DRN-4770321

## The complaint

Miss J is unhappy because Bank of Scotland plc trading as Halifax ('Halifax') declined to refund over £10,000 which she lost as a result of a scam.

## What happened

I issued a provisional decision in March 2024 to explain why I thought Miss J's complaint should be upheld in part. And I said I'd consider anything else anyone wanted to give me. This is an extract from my provisional decision:

*"The details of this complaint are well known to both parties, so I won't go into every detail of what happened here. But, in summary, both parties accept that in June-July 2020 Miss J was tricked into sending £800 in the belief she was investing it to be traded on the foreign exchange ('Forex'), and she then sent over £9,000 further to try to get returns on that 'investment' paid to her.*

*In June 2020, Miss J explained she was approached on a social media platform by someone purporting to provide financial advice about investment opportunities in Forex trading. Unfamiliar with Forex trading or investing in general, Miss J did look up Forex trading online. She spoke to the 'advisor' over social media, before moving the conversation to email and a messaging application. Miss J said she built up a rapport with the 'advisor'. They told her that they could provide her with risk free trading opportunities and said she could make returns of £2,400 on an investment of £800 within 24 hours. They said her initial funds would be safeguarded so if the first trade did not go as planned she could have the funds back, or try another trade. She was led to believe that any funds could be withdrawn immediately or rolled over in to a new trade. They said they would take 20% as commission for doing the trading on her behalf. Miss J was persuaded that the investment opportunity was genuine, so she sent an initial payment of £800 to be traded. She had not done any independent checks into the investment or the company, as she said she did not know to do this due to her inexperience.*

*A few days after the payment, the advisor got in touch to tell Miss J that her initial £800 investment was now valued at £15,500. Miss J was persuaded to send further payments over a four-day period totalling over £9,000 which she was told were fees to withdraw her investment and profits; further fees to withdraw her funds which would be refunded later; taxes required for the funds to be released; mandatory settlement fees required by the finance department to allow them to process and withdraw the funds; and a further tax payment.*

*After sending these funds to the advisor, she still did not get her funds sent to her and the 'advisor' told her that she could not access their online trading portfolio due to data protection reasons. It was at this point Miss J realised that she had fallen victim to a scam and raised the matter with Halifax.*

*Halifax investigated Miss J's complaint and issued its final response not upholding the complaint. In summary, they didn't accept liability because they contacted Miss J when she tried to make the second payment, and she told them she was sending money to a friend and lied to them which prevented them from being able to give her an effective warning. They also thought Miss J had not met the requisite level of care when she was making the payments to ensure that she was dealing with a legitimate trading company. They did* *manage to retrieve approximately £800 which remained in the first receiving account after she had reported the scam, and 39p which remained in the second receiving account.*

*Unhappy with Halifax's response, Miss J brought her complaint to our service and one of our investigators looked into what happened. They recommended that the complaint should not be upheld, and so Halifax should not refund the money that Miss J had lost. In summary, our investigator agreed with Halifax that Miss J had not done sufficient checks on the trading company to have a reasonable basis for believing she was dealing with a legitimate investment company, and whilst Halifax had got in touch to question her about the second payment, she had prevented Halifax from providing her an effective warning when she failed to be honest with them about the payment she was making when they contacted her.*

*Miss J remained dissatisfied. In summary, she said:*

- *She was instructed by the scammer not to tell Halifax what the payment was for and they coached her with responses to provide to the bank, as they noted that banks usually prevent these payments from going forward.*
- *She believed she was making a genuine investment and had no reason to doubt the legitimacy of the advisor, their purported firm or trading platform. She genuinely felt she had grown close throughout the course of the investment and believed the advisor was acting in her best interests.*

*As no agreement could be reached, the case has been passed to me to decide.*

*What I've provisionally 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.*

*In broad terms, the starting position in law is that a bank is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Service Regulations and the terms and conditions of the customer's account. However, where the consumer made the payment as a consequence of the actions of a fraudster, it may sometimes be fair and reasonable for the bank to reimburse the consumer even though they authorised the payment.*

*When thinking about what is fair and reasonable in this case, I have considered whether Halifax should reimburse some or all of the money Miss J lost in line with the provisions of the CRM Code it has agreed to adhere to and whether it ought to have done more to protect Miss J from the possibility of financial harm from fraud.*

*The CRM Code*

*Halifax is a signatory of the Lending Standards Board Contingent Reimbursement Model ('CRM') Code which requires firms to reimburse customers who have been the victims of APP scams like this in all but a limited number of circumstances. It sets out standards that banks, such as Halifax, are expected to meet in terms of protecting their customers from financial harm. But it also sets out expectations that a customer should meet, too. As a starting point, a customer should receive a full refund if they fall victim to an authorised push payment scam such as this one.*

