

## The complaint

Mr O is unhappy that Bank of Scotland plc trading as Halifax ('Bank of Scotland') won't refund the remaining money he lost after he fell victim to an Authorised Push Payment (APP scam).

## What happened

On 7 March 2023 I issued my provisional decision on this complaint. I wanted to give both parties a chance to respond with further submissions, before I gave my final decision. That provisional decision forms part of my final decision and is copied below.

### *What happened*

*Both parties are aware of the circumstances of the complaint, so I won't repeat them all here.*

*But briefly, in December 2020, Mr O received a call from an individual purporting to be from another banking provider, with which he held another account. But unknown to Mr O at the time, the call was from a fraudster.*

*The fraudster told Mr O there had been fraudulent activity on the account he held with the other bank, and on checking his account Mr O could see there were three debit card transactions, totalling over £10,000 that he didn't recognise and hadn't authorised. The fraudster suggested to Mr O that, to reassure himself that the call was genuine, he should verify the number he was being called from online. When Mr O did this, he says he could see it was the official number for his other bank. Mr O has said this gave him complete confidence that he was speaking to his bank, but he later discovered that the fraudsters had successfully 'spoofed' the banks genuine telephone number.*

*He was told that he needed to move his money to stop the fraudsters clearing out his account. The fraudster told Mr O he needed to move money to other accounts he held in his name, and then from there move the money on again. Mr O has said he questioned why he had to move money to different banks and the fraudster told him that the banks all worked in tandem, were working together, had the same remit and fell under the same regulations. The fraudsters added that, in order to keep his money safe he needed to act quickly and move it across a number of payments, and the money needed to be moved urgently to stop the fraudsters being able to access it.*

*Believing everything to be genuine, on 17 December 2020, Mr O moved £34,083.32 into the account he held with Bank of Scotland and, following the fraudsters instructions, went ahead and made the following payments, totalling £33,780.81, to account details the fraudster provided for three different accounts;*

17 December 2020 @ 21:59	£4825.83	(to beneficiary account one)
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17 December 2020 @ 21:59	£4825.83	(to beneficiary account one)
17 December 2020 @ 21:59	£4825.83	(to beneficiary account two)

17 December 2020 @ 21:59	£4825.83	(to beneficiary account two)
17 December 2020 @ 21:59	£4825.83	(to beneficiary account two)
17 December 2020 @ 21:59	£4825.83	(to beneficiary account three)

When he later became suspicious, Mr O contacted his banks to report that he had been the victim of a scam. Bank of Scotland looked into Mr O's complaint and considered its obligations to provide him with a refund. Bank of Scotland 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 says one or more of those exceptions applies in this case and that Mr O hadn't met the standards required of the Code as he had ignored a warning.

Bank of Scotland has said that while making the payments it had provided Mr O with the following warning (which Mr O has said he doesn't recall seeing);

[Name],  
 We'll never call you to ask you to move your money to another account.  
 If you get a call like this it's a scam.  
 Fraudsters can even copy our telephone number.  
 Don't believe them, hang up the phone.

Bank of Scotland also said that, during one of the payments, it provided Mr O with a warning that read;

'Did we call and tell you to move your money to another account?'

It's said Mr O provided an untrue answer to this question and selected 'No'. Again Mr O has said he doesn't recall being presented with this warning.

Alongside this, Bank of Scotland has also said that, for each of the new payee's Mr O set up, when providing the account details and name for the transfers, Mr O was presented with a 'confirmation of payee' alert that stated:

- We have introduced new payee checks to keep you safe
- We've been unable to verify your payee. Not all accounts can be checked at the moment, but more will be available soon. You can still continue, and the details may be correct but please double check the account details with the payee.
- Do you want to continue?

Bank of Scotland say Mr O disregarded the warnings and proceeded with the payments anyway. It did however accept that there was more it could have done, so it hadn't met its expectations. This was because it said the payments Mr O had made were unusual to his previous account activity, and so it could have done more to prevent them from being made. It therefore agreed to accept 50% liability for the payments made from Mr O's account and refunded him £16,890.44. Alongside this, Bank of Scotland also recognised it could have refunded this money to Mr O sooner, so it paid him interest of £337.62 (calculated at 8%) and compensated him with a further £150.

