

The complaint

Mr and Mrs L complain that Bank of Scotland plc trading as Halifax did not refund a series of transactions they lost to a scam.

What happened

Both parties are aware of the circumstances of the complaint, so I won't repeat them again in detail here. In summary, Mr L was the victim of an investment scam which he found on social media. He made the following payments from a joint account he held with Mrs L to a new e-money account in his name which he had control over as part of the scam:

- 4 August 2022: £2,500
- 5 August 2022: £2,500
- 5 August 2022: £50
- 7 September 2022: £50
- 7 September 2022: £2.00
- 7 September 2022: £7,610

When Mr L realised he had been the victim of a scam, he raised a scam claim with Halifax. Halifax explained that they did have concerns over the initial payment and flagged this for further checks. But Mr L said he was moving the funds for personal reasons and did not disclose that they were being used for an investment. So, Halifax did not agree to refund Mr and Mrs L.

The complaint was referred to our service and our Investigator looked into it. In summary, they did not think reimbursement was due in the circumstances, as Mr L had not told Halifax the true purpose of the payment and they did not think any further intervention would have revealed the scam.

Mr and Mrs L disagreed with the outcome. In summary, they felt Halifax should have realised that Mr L was given a cover story. And Mrs L pointed out that she had been unaware of the scam while it was happening and felt Halifax should have also contacted her when a large transaction was attempted on the account to ensure she also authorised it to be sent.

I issued a provisional decision in which I did not recommend upholding the complaint, but I expanded upon the Investigator's findings. My provisional decision read as follows:

Firstly, I would like to highlight that these transactions do not fall under the Contingent Reimbursement Model ("CRM") code as the payments went to another account in Mr L's name, and not directly to the scammers. So Mr and Mrs L's case does not fall under the same level of protection as one under the CRM would.

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 L authorised the payments in question as he believed they were part of a legitimate investment. So, while I recognise that he 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 and Mrs L are 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 and Mrs L's account safe.

In doing so, I've looked over Mr and Mrs L's joint account statements, to see if I think Halifax should reasonably have flagged the scam payments as suspicious or taken additional action. I can see there were genuine transfers for between £1,500 and £2,200 in the months leading up to the scam, so I don't think the initial two payments of £2,500 were particularly unusual. And I have to consider that the payments were going to another account in Mr L's own name, which he had control over, so these payments generally posed a lower risk value.

Despite this, Halifax did refer the initial payment for additional checks, and they asked Mr L what the purpose of the payment was. He confirmed it was for family members when they went away, and that it was going to an account in his name which he had control over. Considering the value of the payment and that Halifax could confirm the recipient account was in Mr L's name, I don't think they needed to probe further. I understand Mrs L's concerns that scammers can give victims cover stories, but on balance I think it was reasonable that they processed the payment at that point based on Mr L's answers. As there was no indication that he was the victim of a scam or that the intended purpose of the payment was an investment.

Because of this, I don't think the later higher value payment of £7,610 needed to be referred for additional checks either. I say this because Mr L had already confirmed the beneficiary account was in his name and under his control, so I think this payment therefore posed a lower risk to Halifax, especially because this payment was made over a month later. So based on what I've seen so far, I don't think Halifax made an error when it did not intervene in this payment.

I want to acknowledge Mrs L's comments that Halifax should have also contacted her to make sure she was happy for the payments to leave the account. I want to assure Mrs L that I understand her frustrations in relation to this, as the funds came from a joint account meaning they were shared funds. However, when considering whether Halifax's action were reasonable, I have to consider that the account was set up as either party to sign, meaning transactions only require one account holder to give authorisation in order for them to be processed. Because of this, I can't agree that Halifax has made an error when it only sought the authorisation and clarification on the payment purpose from Mr L, especially because he was the one who initiated the payments in the first place.

With all of this in mind, I currently don't think Halifax needed to take any further action in relation to the scam payments, so I don't think they could reasonably have revealed the scam in the circumstances. And I currently don't think they need to refund the scam

payments to Mr and Mrs L.

As the funds went to another account in Mr L's name before being forwarded on, Halifax was unable to recover these from the beneficiary bank once they were made aware of the scam. So, I don't think they could have done more in the circumstances in relation to the recovery of the funds.

Mr L responded to my provisional decision with some additional points for me to consider. In summary, he had been told this was a common scam and felt Halifax should have picked up on this. He felt there was a nervousness in his voice in the intervention phone call with Halifax and he did not think they asked him many questions. He also felt the scam payments did appear suspicious when compared to his genuine account activity and as he had banked with Halifax for over 35 years, they should have been aware of his spending habits. Overall, he felt Halifax should share some liability for the loss.

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 carefully reviewed Mr L's additional comments, they have not materially changed the outcome I reached in my provisional decision.

While investment scams are common and we do expect banks to be on the lookout for signs of them, Halifax is still only able to work with the information available to them. Mr L was making a payment to an account in his own name which he had control over and was not making payments directly to a cryptocurrency wallet, so it was already more difficult for Halifax to spot that the funds may be used in an investment. Secondly, Halifax asked Mr L what the purpose of the payment was, however Mr L said it was for family members for trips abroad which does not give cause for concern. So, I don't think Halifax reasonably needed to probe further when there was no indication that Mr L was investing the funds.

I explained in the provisional decision that I did not think the initial few payments of £2,500 were particularly unusual for the account as Mr and Mrs L had previously made faster payments of similar amounts on the account. I appreciate these were faster payments to other Halifax accounts in Mr and Mrs L's names, but I also have to consider that the third-party account in the scam was in Mr L's name. So, the pattern of spending was not out of character for Mr and Mrs L. I also explained that, in any event, the initial payment was flagged for further checks, and I felt the level of intervention and checks applied by Halifax was proportionate to the scam risk present.

I also understand that Mr L feels he sounded nervous on the phone to Halifax, but I'm mindful that this is with the knowledge of how he normally sounds. Having listened to the phone call, as an outsider with no knowledge of how Mr L sounds when he is nervous, his tone on the phone call does not give me cause for concern or make me think Halifax should reasonably have asked more probing questions at the time. As mentioned before, the answers Mr L gave were reasonable and I don't think they required more probing questions as I don't think there was any indication Mr L was investing the funds at the time. It therefore follows that when Mr L made the large payment a months later, Halifax did not need to carry out additional checks on it as they had already satisfied themselves this was to an account in Mr L's name that he had control over, so payments made to it posed a lower risk level.

I therefore still think Halifax acted reasonably when they declined to reimburse Mr and Mrs L and I don't require them to take further action in this case.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs L and Mr L to accept or reject my decision before 13 August 2024.

Rebecca Norris
Ombudsman