*There appears to be no dispute that Miss J was the victim of an authorised push payment scam here. She thought he was investing money and then making payments to secure the release of her returns, but instead it went to a scammer. But, Miss J would not be entitled to a full refund if Halifax can fairly and reasonably demonstrate, as they have asserted, that Miss J has failed to meet the requisite level of care under one of more of the listed exceptions set out in the CRM Code.*

*Those exceptions are:*

- *The customer ignored an effective warning in relation to the payment being made;*

- *The customer made the payment without a reasonable basis for believing that: the payee was the person the customer was expecting to pay; the payment was for genuine goods or services; and/or the person or business with whom they transacted was legitimate.*

**There are further exceptions within the CRM Code, but they do not apply in this case.*

*Did Miss J have a reasonable basis for belief?*

*Unfortunately, I think the evidence suggests that Miss J did not do enough to satisfy herself that she had a reasonable basis for believing that she was dealing with a legitimate financial business when she made the transfers. I say this because:*

- *Miss J met the 'advisor' on a social media platform, not through a legitimate investment website or platform. Her correspondence with the scammer only took place on social media, a messaging application and then email – which does not seem in keeping with how a genuine investment or trading company would operate.*
- *It does not appear Miss J did any independent checks as to the legitimacy of the person or 'company' she thought she was dealing with. For example, she did not do any checks for reviews online or looking anything up through the Financial Conduct Authority website.*
- *Miss J did not receive any formal documentation such as terms and conditions, contracts, or investment brochures. She did not have to go through any kind of identification checks as one might expect when dealing with a legitimate financial business, other than sending a screen shot of her bank statement after she had already sent her first payment. Again, this does not appear to be in keeping with how a legitimate investment or trading company would operate.*
- *The rates of return Miss J were promised were unrealistic – she was told she could turn £800 into £2,400 within twenty-four hours without any risk. She was then told within a matter of days that her investment of £800 had turned into £15,500. She was further told her original funds would be returned if the rate of return was not achieved. This should have been a red flag for Miss J – legitimate investments with high return rates would not be risk-free, and she would not have been able to find any genuine trading or investment opportunities on the market with risk free returns like these. So I think this should have given her further reason to find out more about where she was sending her funds.*
- *The payments went to two different individual's accounts rather than a business account – and the names did not correspond with the name of the person she believed she was speaking with. She was told they were accountants, but she was given no further information about them, or why the funds would go into their own named personal accounts.*
- *Miss J did not have access to any purported platform or accounts for trading, and just had to take a stranger's word that the money had been properly used.*
- *It appears Miss J had concerns about the scammer but continued to make payments anyway – she expressed that she was scared when sending some of the funds across, and asked if she was being messed around before sending more payments.*
- *By her own admission, the scammer told Miss J to lie to her bank and went so far as coaching her in what to say if she was asked questions about the payments. She was told this was because banks did not like putting these sorts of payments through. This should have given Miss J cause for concern, as it seems unlikely that a legitimate financial business would ask a customer to lie to their bank.*

*When these issues are considered collectively and considering the specific circumstances of this case and the factors in the round, I think there were sufficient unusual factors here that*

*Miss J ought to have acted more cautiously than she did. I am satisfied, therefore, that Miss J did not have a reasonable basis for believing she was making a payment for a legitimate investment, so Halifax acted fairly in saying that this exception to refund under the CRM code was applicable in this case.*

*Did Miss J ignore an effective warning in relation to the payment being made, and did Halifax*

*meet its obligations in relation to the payments?*

*The code also sets out standards that banks are expected to meet, as I explained above. Halifax needs to be on the lookout for factors that might indicate an enhanced risk that Miss J's payment instructions were being made as part of a scam. Where they identify such a risk, the bank needs to take reasonable steps to provide the customer with an effective warning.*

*Halifax did not provide any warning relating to the £800 initial payment – which I think was reasonable in the circumstances. As outlined above, banks are only required to provide effective warnings where they have identified a scam risk – and I don't think there was anything about this payment that stood out as likely to be part of a scam. Whilst it was not for an inconsequential amount of money, it is not so large that it ought to have given Halifax cause for concern. And it was in keeping with previous payments on her account.*

