

The complaint

Miss O complains that Bank of Scotland plc trading as Halifax UK has closed her accounts and recorded a marker at CIFAS, the national fraud database.

What happened

Halifax received a report that a payment of £400 credited to one of Miss O's accounts wasn't authorised. It spoke to Miss O on 8 April 2019 who told it a friend had sent it to her. Halifax told Miss O to contact that friend and ask that the fraud claim be removed. The money had been transferred on to a different account held by Miss O and then all withdrawn at a cash point. Halifax then received a formal claim for the money back from the sending bank. It decided to close Miss O's accounts and it registered a fraud marker. Miss O complained saying that this was affecting her ability to get an account elsewhere.

Our investigator didn't recommend that the complaint be upheld. He listed the transactions on both Miss O's savings account, which received the disputed money, and on her current account to which it was transferred and then withdrawn. Miss O had given inconsistent information to Halifax. When she first spoke to it, she said that the money was from a friend to help her as she was homeless. She didn't report not having the card or not withdrawing the money. She later said that this money wasn't from a friend and she was mistaken and that she hadn't had use of her card since 15 March 2019. But she wasn't able to explain how someone else could have had access to her account. She said she had gone on holiday with only £12 and no bank card.

She had since told our investigator that she had been evicted from her cousin's address and all her belongings put onto the street. This included her bank card and her PIN as she wrote it down because she couldn't remember this. She wasn't able to access her account through internet banking as although she had her phone, she had no credit. She didn't know who had made this disputed credit and also other ones to her account during this period that had also been withdrawn. She was only able to speak to Halifax about this when she was on a holiday from 7 to 12 April 2019 and didn't need her card. She was confused about what happened.

Our investigator noted that after the last transaction recognised by Miss O, £350 in cash had been paid into her account which he thought was unlikely to have been the action of a fraudster. There was a period of other transactions before the fraudulent £400 had been credited. This had been transferred and withdrawn within an hour, so he thought it was expected. It wasn't clear how the internal account transfers could have been made by an unknown third party using online banking. He said that he wasn't persuaded that Miss O hadn't authorised the withdrawal of the fraudulent funds. He thought that the high bar for Halifax to make a fraud report to CIFAS had been met.

Miss O did not agree and wanted her complaint to be reviewed. She said she didn't need any money to spend on holiday as this was on a half board basis. She said she could send in evidence showing she had a flight at that time and that she was given money when she came back from a relative to help her get a place to stay as she was homeless.

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.

Miss O's accounts were used regularly after the date she says she made a last genuine payment on 15 March 2019. Her position is that her accounts must have been taken over by someone else unknown to her after then. That person was able to arrange to receive money into her savings account, transfer it into her current account and then withdraw it in cash. As our investigator says money was also credited in cash at a branch on 19 March 2019 which cleared her then overdraft on that day. The credits by faster payment over the period made to a savings account totalled £1,630, including the £400 referred to and then transferred across. Payments were made during the period using her bank card with the last ones on 1 April 2019.

I need to take into account the Payment Services Regulations 2017 in considering this complaint. These state that a payment can only be authorised if it was consented to. So, it's not enough for it to be authenticated, say with a card and PIN. And if they weren't authorised Miss O wouldn't generally be responsible for them.

So, I will be thinking about the following areas in looking at this complaint:

- What is the most likely explanation of what happened to her account and in particular to the card and PIN used for these withdrawals?
- Did Miss O either authorise the payments on the account which could have included allowing someone else to use the card?
- Was the report to CIFAS made fairly? On this point, Halifax needs to have more than a suspicion or concern. It has to show it had reasonable grounds to believe that a fraud or financial crime had been committed or attempted and that the evidence would support this being reported to the authorities.

I'm satisfied from the available evidence from Halifax that the payments were authenticated and that for example the cash withdrawals were made when the chip on her card was read and the correct PIN entered.

I'm focussing on what happened to the £400 which is the basis for the report of fraud. But in thinking about whether Miss O authorised the withdrawal of that money it is relevant to consider all the movements on her account at around that time. She had received substantial amounts of money which she now says she knew nothing about. She said she was expecting friends to help her with money for a hostel and so for money to be credited. But she says she had no way of checking her account. She didn't report her card missing even when she says she had contacted Halifax from abroad and asked why her account was blocked. She later said in a letter to Halifax that she normally misplaced the card and then that all her valuables had been put on the street when she was forced to move out and that a lot was going on which "*did not allow me to take any dramatic action*" at the time. She's now said to this service that she had lost her card and her PIN was written down and that was somehow found in the street. She couldn't access online banking but, on her account, it seems an unknown person could track the money being received and quickly make the transfers and withdrawals.

I'm afraid in my view Miss O has given an unconvincing explanation of what happened. A key reason I say that is because she has been inconsistent. I think that had her card been lost when she was evicted, and she was expecting money into her account that she'd reasonably have taken some action about that. Even if due to difficult personal circumstances she couldn't do so for a number of days, she was able to be organised enough to go away on holiday – accepting that was fully paid for in advance. And her not

having her card was a material factor when she was talking to Halifax about her blocked account and which I think she'd have mentioned at the time if that was the case. And the other reason is that I'm not persuaded that the pattern of entries to her account over a period of about two weeks is consistent with that of a fraudster. Her account received a cash credit. There was ongoing activity and the report of fraud only came after on her version of events someone else had free access to her account for all this time.

So, I think it most likely that Miss O either made these withdrawals herself or allowed someone else to do so on her behalf. I'm satisfied she reasonably knew that the £400 wasn't genuinely her money and that as a result she benefitted from these funds which had been reported as fraudulent.

Halifax says that it applied the CIFAS marker because Miss O received fraudulent funds into her account. So, I've looked at whether Halifax was fair to apply the marker, based on the evidence it had, and the investigation it carried out. CIFAS guidance says the business must have carried out checks of sufficient depth to meet the standard of proof set by CIFAS. This essentially means that Halifax needs to have enough information to make a formal report to the police. And that any filing should be for cases where there are reasonable grounds to believe fraud or financial crime has been committed, rather than mere suspicion.

Having reviewed Miss O's account of events and the evidence Halifax has provided, I'm satisfied that Halifax had sufficient evidence for the CIFAS marker to be recorded and to close the accounts. In coming to this view, I've taken into account the following reasons:

- Miss O received fraudulent funds into her account and didn't report this to Halifax at the time.
- She authorised the withdrawal of the funds and so was in control of who had the benefit of this money.
- Halifax had grounds to believe that Miss O had used fraudulently obtained funds based on the evidence it had.

So, I'm afraid I don't have a basis to require it to do anything further.

My final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss O to accept or reject my decision before 21 September 2020.

Michael Crewe
Ombudsman