

The complaint

Mr N complains that Bank of Scotland plc trading as Halifax (Bank of Scotland) won't refund the money he lost after he fell victim to an 'authorised push payment' ("APP") scam.

What happened

The background to this complaint is well-known to both parties, so I won't repeat it all here. But briefly, and based on the submissions of both parties, I understand it to be as follows.

In September 2022, Mr N received messages through an instant messaging service from someone claiming to be his daughter. The messages said that Mr N's daughter had lost her phone and was unable to make online banking payments, due to having a temporary number. Mr N asked his daughter to call him, but he was told calls couldn't be made or received with the replacement phone.

The messages said that she needed help paying a medical bill and that they would pay Mr N back when their online banking was working again. Mr N asked what the payment was for, as he said in the messages he suspected his bank would ask him, and he was then told more detail about what the medical procedure was. Believing the messages were coming from his daughter, Mr N went ahead and, on 30 September 2022, made a payment for £3,290.15 to the account details provided.

Shortly after making the payment, Mr N received a further message requesting another payment along with new account details. Mr N questioned why the payments were going to different accounts and told his daughter that this worried him. In response to this Mr N was told that his daughter had fallen behind with her payments and that if the payments are made there won't be any hassle.

In the messages Mr N then questioned things further, he said he couldn't find any details online of who had carried out treatment and that he thought it looked 'dodgy'. But after exchanging some further messages, Mr N said he was going to pay the second bill, but that he was going to ask his bank to check for fraud. Mr N went ahead and made a second payment for £3,579.10, again on 30 September 2022, to the account details provided, but he didn't carry out any checks with his bank before doing so. We now know that Mr N was dealing with a fraudster and had sent his payments to accounts the fraudsters controlled.

Mr N has said he was convinced it was his daughter who was sending the messages. He said this as they referred to themselves as 'the eldest daughter', which is what he refers to her as. He added that his daughter had been going through some personal issues, he knew something was wrong but didn't know what it was. And when she didn't want to say much about the procedure or that she owed money, it resonated with him as she is a private person. He added that messaging is the usual way that he talks to his daughter and that she would always come to him if she was in trouble or needed help, so he didn't think it was strange.

Mr N realised he'd been scammed when he received a similar message around 10 days later from somebody claiming to be his youngest daughter. He became suspicious that both of his daughters couldn't be in the same position.

Realising he'd been scammed, Mr N raised the matter with Bank of Scotland. Bank of Scotland is a signatory of the Lending Standards Board Contingent Reimbursement Model CRM Code (the "CRM Code"). The CRM Code requires firms to reimburse customers who have been the victims of APP scams in all but a limited number of circumstances. Bank of Scotland looked into Mr N's complaint and issued its final response on 14 February 2023, not upholding it. In summary, it said Mr N could have done more to verify it was his daughter, when he first received the messages and he should have spoken to her over the phone, before sending any money.

It added that it had done everything it could to protect Mr N and had provided relevant warnings at the time the payments were made. Bank of Scotland attempted to recall the money from the beneficiary banks (the banks to which the payments were made), but was only able to recover £0.93, which was returned to Mr N.

Unhappy with Bank of Scotland's response, Mr N brought his complaint to this service. One of our Investigator's looked into things and thought the complaint should be upheld in part. In summary he didn't think Bank of Scotland had provided effective warnings in relation to the payments that were made. He added that he didn't think Bank of Scotland had been able to establish that Mr N didn't have a reasonable basis for belief when making the first payment. But by the time the second payment was made, there were enough red flags that should have alerted Mr N to the possibility this was a scam.

Overall, it was our Investigator's view that Bank of Scotland should refund Mr N the full amount of his loss for the first payment, but that liability for the second payment should be shared and Mr N should receive a 50% refund for the second payment. Our Investigator said that interest should be added to the amount being refunded.

Mr N accepted our Investigator's view as a reasonable compromise, but Bank of Scotland disagreed. In summary it said it thought Mr N was fully liable for the first payment. This was because it believed it had given a clear and specific warning when this payment was made and Mr N could have contacted his daughter on a trusted number to validate the request was genuine. But it agreed with our Investigator's recommendation in relation to payment two and put forward an offer of refunding 50% of payment two, along with interest.

Mr N didn't accept Bank of Scotland's offer. As agreement hasn't been reached the complaint has now been passed over to me for a final 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.

I've carefully considered Bank of Scotland's representations about the warnings it gave and whether Mr N had a reasonable basis for believing the transactions were genuine. But they do not persuade me to reach a different view to that reached by our Investigator. I'll explain why.

Payment One

Bank of Scotland has shared details of the warning it provided with us. Having looked at the warning it has submitted, I don't think the warning Bank of Scotland presented would be considered as 'effective' under the CRM Code.