Bank of Scotland also tried to recover the money Mr O lost from the beneficiary accounts (the accounts to which the payments were sent). It was able to recover £500 from one of the accounts (which was returned to Mr O's Bank of Scotland account on 22 December 2020). But unfortunately no further funds remained to be recovered.

Believing he should have been refunded in full Mr O referred his complaint to this service. One of our Investigator's looked into things but didn't uphold Mr O's complaint. In summary,

*he thought Bank of Scotland had provided an effective warning and he didn't think Mr O had a reasonable basis for believing he was speaking to a genuine member of bank staff.*

*Mr O didn't agree with our Investigator's view. As agreement couldn't be reached the complaint has now been passed to me for a decision.*

*What I've provisionally decided and why*

*I've considered all the available evidence and arguments when looking at what's fair and reasonable in the circumstances of this complaint. In doing so, 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 be good industry practice at the time.*

*In broad terms, the starting position at law is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account.*

*However, where the consumer made the payment because 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. The CRM Code is of particular significance here. As I've mentioned, Bank of Scotland is a signatory to that code, which requires its signatories to reimburse customers who are victims of scams like this one in all but a limited number of circumstances. Bank of Scotland says that one or more of those exceptions are applicable in this case. I've dealt with each exception in turn below.*

*Did Bank of Scotland give an effective warning?*

*The CRM code says that, where a firm identifies a scam risk, it should take reasonable steps to provide its customer with effective warnings. To meet the standards required under the code, the warning needs to be (as a minimum) understandable, clear, impactful, timely and specific.*

*Bank of Scotland has said Mr O was provided with a number of warnings as part of the process when making his payments. The content of those warnings is set out in the background section above.*

*Effective warnings need to be impactful enough to overcome, or at least attempt to overcome, the typical features of the type of scam they seek to prevent. I agree that the first warning I've detailed in the background was, broadly speaking, relevant to the complaint. Although the fraudster wasn't saying they were from Bank of Scotland, Mr O had received a call apparently from his bank and he'd been asked to move his money.*

*The CRM code also says that an effective warning needs to include the appropriate action a customer can take to address the risk of a scam. This warning does say that Mr O should hang up, rather than continue with the call but it goes no further than that. I don't think that was sufficient to meet the requirements of the code.*

*However, Mr O can't remember seeing the warnings and from the audit records Bank of Scotland has provided I think this is understandable. As it appears Mr O was only on the particular warning screen for seconds before moving through the payment journey, so I don't think he read them. I'm mindful that it's significant here that he was being coached by the fraudster to act quickly and with urgency to protect his money. Considering he believed his money was at risk and that he needed to act promptly, it's understandable why he moved passed this warning fleetingly.*

*I appreciate that Bank of Scotland say Mr O received an 'unable to confirm' Confirmation of Payee ("CoP") result when he made the payments – and this was because the beneficiary banks did not have CoP in place. But this warning stated to check the account details with the person being paid. Given Mr O had no reason to doubt who he was paying and had what he considered to be the right details – I don't think this would have alerted Mr O to the possibility that something may not be right and that he was falling victim to a scam. I'm also mindful that none of the warnings Bank of Scotland has said it provided, make it clear that any money sent as a result of a scam would be lost and likely irrecoverable, which is a requirement of the CRM code.*

*Overall, in this particular case, while I accept Bank of Scotland did take steps to warn Mr O about impersonation scams, I don't think the warnings Bank of Scotland provided were strong enough to break the spell of the type of scam Mr O fell victim to and so I'm not persuaded it provided effective warnings in compliance with the requirements of the CRM Code. This means the 'effective warning' exception does not apply.*

*Did Mr O have a reasonable basis for belief?*

*I have also carefully thought about whether Mr O had a reasonable basis for belief when making the payments and I'm persuaded that he did. I say that because;*

