

## **The complaint**

Mr M is unhappy with the service Bank of Scotland plc trading as Halifax provided after they were the victims of an authorised push payment (APP) scam.

## **What happened**

Where the circumstances of the complaint are well known to both parties, I won't detail them again here. Rather, I'll focus on setting out the key reasons for my decision. I hope Halifax and Mr M won't take this as a discourtesy; it's just a reflection of the informal nature of our service.

## **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's findings for broadly the same reasons, I will explain why.

Firstly, I have thought about whether Mr M's complaint can be considered in light of the Contingent Reimbursement Model (CRM). But Halifax are under no obligation to refund the money to Mr M under the CRM Code, as the Code only applies to payments made to another person (which wouldn't have been the case here given the payments were made to an account Mr M had with an e-money institution (EMI)).

It's not in dispute that Mr M authorised the disputed payments in question. On 13 March 2023 he sent the first payment of £500 to an account in his own name which he had with an EMI. Following this Mr M sent a further £5,756.60 between 13 March and 15 March 2023 to the same account.

I accept that Mr M didn't intend for his money to go to the fraudsters, under the Payment Service Regulations 2017 (PSRs) Mr M is presumed liable for the loss in the first instance as the payments were authorised by him. This is unless there is sufficient evidence that Halifax should fairly and reasonably have done more to protect Mr M.

Halifax does have a responsibility to monitor accounts and payments, and one of the reasons for this is to prevent fraud and scams. Halifax needs to have systems in place to look out for unusual transactions or other signs that might indicate its consumers are at risk of fraud. With that in mind, I've considered whether Halifax should have considered these payments as being sufficiently unusual or uncharacteristic that it ought to have given it sufficient grounds for suspecting fraud.

Bearing this in mind, I'm satisfied it wouldn't be reasonable to expect Halifax systems to have been triggered by the payment in dispute. I say this because the first payment which was made to an account in Mr M's own name was for £500, which isn't a substantially high amount. The second amount Mr M transferred was for £2,200 (which was the highest value payment Mr M sent. The other payment were between £10 and £1,368.

I accept that this was Mr M's representative has said that it feels Mr M's account activity changed with the scam payments. But I disagree. I am satisfied that the payments Mr M made were neither uncharacteristic or unusual. I say this because, having reviewed Mr M's account activity, I can see there were other similar transactions in the last six months, to highlight one of them, £1,900 in the six months prior to the scam. I accept that the £2,200 payment was one of the highest values of expenditure on Mr M's account, but in context of what I would generally expect a bank to identify as suspiciously large, the amount itself isn't remarkably high) it was still in line with the pattern of behaviour and spending on the account.

I have also considered the pattern of the behaviour. Mr M's representative has confirmed that Mr M had used his savings to fund the scam. And having reviewed the statements, I can see that around the time of the scam, money would be transferred into Mr M's account (from his saving account) and transferred out to an account in Mr M's name. As the transfer had come from Mr M's savings account, I'm satisfied this didn't look particularly suspicious and as such Halifax's systems were unlikely to have triggered. I say this because the very nature of savings account is for customers to do just that, save, usually for something specific. Therefore, it is not unusual for larger one-off payments to be made.

So, I can't reasonably conclude there was anything to indicate any suspicious circumstances around where the money was being transferred to as it was an account in Mr M's name. I also have to bear in mind that if banks such as Halifax were to be expected to intervene with every payment of a similar size to the ones being disputed here - and to accounts in a consumer's own name - it could risk grinding the banking system to a halt.

For the reasons I have explained above, I am satisfied that neither amount was remarkably large or significantly uncharacteristic of Mr M's pattern of spending, particularly given he was using his savings. Consequently, I don't think Halifax could reasonably have known that these payments were subject of a scam. The payments were not significant enough to have triggered its systems; nor were there sufficient grounds to justify delaying the payments.

I have gone on to consider if Halifax took reasonable steps to try and recover the funds. As Mr M had transferred the funds to an account in his own name (EMI account), and then out of the EMI account to the scammer, I am persuaded that it was highly unlikely that Halifax would be able to facilitate the recovery of the payments after they were moved on from M M's EMI account to the scammers. So, I don't think I can hold Halifax responsible for Mr M being unable to recover his funds.

All things considered, and despite my natural empathy for this cruel scam and the situation finds himself in having lost his money, I'm not persuaded Halifax taking different actions would have prevented the payments being made, or the loss that ensued, for the reasons I have explained. It follows that I do not consider it fair or reasonable to require Halifax to do anything beyond what it has already done for this complaint.

### **My final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 15 December 2023.

Jade Rowe

**Ombudsman**