

## The complaint

Mr O complains that Bank of Scotland plc trading as Halifax (Halifax) is refusing to refund him the amount he lost as the result of a scam.

Mr O is being represented by a third party. To keep things simple, I will refer to Mr O throughout my decision.

## What happened

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

In summary, Mr O was referred to the investment business Hyperfun (X) by a friend who had been investing successfully with it. This gave Mr O confidence that X was a legitimate business.

Mr O visited X's website which looked genuine and opened an account providing his personal information. X's site advertised an investment giving a return of £5 each day after an investment of £10,000. X didn't contact Mr O directly and if Mr O needed assistance, he would seek this through the online chat facility. Mr O was also added to a WhatsApp group of other investors.

Mr O started to invest with X sending funds as requested through the cryptocurrency exchange Binance.

Mr O received several small withdrawals throughout the scam, but when he attempted a withdrawal late in the scam X gave excuses for delays, and the withdrawal never happened. It was clear at this point that Mr O had fallen victim to a scam.

The following are payments made into the scam via Mr O's Halifax account:

Date	Payee	Payment Method	Amount
4 October 2021	Binance	Debit Card	£300.00
8 October 2021	Binance	Debit Card	£4,000.00
14 October 2021	Binance	Debit Card	£5,150.00
15 October 2021	Binance	Debit Card	£5,000.00
9 November 2021	Binance	Debit Card	£5,000.00
9 November 2021	Binance	Debit Card	£5,000.00
23 November 2021	Binance	Debit Card	£5,000.00
24 November 2021	Binance	Debit Card	£5,000.00
29 December 2021	Binance	Debit Card	£5,000.00
29 December 2021	Binance	Debit Card	£20,000.00
6 January 2022	Binance	Debit Card	£5,000.00
26 January 2022	Coinbase	Credit	- £4,018.58
31 January 2022	Binance	Debit Card	£100.00
7 February 2022	Binance	Debit Card	£4,500.00
18 March 2022	Coinbase	Credit	- £1,945.98

22 March 2022	Binance	Debit Card	£1,100.00
5 April 2022	Coinbase	Credit	- £2,652.53
11 April 2022	Binance	Debit Card	£5,000.00
11 April 2022	Binance	Debit Card	£5,000.00
3 May 2022	Coinbase	Credit	- £5,282.00

Mr O tells us that he was investing mostly for other people. He invested £7,000 of his own money and returned a further £13,000 to those who transferred money to him to invest. So, we can only consider Mr O's loss which appears to be a total of £20,000.

Our Investigator considered Mr O's complaint but didn't think it should be upheld. Mr O 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 Mr O has fallen victim to a cruel scam. The evidence provided by both Mr O and Halifax sets out what happened. What is in dispute is whether Halifax should refund the money Mr O lost due to the scam.

#### *Recovering the payments Mr O made*

Mr O made payments into the scam via his 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.

Unfortunately, Mr O made his complaint to Halifax outside of the allowed time to raise a chargeback and therefore Halifax has been unable to attempt a chargeback for the payments Mr O made into the scam.

#### *Should Halifax have reasonably prevented the payments Mr O made?*

It has been accepted that Mr O authorised the payments that were made from his account with Halifax. So, the starting point here is that Mr O 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 Mr O about the payments he was making, and if it had questioned Mr O would it have been able to prevent the scam taking place.

Some of the payments Mr O made into the scam were significant in value so I am not surprised that Halifax stepped into question Mr O about the payments he was making.

Halifax stepped in towards the beginning of the scam twice when Mr O was attempting to make payments of £5,000.

Mr O confirmed he was not being encouraged by anyone to make payments and he had been investing for almost a decade. Mr O told Halifax he had made previous investments with other investment businesses. The information given by Mr O did not cause Halifax any concerns as he was not being asked by a third party to make payments.

In late December 2021 Halifax spoke to Mr O again when he attempted to make a payment for £20,000. Halifax asked Mr O where recent payments into his account had come from. Mr O confirmed they were payments from his friends, and he was making investments for them with Binance. Mr O confirms the investment is long term, he says he has been using Binance for two months and investing in Crypto for a very long time.

The questions Halifax asked Mr O about the payments he was making were what I would have expected it to ask in the circumstances. The scam Mr O was experiencing was sophisticated and the answers Mr O gave to Halifax understandably didn't cause it any concerns. Mr O had told Halifax he was an experienced investor, he had been investing for years and no one else was involved in making the payments.

Even if Halifax had intervened with other payments, I don't think Mr O would have provided different answers to its questions, or that the scam would have been uncovered.

So, with the above in mind I don't think Halifax missed an opportunity to uncover the scam and it is not responsible for Mr O's loss.

### **My final decision**

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 6 March 2024.

Terry Woodham  
**Ombudsman**