While the warning, in part, intends to warn customers about potential scams they may be at risk of. The warning doesn't bring to life what the type of scam Mr N was falling victim to looked like or highlight the common features of these type of scams (such as specifically mentioning contact being made via social media messaging applications, being told by a family member that their phone is broken and that an urgent payment is required, with excuses being made as to why a verbal conversation would not be possible). The warning also doesn't make it clear that any money sent as a result of a scam would be lost and likely irrecoverable.

I've gone on to think about Bank of Scotland's representations about whether Mr N had a reasonable basis for believing he was genuinely communicating with his daughter at the time this first payment was made. Having done so, I'm not persuaded that Bank of Scotland has been able to establish that Mr N didn't have a reasonable basis for belief when he made the payment. I'll explain why;

- These types of scams are particularly cruel and play on the trust and emotive nature of the relationship between a parent and their child. Mr N has said he believed the messages were coming from his daughter. He's said this way of communicating wasn't unusual and where the fraudster referred to his 'eldest daughter' this was familiar language that he used to refer to her. So I can understand how the familiarity, in the style of the messages, reasonably led him to believe they were coming from his daughter.
- From what I've seen, I don't think Mr N has proceeded here with a disregard for risk. He did ask to speak with his daughter before going ahead with the first payment and in doing so, Mr N has demonstrated that he has taken some steps to protect himself from possible risk. I think he was given a plausible reason as to why talking to his daughter wasn't possible. He'd also been given a plausible explanation for why his daughter wouldn't have been able to make the payment herself and why she needed Mr N's help, in that online banking wasn't available on the temporary phone. I don't consider that by not pushing for a verbal conversation further, it would automatically follow that he didn't have a reasonable basis for belief. I'm persuaded at this point the steps he took were proportionate when considering the circumstances.
- With the benefit of hindsight and the removal of the pressured environment, it's easier to identify elements where Mr N may have thought and acted differently. But the convincing nature of these scams can often have a negative effect on a person's thought process. Especially in the absence of an effective warning around how these scams typically feel and play out. In the individual circumstances of this case, because of the situation and in the moment. It is understandable why Mr N was worried about his daughter and wanted to help.

Overall and on balance, I'm not persuaded that Bank of Scotland has shown that Mr N lacked a reasonable basis of belief when he made the first payment for £3,290.15.

Payment Two

Bank of Scotland has agreed with our Investigator's recommendation in relation to payment two. It agrees that the warning it gave for the second payment was not the most appropriate option, but that Mr N should also share some responsibility for this payment.

Mr N has already agreed with our Investigators position regarding this payment, so I don't see the need to go into any great detail about the second payment. Suffice to say that I agree that shared responsibility for the second payment is fair and reasonable and in line with what I would expect under the CRM code.

Bank of Scotland hasn't provided an effective warning for this payment when it ought to have done. But I also find that there was enough going on that Mr N ought to have proceeded with more caution. When looking at the messages I think it is clear that by this point Mr N had his own concerns, he says he thinks it sounds 'dodgy' and is questioning why the payments are going to different accounts. Mr N also expressed an intent to speak to his bank about the second payment to check that it wasn't fraud, something that he didn't go on to do.

In summary, Bank of Scotland didn't present an effective warning. But on the other hand, I'm persuaded that Bank of Scotland has been able to demonstrate that Mr N didn't have a reasonable basis for belief when he made the second payment. With this in mind, I find that shared responsibility for the loss of this second payment is a fair and reasonable resolution when considering the CRM code.

Finally, I've considered whether Bank of Scotland acted reasonably in attempting to recover Mr N's funds. It is quite typical with these types of scams for fraudsters to move money away from the beneficiary accounts, straight after the payments are made, presumably to frustrate the efforts at this type of recovery. Sadly, that was the case here, with evidence I've seen from the beneficiary banks showing that the payments were moved on shortly after the payments were made, and before Bank of Scotland were made of the scam by Mr N. It follows that I don't think Bank of Scotland has missed an opportunity to recover any more of the money that Mr N sadly lost.

Putting things right

For the reasons outlined above, Bank of Scotland plc trading as Halifax, should now;

- Refund Mr N £5,079.70 (being a full refund of the first payment made for £3290.15 and 50% of the second payment that was made for £3,579.10)
- Pay 8% simple interest per year on that amount calculated from the date Bank of Scotland plc trading as Halifax originally declined Mr N's claim until the date of settlement.

My final decision

My final decision is that I uphold this complaint against Bank of Scotland plc trading as Halifax in part.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 25 July 2023.

Stephen Wise
Ombudsman