- *The fraudsters told Mr O that there was suspicious activity on his account. On checking Mr O was able to see some high value transactions that he hadn't authorised. I think it is understandable and not unreasonable why he may have thought this information was only something that his genuine bank would have been aware of and something that his bank would want to discuss with him, as a matter of some urgency.*
- *The sophistication of the scam enabled the fraudster to spoof a banks genuine telephone number which re-assured Mr O they were genuine. I'm also satisfied Mr O was unaware that phone numbers can be spoofed so that calls appear to come from a genuine source.*
- *Mr O also made attempts to verify the number he had been called on. Mr O had checked the number he was being called from against the details on the banks genuine website. Which I think reasonably gave him further assurances that he was genuinely talking to his bank.*
- *Mr O was being coached by the fraudster on the step-by-step actions he needed to take and was being put under time pressure to move his money, in order to protect it, as is often the case for customers affected by this type of scam. Mr O did ask the fraudsters questions along the way (such as why he needed to pay different banks and make separate payments). I don't think the answers Mr O has said the fraudsters gave ought to have given him cause for concern. I think it's reasonable for Mr O to have believed that it was plausible that banks would work together to tackle fraud and that they would want to do all they could to prevent Mr O's money from being at risk.*
- *I don't think Bank of Scotland has given enough consideration to the fact the fraudster had created an environment where Mr O thought he had to act quickly to protect his accounts from an attack. With the benefit of hindsight and the removal of the pressured environment, it's easier to identify elements where Mr O may have had an opportunity to ask further questions. But the convincing nature of these scams can often have a negative effect on a person's thought process*

*and make them take steps that, in the cold light of day, they might not otherwise take.*

*Overall, I'm not persuaded that Bank of Scotland has done enough to establish that Mr O made these payments without a reasonable basis for believing that he was transacting with a legitimate employee of his bank.*

*Considering everything, I'm persuaded that Bank of Scotland should have reimbursed all the money Mr O lost from his Bank of Scotland account under the CRM Code. I'm not satisfied that any of the permitted exceptions to reimbursement apply in the circumstances of this case.*

*Should Bank of Scotland have done more to prevent the scam?*

*In addition, I think that Bank of Scotland ought reasonably to have done more to prevent this scam. I've looked at Mr O's account statements in the months leading up to the scam and I'm persuaded that the first payment Mr O makes, for £4825.83, is a significant departure from how he typically runs his account.*

*The evidence I've seen shows that the transactions on Mr O's account are more typically for relatively low values, indeed there are only a few payments over £100, which are for the same monthly direct debit. So, I'm persuaded that a payment for over £4,000 to a new payee ought to have caused Bank of Scotland concern that Mr O may have been at risk of financial harm, I think it stands out as unusual and out of character. I also think this is supported by Bank of Scotland's own records, which indicate there had been no payments out of similar values in the two years leading up to the scam and the spending before had been relatively modest in comparison.*

*With this in mind, I think it's reasonable to have expected Bank of Scotland's intervention to have gone further than it did, and for it to have asked Mr O some questions before allowing the payments to be processed. Had it done so, I think the scam would've quickly unfolded and Mr O wouldn't have gone ahead with the first, or the subsequent payments.*

*The relevance of this finding is that Bank of Scotland ought to have prevented the loss, rather than just reimbursed Mr O under the provisions of the CRM Code. It follows that Bank of Scotland should pay Mr O interest from the date of loss, rather than the date it decided not to refund him under the CRM Code.*

*I can't know for certain what Mr O would've done with the funds he lost had he not been defrauded, so I think it's fairest to award interest at a rate of 8% simple per year – to reflect the cost of being deprived of that money.*

*My provisional decision*

*In all of the circumstances, I am currently minded to say that the fair and reasonable outcome is to uphold this complaint and require Bank of Scotland to;*

- refund Mr O the outstanding loss of £16,390.37 (being the overall amount Mr O lost, of £33,780.81, less the £500 Bank of Scotland was able to recover and the £16,890.44 it has already refunded to Mr O)*
- pay 8% simple interest per year from the date of payments to the date of settlement.*

Bank of Scotland didn't respond to my provisional decision and Mr O responded to confirm that he was in agreement with it.

### **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.

As Mr O has agreed with my provisional decision and as Bank of Scotland hasn't made any further submissions, I see no reason to depart from my provisional decision and, therefore, I continue to be of the view that this complaint should be upheld.

### **Putting things right**

Bank of Scotland plc trading as Halifax should;

- refund Mr O the outstanding loss of £16,390.37 (being the overall amount Mr O lost, of £33,780.81, less the £500 Bank of Scotland was able to recover and the £16,890.44 it has already refunded to Mr O)
- pay 8% simple interest per year from the date of payments to the date of settlement

### **My final decision**

My final decision is that I uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 19 April 2023.

Stephen Wise  
**Ombudsman**