scotland plc trading as Halifax did not refund a series of payments he lost to a scam.

## **What happened**

Mr A was approached on social media by a company I'll call X, who offered him a job opportunity. He was told he needed to complete 40 tasks per day, but he would need to deposit cryptocurrency into his account with X. He began working and was able to successfully withdraw some commission, so he felt the opportunity was genuine. In addition, he had been added to a group chat with other employees who all said they had been making genuine money.

Over the next few days, he added more of his own funds via cryptocurrency in order to complete the tasks. He made the following debit card payments to a cryptocurrency wallet in his own name with Binance, before transferring them to X:

- 09/05/2023 - £16.00
- 09/05/2023 - £170.00
- 10/05/2023 - £800.00
- 10/05/2023 - £1,901.00

He was then asked to pay taxes in order to withdraw his funds and it was that point that he realised he had been the victim of a scam. Mr A contacted Halifax to raise a scam claim. They explained they could not recover his funds from the merchant, as he had been provided with a legitimate service. And they could not recover the funds from his cryptocurrency account as they had been moved on to the scammer's wallet.

Mr A referred the complaint to our service and our investigator looked into it. They said that as the payments were carried out by debit card, they were not covered by the Lending Standards Board's Contingent Reimbursement Model ("CRM") Code. They felt the scam payments were not so out of character when compared to Mr A's genuine account activity that they warranted intervention from Halifax before being processed, and there were no reasonable grounds for a chargeback claim to be raised. So, they didn't agree the payments should be refunded.

Mr A's representative disagreed with the initial view. They maintained that the last two payments were unusual and should have flagged as suspicious. And they felt the merchant the payments were going to should also have been a warning to Halifax that Mr A might be at risk of financial harm.

As an informal agreement could not be reached, the complaint has been passed to me for a final 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 agree with the Investigator for largely the same reasons, and I don't recommend that Halifax refund the transactions in question. I'll explain why in more detail.

I've firstly considered if Halifax could reasonably have recovered the funds from the merchant. As Mr A made the payments via debit card, they are covered under the chargeback scheme.

It should be noted that 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.

Mr A was dealing with X, which was the company that instigated the scam. But he didn't make the debit card payments to X directly, he paid a separate cryptocurrency exchange (Binance). This is important because Halifax was only able to process chargeback claims against the merchant he paid (Binance), not another party (such as X).

The service provided by Binance would have been to convert or facilitate conversion of Mr A's payments into cryptocurrency. Therefore, Binance provided the service that was requested; that being the purchase of the cryptocurrency.

The fact that the cryptocurrency was later transferred elsewhere – to the scammer – doesn't give rise to a valid chargeback claim against the merchant Mr A paid. As Binance provided the requested service to Mr A any chargeback attempt would likely fail. Because of this, I think it was reasonable that Halifax did not attempt a chargeback in the circumstances, so I don't think it has made an error in relation to the recovery of the funds.

I've gone on to consider the payments themselves. In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to be good industry practice at the time.

Broadly speaking, the starting position in law is that an account provider is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the terms and conditions of the account. And a customer will then be responsible for the transactions that they have authorised.

It's not in dispute here that Mr A authorised the payments as he believed they were part of a legitimate sale. So, while I recognise that Mr A didn't intend the money to go to scammers, the starting position in law is that Halifax was obliged to follow his instruction and process the payments. Because of this, Mr A is not automatically entitled to a refund.

The regulatory landscape, along with good industry practice, also sets out a requirement for account providers to protect their customers from fraud and financial harm. And this includes monitoring accounts to look out for activity that might suggest a customer was at risk of financial harm, intervening in unusual or out of character transactions and trying to prevent customers falling victims to scams. So, I've also thought about whether Halifax did enough to try to keep Mr A's account safe.

Having done so, I just don't think the payments were of such a high value or unusual enough to have warranted intervention by Halifax before being processed. Mr A had made higher value payments than the first three transactions in the months leading up to the scam, and while I accept the final payment of £1,901 was a higher value than other transactions on the account, I don't think this alone would be enough to warrant intervention by Halifax. In addition, the account was not fully drained of its funds as some remained following the scam payments.

Mr A's representative has said who the payee was alone should have alerted Halifax that the payments were suspicious. However, I don't think it would be reasonable to expect Halifax to block every payment to the merchant as a significant number of these will be legitimate. However, as explained above, I do think Halifax should consider if the transactions were unusual or out of character. As I don't agree the payments in question were unusual, I don't think Halifax has missed an opportunity to reveal the scam, so I don't agree it needs to provide a refund in the circumstances.

Having carefully considered everything available to me, I don't think Halifax has made an error when it processed the transactions without intervening beforehand or when it did not pursue a chargeback claim.

### **My final decision**

I do not uphold Mr A's complaint against Bank of Scotland plc trading as Halifax.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 10 April 2024.

Rebecca Norris  
**Ombudsman**