

The complaint

Mr B and Ms B are 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 Mr and Ms B and Halifax 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. But before I do, I want to acknowledge that I understand my decision will be disappointing to Mr B and Ms B. But based on the evidence, I am persuaded the offer Halifax has made is fair in the circumstances. I will explain why.

It's not in dispute that Mr B authorised the payments in question. Over a two-and-a-half-month period he sent £32,164 to his crypto wallet from his Halifax account, (where the funds were subsequently transferred on to the scammer). While I accept that Mr B didn't intend for his money to go to the fraudsters, under the Payment Service Regulations 2017 (PSRs) Mr B is presumed liable for the loss in the first instance as the payments were authorised by him. Unless there is sufficient evidence that Halifax should fairly and reasonably have done more to protect him, e.g. by failing to act on clear triggers of unusual or uncharacteristic activity on the account.

To put it another way, Halifax has 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 (amongst other things). With that in mind, I've considered whether Halifax should have considered these payments as being so unusual or uncharacteristic that it ought to have given the bank sufficient grounds for suspecting fraud.

Bearing this in mind, and having considered the circumstances of this case, I'm satisfied it wouldn't be reasonable to expect Halifax's systems to have been triggered by the payments in dispute. I will explain why.

The first payment in dispute was for £100 sent via faster payment to Mr B's own crypto wallet on 7 January 2022. I am satisfied it wouldn't be reasonable to expect Halifax's systems to have been triggered. I say this because it's a relatively nominal amount and if Halifax were expected to check each transaction of this value it would cause significant inconvenience for its customers.

I have also considered that Mr B was presented with a warning when he made his first payment of £100. The warning outlined that Halifax was unable to check the account details. The warning said:

“We’re seeing more scams to accounts that can’t be checked”

Mr B proceeded to make the payment.

The payments which followed ranged between £1 and £4,000 between 10 January 2022 and 14 March 2022. While I accept the amount of money Mr B sent is clearly significant to him, this doesn’t in itself suggest a heightened risk of fraud. I also acknowledge that some of the transactions in question were larger than usual for the account, although, in the context of what I would generally expect a bank to identify as suspiciously large, the amounts themselves weren’t remarkably high. So, I am not persuaded this would have stood out as unusual or suspicious.

I have also considered Mr B’s account activity. The payments in question were all made via faster payment over a two-and-a-half-month period (roughly). When I have gone on to consider Mr B’s statements, I can see that prior to the scam, Mr B mainly used his account to make faster payments, and there had been several faster payments made to an international money transfer service, in short succession, in the same month. Mr B would often transfer money into his Halifax account and out the same day or within a couple of days of transferring it into the account. This is how he managed his account. And is in line with the payments in question. So, while the amount he transferred was higher than usual (although 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 on the account.

Lastly, Mr B was also transferring the money to his crypto wallet, which he had already sent a nominal amount to on 7 January 2022 after Halifax had presented a warning. As a consequence, the payments which followed, for the reasons outlined above, weren’t significantly large or uncharacteristic to an unknown/new payee.

As such, 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. It’s important to note that Mr B didn’t ask Halifax to send the money directly to the scammers but instead to a crypto wallet in his name. And Halifax did as Mr B requested. So, 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 Mr B’s crypto wallet to the scammer. Therefore, I don’t think I can hold Halifax responsible for Mr B being unable to recover his funds.

All things considered, and despite my natural empathy for this cruel scam and the situation Mr B 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 Ms B and Mr B to

accept or reject my decision before 20 December 2023.

Jade Rowe
Ombudsman