DRN-5138897

The complaint

Mr M is unhappy Bank of Scotland plc, trading as Halifax, will not refund the money he lost as the result of an authorised push payment (APP) scam.

Mr M's complaint has been brought by a representative, for ease of reading I will refer solely to Mr M in this decision.

What happened

As both parties are familiar with the details of the scam I won't repeat them in full here. In summary, on 4 May 2020 Mr M made an international payment for £7,000 to purchase a motorhome he had found for sale on an online marketplace. Mr M says the seller had sent him a copy of the vehicle registration certificate (V5), a current MOT certificate, full service history, mileage, chassis number, a copy of his passport and numerous photographs of the interior and exterior in advance.

When the vehicle did not arrive by 11 May 2020 as agreed Mr M contacted the shipping company. It had no record of the delivery. Mr M then realised he had been scammed and contacted Halifax on 12 May 2020. Halifax tried to recover Mr M's funds but the international bank did not respond at first. By the time it did on 29 May 2020 no funds remined in the account.

Mr M did not raise a complaint at the time of the scam. In January 2024 his representative complained to Halifax saying the bank should have done more to protect Mr M.

Our investigator did not uphold Mr M's complaint. He said Halifax ought to have intervened and asked Mr M about the payment as it was out of character for his account. But he felt Mr M's replies to its likely questions would have meant Halifax would have processed the payment. And he said the bank had done what we would expect to try to recover the money.

Mr M disagreed with this assessment and asked for an ombudsman's review. He said had Halifax queried him on this payment he would have been entirely forthcoming with the reason for his payment. At this point Halifax would have been in a position to realise the risk of financial harm to him and ought to have invoked the banking protocol, inviting Mr M into branch, to discuss this payment and caution him about it. Mr M says he would then have reconsidered making the payment.

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.

There's no dispute that Mr M made and authorised the payment. Mr M knew why he was making the payment. At the stage he was making this payment, he believed he was buying a motorhome. I don't dispute Mr M was scammed and he wasn't making the payment for the reason he thought he was, but I remain satisfied the transaction was authorised under the Payment Services Regulations 2017.

It's also accepted that Halifax has an obligation to follow Mr M's instructions. So in the first instance Mr M is presumed liable for his loss. But there are other factors that must be taken into account.

To reach my decision I have taken into account the law, regulator's rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time. To note, as the payment was international the principles of the Contingent Reimbursement Model (CRM) code do not apply in this case.

This means I think that Halifax should have:

- been monitoring accounts and payments made or received to counter various risks, including fraud and scams, money laundering, and the financing of terrorism.
- had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (amongst other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which financial institutions are generally more familiar with than the average customer.
- in some circumstances, irrespective of the payment channel used, taken additional steps or made additional checks before processing a payment, or in some cases declined to make a payment altogether, to help protect its customers from the possibility of financial harm.

In this case I don't think Halifax ought to be held liable for the transaction. I'll explain why.

I do think the transaction ought to have triggered an intervention from Halifax. I say this as it was out of character for how Mr M used his account – it was significantly higher value, to a new payee, funded by a recent transfer in and left the account with no funds.

This means what I need to decide is, on balance, would an intervention from the bank have prevented the scam from succeeding. I would have expected Halifax to have called Mr M and asked a series of open questions to understand the basic context of the payment.

I think it is most likely Mr M would have answered the questions Halifax ought to have asked such that it was satisfied the payment was legitimate. I say this as he had copies of all relevant documentation from the seller and he understood the delivery was via a legitimate platform that frequently ships vehicles and had provided a sales invoice. Mr M believed the price was in line with similar vehicles he had researched, so not 'too good to be true'. This means Mr M would have given plausible answers to a proportionate line of questioning. In these circumstances I think for the scam to be exposed Halifax would need to have scrutinised the context of the payment beyond the extent that I see to be proportionate.

Mr M argues as the payment was being made outside the online marketplace Halifax could have broken he spell of the scam. However in the circumstances of this case I disagree. I accept it is contrary to the marketplace's guidelines, but Mr M was making a payment directly to an account in the name of the seller who had provided a copy of both his passport and the V5 in his name so I think, on balance, Mr M would have wanted to proceed anyway.

Mr M says this finding that any intervention would have not changed his mind is wholly hypothetical. But this is the approach we take in such circumstances and I have reached my conclusion based on the balance of probabilities. In other words, what I find to be most likely given the available evidence and the wider circumstances.

The banking protocol which Mr M referred to is not relevant here as those are provisions

for consumers making branch payments. That said, regardless of the payment method, similar principles apply regarding what type of questioning should be employed when a payment is identified as suspicious. And I have explained above why I'm not persuaded such questioning would have uncovered the scam here. Similarly, I therefore do not think Halifax would have had reason to involve the police.

I have then considered if Halifax did what it ought to try to recover Mr M's money once he reported the scam. As the recipient bank was outside the UK it would not be signed up to the same standards so Halifax could only use its best endeavours. I can see it contacted the bank the same day Mr M flagged the scam. The bank did not respond until 17 days later to confirm that the money had already been moved on from the receiving account so there were no funds to return. In the round I find Halifax did what we would expect in this regard.

This means I am not instructing Halifax to refund any money to Mr M. This is a difficult decision to make, I'm sorry Mr M lost a considerable amount of money which was very distressing for him. I can understand why he would like to be compensated for his losses. And I do accept Mr M has fallen victim to a cruel scam. But I can only consider whether the bank, which had no involvement in the scam itself, should be held responsible for what happened. For the reasons set out above I do not find Halifax can fairly be held liable in the circumstances of this case.

Mr M also asked for £300 compensation but I cannot find any grounds to award this – the distress and inconvenience he suffered was as a result of the scammer's actions, not those of the bank.

My final decision

I am not upholding Mr M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 25 December 2024.

Rebecca Connelley
Ombudsman