

The complaint

Ms H has complained that Bank of Scotland plc (trading as Halifax) won't refund the money she lost after falling victim to a scam.

What happened

In 2020, Ms H saw an investment advert on social media. She provided her details and was contacted by a scammer posing as an investment advisor. She explained they came across as knowledgeable, open, and helpful, and claimed that television personalities had invested with them, so she didn't do any further research. They persuaded Ms H to pay £2,500 to her own account on a cryptocurrency exchange, then on to the scammer's crypto wallet. They stopped responding to Ms H and she realised she'd been scammed, though at the time she didn't think to speak to Halifax. She told Halifax about the scam in her complaint in 2023.

Halifax didn't think they were liable for Ms H's loss. They said the payment wasn't sufficiently out of character for them to flag it and question or warn Ms H about it further. And they were not able to recover the money as it had been paid to another account of Ms H's.

Our investigator looked into things independently and didn't uphold the complaint. Ms H's representatives asked for an ombudsman to look at the matter afresh, so the complaint's 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.

I understand that Ms H fell victim to a scam, and so she has my sympathy. I appreciate this can't have been an easy time for her, and I appreciate why she feels that her money should be returned. It's worth keeping in mind that it's the scammer who's primarily responsible for what happened, and who really owes Ms H her money back. But I can only consider what Halifax did. Having carefully considered everything that both sides have said and provided, I can't fairly hold Halifax liable for Ms H's loss. I'll explain why.

It's not in dispute that Ms H authorised the payment. So although she didn't intend for the money to go to a scammer, under the Payment Services Regulations she is liable for the loss in the first instance. And broadly speaking, Halifax had an obligation to follow her instructions – the starting position in law is that banks are expected to process payments that a customer authorises them to make.

Halifax should have been on the lookout for payments which could be the result of fraud or scams, to help prevent them. But a balance must be struck between identifying and responding to potentially fraudulent payments, and ensuring there's minimal disruption to legitimate payments. I've thought carefully about whether Halifax should have done more in Ms H's case.

However, I don't think the payment involved was so unusual or out of character that Halifax needed to intervene. While it was a relatively substantial payment to a crypto platform, it was going to Ms H's account on an established platform which she'd used before, it was not large enough that I'd have expected its size to be of particular concern to Halifax, and in the period before the scam Ms H had made payments of a similar size, including much larger payments to other accounts of hers. It was only one payment, and not multiple rapid ones, to a UK payee Ms H had set up months earlier, and it did not drain her account by any means – there was a very healthy balance left after. So on balance, I can't fairly conclude that Halifax needed to flag this payment and question or warn Ms H further about it.

Next, I've considered what Halifax did to try to recover Ms H's money after she told them about the scam. But as the payment went from Halifax to her own crypto account, there wasn't anything more that Halifax could really do here. Ms H could try contacting the crypto platform to see if they can recover the money. But I should explain that it's a common tactic for scammers to move on the money as quickly as possible, before the victim realises what happened. So given the years that have passed, it's not realistically likely that the money can be recovered now.

So while I'm very sorry to hear about what happened to Ms H, I don't think Halifax should be held responsible for her loss. And so I cannot fairly tell Halifax to refund Ms H's money in this particular case.

My final decision

For the reasons I've explained, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms H to accept or reject my decision before 26 February 2024.

Adam Charles
Ombudsman