

## **Criteria for awarding compensation for loss arising from bank help desk scams ('spoofing').**

Dutch Banking Association, 2 June 2021

### **1. Introduction:**

2020 saw a big increase in bank help desk scams, otherwise known as 'spoofing'. Spoofing is a form of non-bank fraud whereby victims themselves transfer money by making or approving bank transfers. A criminal will telephone a victim, using smart trickery to disguise the number they are phoning from, so that it appears the victim's bank is phoning from the bank's own number. During the call, the criminal will ask the bank customer to transfer money, for example, to a safe deposit account, alleging that 'suspicious activities' are taking place on the customer's account. Because this abuses the trust that customers place in their banks, the banks have decided to compensate this specific form of fraud as a matter of goodwill. As from 2021, the following criteria will be applied as a guideline in assessing the goodwill payment to make to victims of spoofing. It is open to banks to apply a more generous policy insofar as they are always free to give more compensation than the criteria prescribe.

#### **Definition of Spoofing:**

In perpetrating bank help desk scams, or spoofing, the criminal will present themselves to the victim as an employee of the customer's bank. To this end, the criminal misuses the name and/or telephone number of the bank. The criminal gains the trust of the victim and by assuming the role of the bank employee persuades the victim to transfer a payment to a supposedly safe account with his or her bank.

### **2. Criteria**

When a case of spoofing is reported, the bank will take steps to limit the customer's further loss and, where possible, protect their money. Pursuant to the letter from the Minister of Finance dated 18 December 2020, banks shall offer victims of spoofing compensation as a matter of goodwill if:

- The victim has reported the instance of spoofing to the police.
- There has been a spoofing of the name and/or telephone number of the bank in question.
- The victim provides some form of evidence that there has been spoofing.
- The victim is a non-commercial customer (and the scam was made on a private bank account).

In principle, victims will be compensated 100% of their loss as a matter of goodwill. However, a bank may decide not to pay compensation, or to adjust the amount of the compensation, in the following cases:

1. The victim was complicit in the scam.

Explanation: If the customer him/herself has contributed to the scam there is complicity in the scam and intent. It is a criminal offence to make a false report of fraud or to be willfully complicit in spoofing.

2. The victim has previously received compensation for spoofing from the same bank.

Explanation: If a victim has previously received compensation from the same bank for an instance of spoofing that involved a similar method of scam (modus operandi (MO)), the victim can be expected to behave with greater caution as a result of such experience. The bank can expect, for example, that as a result of such experience the customer should first have taken steps to check whether it is indeed the bank that is contacting him/her by hanging up and telephoning the bank on a number used by the customer (and not automatically calling back on the number initially used to contact him/her). Note: in respect of joint accounts, each account holder may, in principle, be compensated for spoofing on one occasion.

3. The victim fails to adequately assist the bank in the investigation of the scam.

Explanation: A victim is expected to assist in the investigation of the scam and to provide truthful information to the police and the bank. In this way an attempt can be made to recover the stolen money from the scammer and the extent of the loss can be quantified. It is also important for the bank to be able to establish an incidence of spoofing on the basis of the information supplied.

In addition to these concrete criteria, the bank will also look at all the circumstances of each individual case of scam. Banks also expect their customers to act responsibly and attentively. Banks will decide on full or partial compensation as a matter of goodwill based on the principles of reasonableness and fairness. For example, there may be customers who have ignored several messages from the bank that specifically warned them of the risk of scams and scammers. Or there may be victims who, without asking questions (or contacting their bank), transfer large sums in suspicious circumstances (such as sums to several, sometimes even foreign accounts). In such circumstances, banks may decide only to partially compensate the loss, or not at all.

## Attachment: Legal Framework

Banks have a statutory obligation to compensate for certain types of fraud. See Book 7 Articles 528 and 529 of the Dutch Civil Code. This applies to a 'bank fraud'. Bank fraud involves the misuse of payment options offered by the bank to its customers. The victim is not the party who gives the payment instruction. In such a case, banks have a statutory obligation to pay compensation, unless there has been a deliberate act, gross negligence, or fraudulent act by the customer. In 2014, in consultation with the Consumentenbond (Dutch Consumer Association), banks drew up five uniform security rules: 1. keep your security codes secret; 2. ensure that your bank card is never used by anyone else; 3. ensure proper security for the hardware that you use for your banking tasks; 4. check your bank account and report any incidents immediately to your bank; and 5. follow instructions given to you by your bank. If the customer complies with these rules, he/she has not acted with gross negligence as defined in Book 7 Article 529 of the Dutch Civil Code.

Banks are not under a statutory obligation to compensate loss arising from non-bank fraud. Non-bank fraud is a situation where a victim unwittingly or under false pretences him/herself gives the instruction to make the payment to the fraudster. The bank help desk scam, or 'spoofing', is a form of non-bank fraud.

If a customer him/herself gives a payment instruction, the bank must carry out the customer's instruction.