

The complaint

Mr P has complained about the actions of Bank of Scotland plc trading as Halifax after he fell victim of an authorised pushed payment (APP) scam.

Mr P has a representative on this complaint.

What happened

The details of the complaint are well known to both parties, so I will not repeat them again here. Instead, I will focus on giving the reasons for my decision.

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.

- Firstly, I understand that Mr P's representative has said they would like his complaint to be considered in light of the Contingent Reimbursement Model (CRM). But Halifax are under no obligation to refund the money to Mr P 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 Mr P's own cryptocurrency wallet he had with an e-money institution (EMI) before being moved on to the scammer).
- It's not in dispute that Mr P authorised the disputed payments in question. On 12 May 2022 he sent £3 and £2,510 to his crypto wallet from his Halifax savings account (where the funds were subsequently transferred on to the scammer). While I accept that Mr P didn't intend for his money to go to the fraudsters, under the Payment Service Regulations 2017 (PSRs) Mr P 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 P.
- 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's systems to have been triggered by the payment in dispute. I say this because the first payment which was made to Mr P's crypto wallet was for £3, which is obviously a nominal amount. The second amount Mr P transferred was for £2,510, and while I don't think this was a particularly remarkably amount to cause Halifax to be concerned, I do accept Mr P's argument that this was a higher amount than previously transferred from his account. So, I have gone on to consider the other circumstances surrounding the funds transferred.

- Mr P transferred the funds from his savings account to his crypto wallet. As the transfer had come from Mr P'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. Secondly, when looking at the activity on Mr P's savings account, usually money was transferred into the account and out the same day. 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 behavior on the account. Lastly, Mr P was also transferring the money to his crypto wallet, which he had already sent a nominal amount to that day. As a consequence, this wasn't a large payment to an unknown payee.
- Therefore, I can't reasonably conclude there was anything to indicate any suspicious circumstances around where the money was being transferred to. I appreciate the representative's argument that Mr P was a retail client and hadn't used crypto wallets before. But I 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 crypto wallets 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 P's pattern of behavior from his savings account. 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. Mr P transferred the funds on 12 May 2022 to his crypto wallet. However, on the same day he says he received an email from the trading platform advising that 3050 USDT (a cryptocurrency named Tether) had been withdrawn from his account on the trading platform. This was the equivalent to the sum invested by Mr P in GBP. Mr P didn't question or report the issue at this point.
- On 18 May 2022, Mr P realised there was an issue when he discovered the investment had disappeared and there was no trace of the funds. Even if Mr P had made Halifax aware at this point, it's important to note that he 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 P requested. 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 P's EMI account to the scammers. So, I don't think I can hold Halifax responsible for Mr P being unable to recover his funds.

All things considered, and despite my natural empathy for this cruel scam and the situation Mr P 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 P to accept or reject my decision before 14 November 2023.

Jade Rowe
Ombudsman