*Halifax, in their submissions to this service, explained that the second payment did flag on their systems for its potential risk and so they stopped the payment, and spoke with Miss J on the phone. Miss J said that following the scammer's instructions, she was not honest with Halifax. She told them that she was making the payment to a friend. They asked her if anyone had asked her to be dishonest about the payment and Miss J confirmed that they had not, so Halifax lifted the blocks on her account and allowed her to continue making the payments. I have listened to the call Halifax had with Miss J, and she sounded relaxed and in control on the phone call. She told Halifax the payment was going to someone she knew. Halifax went on to talk to her broadly about fraud and scams and told her that if she did carry on, she was unlikely to be able to get her money back. They explained how trustworthy fraudsters could be, but explained that they had ruined many customers lives. Miss J told them that she knew the recipient as they were her friend, that she had been given their account details face to face. She confirmed that she hadn't been contacted by anyone out of the blue or asked not to discuss the payment with the bank. She appeared calm, casual and made conversation with Halifax, even asking about whether cases of fraud were on the rise as she had not had a call like this before and expressing her gratitude to them. She confirmed again that she had not been contacted, asked to lie to the bank or told she needed to move her money. She said it was one hundred percent her decision and her making the transactions. Halifax reiterated that it was very unlikely she would get her funds back once it left the account. After the conversation, Halifax put the payment through.*

*Due to the account activity and value of this payment, it is not clear to me why Halifax identified this as a scam risk. So, I would not have said ordinarily that they needed to provide an effective warning here. However, for some reason it does appear they recognised this payment as a risk and so they got in touch with Miss J and questioned her about the payment. I would not say that their interaction amounted to an effective warning – for example it did not bring to life the type of scam Miss J was falling victim to and how these usually work – but I do not think that was Halifax's fault here. Miss J was not honest with them about the reason for her payment, and I heard nothing in her words, tone, or delivery which I think ought to have given Halifax cause for concern here. Miss J's decision to provide a cover story, and her effectiveness in doing so, made it very difficult for Halifax to provide an effective and tailored warning here. So I think in this case Miss J made it impossible for them to provide an effective warning – and so should not benefit from this.*

*But the code is not where Halifax's obligations end – when they notice an unusual and out of character transaction they need to speak to their customer and ask further questions to satisfy themselves that their customer is not at risk of fraud or financial harm. It is clear they* *did contact Miss J here, and ask her about the first payment. I've thought about the questions they asked, taking into account the answers Miss J gave. Having done so, I think their intervention was proportionate in the circumstances. Whilst they could have asked more questions about why she was paying her friend, I think in this case given the relatively low amount and the calm and collected nature of Miss J in the phone call, and her ability to answer the questions they did put to her, I think the intervention was appropriate here and they need not have done anything more in relation to this payment. Miss J did not say anything which ought to have put Halifax on notice that she was falling victim to a scam – and so I think they did not fail to meet any obligations in relation to this payment.*

*I've considered whether they ought to have provided her any further effective warnings for the payments she made subsequently. The subsequent payments were as follows:*

- *Day one: £1500.00*
- *Day one: £1784.64*
- *Day one: £400.00*
- *Day one: £1100.00*
- *Day two: £1792.75*

*On the one hand, as far as Halifax were aware after their first intervention, the further funds went to a known and trusted payee. The first of the subsequent payments took place three days after the conversation between Miss J and Halifax. The payments were not done in quick succession in line with some patterns of fraud. So I think it was reasonable in the first instance that Halifax did not recognise the first subsequent payment as one that demonstrated a risk of fraud or financial harm to Miss J. I think the same logic applies to the second and third payments. However, by the fourth payment on the same day, I do think that Halifax ought to have recognised that Miss J was at risk of falling victim to a scam. Halifax have pointed to the fact that Miss J previously used her account for faster payments, including some up to £5,000, and had sometimes sent more than one faster payment in quick succession. I've reviewed her statements and can see that this appears to be accurate. However, this appears to have been up to a couple of payments in the same day, so I do think by the fourth payment in the same day, amounting to nearly £5,000 Halifax ought to have been on notice that Miss J was at risk of falling victim to a scam. It would seem highly unusual to pay the same payee across four payments in one day, and was not in line with previous account activity for Miss J. So, I think they ought reasonably to have provided an effective warning under the code. I also think that the four payments within the day meet the bar for further intervention – and I think they ought to have contacted Miss J to ask her about the payments.*

*In regard to an effective warning – I think Miss J likely would have selected that she was paying a friend or family member and prevented Halifax from providing her with an effective warning. So I have considered whether telephone intervention would have meant Halifax would have been able to recognise that Miss J may have been falling victim to have a scam, such that they could have prevented the payment and the payment that took place the following day. It is impossible to say exactly what would have happened, so I have to decide on the evidence what I think most likely would have happened here. Having done so, I do think they could have stopped Miss J making these two payments. I'll explain why.*

