

Complaint

Mr W has complained that Bank of Scotland plc won't refund transactions he says he didn't make or otherwise authorise.

What happened

In January 2020, Mr W made a number of transactions to a gambling merchant and won £30,000. However, over the following 11 days this was spent in similar gambling payments. Mr W says he didn't make any of the payments from after he won the £30,000.

Mr W says he never lost his card and no one else had access to it. He'd log in to the gambling account and his online banking using an encrypted laptop that only he knew the password to. He said that while the disputed transactions were going on, his laptop was in for repairs and so he couldn't have made the payments – though he didn't have any evidence of this.

Bank of Scotland held Mr W liable for the payments in dispute. They didn't see a likely way someone could've accessed his laptop, online gambling account, and his card security details without his permission. The disputed transactions were made from Mr W's genuine device address, were similar to his genuine gambling spending both beforehand and afterwards, and they noted he was still checking his online banking while the transactions were going on. They pointed out that Mr W had been hesitant to cancel the card despite the alleged fraud, and after getting his new card he continued to use the gambling merchant.

Mr W came to our service. He said the device addresses did not match.

Our investigator looked into things independently and didn't uphold the complaint. He also couldn't find a likely way someone had made the payments without Mr W's consent, and found it was more likely than not that they were made with Mr W's authority. He found that the device addresses did indeed match Mr W's genuine usage.

Mr W didn't agree with our investigator, so the complaint's been passed to me to decide.

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.

Having done that, I've come to the same conclusions as our investigator, and for much the same reasons.

Broadly, Bank of Scotland can hold Mr W liable for the payments in dispute if he authorised them.

I'm satisfied from Bank of Scotland's technical evidence that the payments in dispute used Mr W's genuine card security details. And I understand they were made from Mr W's genuine device address, and from a valid online gambling account. Now this is not enough,

on its own, for Bank of Scotland to hold Mr W liable. So I also need to think about whether the evidence suggests that it's most likely Mr W consented to the transactions, or not.

Having carefully considered everything that both sides have said and provided, I don't think it's unreasonable for Bank of Scotland to hold Mr W liable for the transactions in dispute on the basis that he consented to them. I'll explain why.

Mr W says the payments were not made from his device address, as his starts 192.168. But I'm afraid Mr W has mixed up local, private device addresses with external ones. I'm satisfied from Bank of Scotland's evidence that the disputed payments were made from the same device address as Mr W's genuine spending and his genuine online banking. Mr W has said this is his encrypted laptop.

So it follows that in order to make these transactions, someone would've needed access to Mr W's password-protected laptop, his online gambling account details, and his card security details. But from what Mr W's told us, I don't see a likely way that someone would've had all of that without his knowledge or permission. Further, it seems it might have been difficult for a fraudster to have benefitted from this, as normally the winnings would've been paid back to Mr W.

Mr W told Bank of Scotland that he handed his laptop in for repairs in the morning before work. He suggested that could've been how it was accessed. But the transactions started at night after he won the £30,000, and before he could've handed the laptop in. So that wouldn't have been how someone accessed his laptop. Further, Mr W didn't provide any evidence that he had his laptop repaired at the time, despite our investigator raising this. I can't see any payments to a repair shop on his statements. And he was still using his online banking from his normal device address during the period of the disputed transactions – so it looks like he did have his laptop with him at the time.

Mr W checked his online banking a number of times while the disputed transactions were going on, where he would've seen his balance being far less than before. But he then waited to tell Bank of Scotland anything was wrong. It's difficult to see why Mr W would wait to report the disputed payments if they were made without his consent.

Further, some of Mr W's online banking logins were within a few minutes of the payments he now disputes, and from the same device address. In other words, there were times when Mr W was online on his device just before or after the payments in dispute. And it seems very unlikely that someone was able to access his device without his consent either moments after he was using it; or – perhaps more implausibly – that they were able to use his device without his permission and then happened to return it to him just in time for him to use it himself, without Mr W ever noticing anything was wrong.

Mr W made genuine payments to this same merchant both before and after the disputed transactions. The payments in dispute are very similar to Mr W's genuine spending. Indeed, I can see that Mr W was keen to get his new card working and was adamant he didn't want to keep the security blocks in place despite his alleged fraud issues. Then once he had access to his new card, he resumed making large payments to this gambling merchant almost straight away.

Lastly, I've not seen any evidence that makes it seem implausible or unlikely that Mr W could've authorised these payments or given someone else permission to make them. And I've not seen any compelling evidence which shows that he was defrauded here.

In summary, I'm satisfied that Mr W's genuine details were used. Based on the evidence, there isn't a likely way someone did this without his permission. But the evidence does

substantially support these payments being genuine. That leaves only one likely possibility – that Mr W made the transactions or gave someone else permission to make them. This is a difficult message for me to give, and I know it's a difficult message for Mr W to receive. But given the evidence I have, and the balance of probabilities, I'm unable to reasonably reach any other conclusion.

So based on everything I've seen, I think it's fair for Bank of Scotland to refuse a refund in this case.

My final decision

For the reasons I've explained, I don't uphold Mr W's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 15 July 2020.

Adam Charles
Ombudsman