

The complaint

Mr H is unhappy that Bank of Scotland trading as Halifax hasn't refunded him for the money he lost as part of a third-party scam.

What happened

Mr H received a call from someone claiming to be from the National Insurance Office, they told him multiple other accounts had been set up using his National Insurance number and were accusing him of fraud. In his original testimony to the bank, Mr H said the scammer told him in order to prove the other accounts weren't his, he needed to work with them to catch the fraudster. Mr H said they asked him to transfer money into another account. Mr H also said they asked him to confirm his local police station number, so he found it on the internet and gave them this. (I note this differs from the more recent testimony provided by Mr H's representatives where they say the scammer gave him the number for the local police and Mr H checked this on the internet). Either way this seems to have been in order that he would get a call from the police to confirm what they were saying was true.

Mr H received a second call from someone claiming to be an officer from the local Police Station who confirmed the previous call was genuine. The number they were calling Mr H from matched the number he found online, because of this he believed everything was true and followed the instructions he was given.

Mr H transferred £4,998 and then attempted to transfer a second payment. This second payment was stopped by the bank and the scam uncovered when Mr H later called to unblock the transfer.

Halifax did not uphold the complaint, so Mr H brought his complaint to this service.

Our investigator upheld the complaint in part. He felt that the bank could have done more when Mr H made the payment, but he didn't think Mr H had a reasonable basis for believing this was a legitimate request.

The bank agreed to settle 50% of the transaction as outlined in the view but Mr H did not agree. As the case could not be resolved informally, it's been passed to me for a 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.

In deciding what's fair and reasonable, I'm required to take into account relevant law and regulations; regulatory rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

Halifax has signed up to the Lending Standards Board's Contingent Reimbursement Model ('CRM Code'), and it was in force at the time the payment was made. Under the CRM Code, the starting principle is that a firm should reimburse a customer who has been the victim of an Authorised Push Payment ('APP') scam. But under the CRM code, a firm may choose not to reimburse a customer if it can establish that:

The customer made the payment without a reasonable basis for believing that:

- the payee was the person the customer was expecting to pay;
- the payment was for genuine goods or services; and/or
- the person or business with whom they transacted was legitimate

There are further exceptions within the CRM code, but these don't apply here.

Following our investigator's view, Halifax agreed to refund 50%; accepting that it ought to have done more and recognising that means it bears some responsibility for Mr H's loss. As Halifax has provided a partial refund to reflect this - there is no need for me to consider the bank's responsibility under the CRM Code further.

Did Mr H have a reasonable basis for belief?

I need to consider not just whether Mr H believed he was sending money to a safe account, but whether it was reasonable for him to do so. I've thought about the steps Mr H took to reassure himself about the legitimacy of the transaction and whether it was reasonable for him to proceed with the payments.

Specifically, I have taken into account Mr H's circumstances in which he received the call and the pressure he was likely under in the moment of a call like this. I accept this is a finely balanced case, but overall, I still don't consider Mr H had a reasonable basis for believing the person he was transacting with was legitimate for the reasons below:

- The initial call came from a mobile number and the caller knew no personal information about the customer. Mr H gave up his personal information including his National insurance number.
- It seems from Mr H's original testimony to the bank that Mr H may have had some doubts in the initial call which is what led to the second "police call" to prove it was true. But the scammers didn't seem to know who his local police station was or the number – as they got this information from Mr H himself.
- I appreciate Mr H was at work and there may not have been much time between the calls – but there was time to check on the internet (as he says he did) the number of his local police station. So I think Mr H would have had time between calls to check things further.
- Mr H was told not to tell the bank the truth about the reason for the payment if the payment was blocked – this seems odd to me and should have caused him concern.
- The confirmation of payee came up with a no match, but Mr H says he was in a panic so just allowed it to go through. I appreciate Mr H believed what he was being told but this ought to have been a sign that things were not quite right.

I accept that M H says he verified the number – which was likely spoofed. I also accept that calls like this are designed to create pressure and disrupt the victim's thinking. But there was time to look up his local police station number and therefore some time (albeit I appreciate it might not have been long) in between the calls to check things like his credit report or call the bank.

On balance, when considering the circumstances, I can't fairly say Mr H has proceeded to make the payment with a reasonable basis for believing the payment was legitimate. I'm persuaded this was sufficient reason for Halifax to fairly decline to reimburse Mr H with the full amount of this payment, and I think the 50% refund it has already agreed to pay for this payment is fair and reasonable given the circumstances.

Recovery of funds

I've also thought about whether Halifax took reasonable steps to recover Mr H's funds once it was made aware, he was the victim of a scam. The scam payment was made on 1 February at 12:51 and Mr H called Halifax at 18:03 and the scam logged at 18:17 the same day. From what I've seen Halifax did not contact the receiving bank until 10:10 the following day and was told a few hours later that no funds remain. I have now seen the information from the beneficiary bank showing the majority of funds left the beneficiary account immediately (all but £3 was taken within eight minutes of Mr H sending the money). By the time the scam call was logged the remaining £3 had also left the account and no funds remained. So, although I think there was a delay in Halifax contacting the beneficiary bank, I don't consider it would make a difference in this case - as funds had already left the scammers account before the matter was reported to Halifax.

I'm sorry Mr H has lost a considerable amount of money and I can understand why he would like to be compensated for more of his losses. I do accept he has fallen victim to what can only be described as a cruel and callous scam. But I'm only considering whether the bank, which had no involvement in the scam itself, should be held responsible for what happened and whether it is fair to hold it responsible for all of Mr H's losses when there were signs that things were not quite right.

Putting things right

In order to put things right for Mr H Bank of Scotland plc trading as Halifax must now

- Pay Mr H 50% of the transaction (so £2,499) within 28 days of receiving notification of his acceptance of my final decision: plus
- Pay 8% simple interest on that sum from the claim was declined under the CRM Code to the date of refund¹.

My final decision

My final decision is I uphold this complaint in part and require Bank of Scotland plc trading as Halifax to put things right for Mr H as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 18 September 2023.

Kathryn Milne
Ombudsman

¹ If Halifax is legally required to deduct tax from the interest should send Mr H a tax deduction certificate so he can claim it back from HMRC if appropriate.