

## **The complaint**

Mr A complains that Bank of Scotland plc, trading as Halifax, won't refund the money he lost in an authorised push payment (APP) scam.

## **What happened**

Mr A decided to invest in Bitcoin through a broker he found on social media. He sent a faster payment of £800 to a personal account on 20 March 2018. He was told this investment had made a profit of £50,000 the following day - and that to release these funds he needed to send a faster payment of £2,973.80 to a different personal account. He did this on 21 March 2018. When he did not receive the profits and could no longer contact the broker he realised he had been scammed and reported it to Halifax.

Halifax rejected Mr A's claim saying the transactions were not unusual for the account and there were several red flags that ought to have stopped Mr A.

Our investigator did not uphold Mr A's complaint. She said the transactions were not out of character and nor did they drain the account, so Halifax was not at fault when it did not intervene. She said Halifax did what we would expect to try to recover the money once Mr A reported the scam.

Unhappy with this assessment Mr A asked for an ombudsman's review. He said Halifax had checked other smaller payments with him and the other high value payments he had made were to family member so they did not need to be checked – but does this mean it's okay Halifax doesn't check other payments of a similar value. He feels that is unfair.

## **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 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 have been good industry practice at the time.

The Contingent Reimbursement Model Code doesn't apply in this case as the payments were made before it came into force and so can't be considered under it.

So, in broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations 2017 and the terms and conditions of the customer's account. And I have taken that into account when deciding what is fair and reasonable in this case. It is not in dispute in this case that Mr A made and authorised the payments. At the time he made them he believed he was investing in Bitcoin. Mr A says he was scammed and he wasn't making the payment for the reason he thought he was, but I remain satisfied the transaction was authorised under the Payment Services Regulations 2017

But that is not the end of the story. Taking into account the law, regulators rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider Halifax should fairly and reasonably:

- Have been monitoring accounts and any payments made or received to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams.
- Have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer.
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or make additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

In this case, I need to decide whether Halifax acted fairly and reasonably in its dealings with Mr A when he made the payment requests, or whether it should have done more than it did.

As I've explained above, I consider that as a matter of good practice Halifax should have been on the lookout for unusual or uncharacteristic transactions. Having considered Mr A's account activity before the scam I agree with the investigator that the scam payments weren't unusual or uncharacteristic and so I wouldn't expect Halifax to flag them or ask Mr A any questions about them.

The payments were made to personal UK bank accounts. There was nothing about them that was unusual. I don't think either payment here was of such a value that they ought to have been flagged as suspicious in the context of Mr A's account history. I find, in the circumstances, Halifax had no reason to be concerned about them and so to intervene in any way. Mr A argues that lower value payments he had previously made triggered an intervention from Halifax. But value is only one characteristic of a transaction and it may reasonably be some lower value payments require verification, but certain higher value payments don't.

There is a balance to be struck between identifying payments that could potentially be fraudulent and minimising disruption to legitimate payments. If all payments such as the ones Mr A made were blocked while further enquiries were made, many genuine payments would be stopped which would cause significant disruption and delay. Mr A believes that Halifax failed to prevent a foreseeable loss, but I disagree. I don't consider that Halifax reasonably had any reason to suspect Mr A may be at risk of financial harm.

I have then considered if Halifax did enough to try to recover Mr A's funds once it was put on notice. Mr A reported the scam to Halifax at 5.30pm on 21 March 2018. It raised a fraud claim at 6.07pm and by 10.20am the following morning both recipient banks had confirmed no money remained in either account. So I don't believe Halifax could have done anything more.

I am sorry Mr A has had to contact us in these circumstances but for the reasons set out above I cannot fairly hold Halifax – who had no involvement in the scam - liable for Mr A's losses. It follows I am not instructing it to refund either payment.

### **My final decision**

I am not upholding Mr A's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 20 November 2023.

Rebecca Connelley  
**Ombudsman**