*I have carefully considered the communications between Miss J and the scammer. I think it is fair to say that as the conversation carries on, and more and more requests for funds are sent to Miss J, she appears to get a lot more emotional and expresses that she is scared that they are messing her around. They had previously told her to lie to the bank, and she had done so, but they did not provide her with a detailed cover story. They told her to say she was paying a friend. Whilst Miss J was able to convincingly lie to the bank when she was making the payment of £2,800, it is unclear how she would have persuaded Halifax that* *she was paying her friend for the fourth time that day. This would be an unusual way to pay a friend, and it is unclear if she had come up with any kind of story that would have sounded realistic to Halifax. This is particularly so, given that it is clear from the messages that her emotions were getting ever heightened as the day went on. So, whilst I cannot say exactly how the conversation would have gone, I think it is more likely than not that Miss J would have failed to answer questions satisfactorily and the payment ought to have been stopped. I think this would likely have stopped the final payment taking place the following day too.*

*So, as I think Halifax could have prevented the loss for these two payments, I think it would be fair and reasonable for them to bear some responsibility here. But I also have to consider whether Miss J ought to bear any responsibility for the loss she incurred in these two payments. This is because there is a general principle that consumers must take some responsibility for their decisions. In this instance, I do think that Miss J is partly responsible for the loss in relation to these two payments – and so I think a shared liability is fair and reasonable. My reason for thinking this is the same as the reasons I have outlined above for why I do not think Miss J had a reasonable basis for belief when she made the payments – and so I won't repeat it here.*

*So, having taken account of all of the circumstances of this complaint I think it would be fair and reasonable for Halifax to refund the final two transactions Miss J made as part of this scam – with a 50% deduction in recognition of Miss J's contributory negligence.*

*Recovery*

*I have also considered whether Halifax could have done more to try to recover the money once it had been told of the scam. We would expect a business to take reasonable steps to try and recover the money from the bank it was sent to, with urgency, after their customer notifies them they fell victim to a scam. Halifax did try to recover the funds miss J sent to the scammer within an appropriate amount of time – and were able to evidence that they contacted the receiving banks. It is not entirely clear how quickly they did so – but they managed to receive Miss J's losses back from the first bank. Our investigator checked with the second receiving bank, who showed that at the time Miss J reported the scam there was already only 39p in the account, so even if there was a delay in reporting the scam to them, I cannot say that Halifax would have been able to have obtained any further returns.*

*My provisional decision*

*My provisional decision is that I think Halifax ought to refund 50% of the last two payments Miss J made to the scammer, along with 8% simple interest from the date of the loss to the date of the payment. If nothing changes, my final decision is likely to be along the same lines."*

## 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.

In response to my provisional decision, Miss J responded through her professional representatives to inform me of their circumstances and explain the offer was lower than she had hoped for. In summary, they said:

- Miss J had worked extremely hard to build up her savings, and losing them to the scam had a huge impact on her physical and mental health. She is suffering with severe depression and anxiety and even contemplated taking her own life.
- She is in debt to her family and friends and unable to repay them or build her savings back up.
- The scammer put her under immense pressure to make sure she sent the funds, and told her what to say to Halifax when she spoke to them.

- Whilst the payment did flag as unusual and prompt the phone call between Halifax and Miss J, they did not think the call went far enough given that the payment was for the large amount of £2,800. They said Halifax ought to have had a more in-depth conversation and pried into the reason for the payment.
- The subsequent payments started only 3 days after the £2,800 which was under a week after the first payment, so should have required earlier intervention to check that these were legitimate.

Halifax responded to say they had nothing further to add.

I have thought about Miss J's further submissions and whilst I am sorry to hear of the huge impact this has had on her life and health, I cannot say that it impacts my decision on what I think the bank should fairly refund her in the circumstances. I do appreciate the £2,800 was not an inconsequential amount of money, but I remain satisfied that Halifax's intervention was proportionate in the circumstances and that there was nothing Miss J said in their phone call with her that ought to have given them cause for concern such that they did not put this payment through.

I also do not agree that on the first day of subsequent payments they ought to have intervened sooner – Miss J had made numerous faster payments in a day before, and had made faster payments up to £5,000 in a day. The phone call between Halifax and Miss J meant that Halifax thought this was a known and trusted payee. So I do not think that they ought to have intervened prior to the fourth payment in that day. As such, I am reaching the outcome that I had suggested in my provisional decision.

**My final decision**

Bank of Scotland plc trading as Halifax must refund 50% of the final two transactions, along with 8% simple interest from the date of the loss to the date of the payment.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss J to accept or reject my decision before 26 July 2024.

Katherine Jones
**Ombudsman**