

The complaint

Mr and Mrs G complain that Bank of Scotland plc, trading as Halifax, allowed Mr G to spend thousands of pounds on gambling transactions from their joint account without notifying Mrs G.

What happened

Mr and Mrs G have a joint current account with Halifax. Mr G also has a credit card account, on which Mrs G is an additional cardholder. In September 2019 Mr G took out a loan of £7,000, which was paid into the joint account. This complaint is about the joint account. (There is another complaint about the loan, brought by Mr G on his own, which is being dealt with separately.)

In August 2019, Mr G began using the joint account to make online gambling transactions. In that month he made over 200 payments to a gambling website. He continued to use the account for this purpose in the following months, funded by the loan. His wife only found out when she was notified that the account was overdrawn, in October. She complains that the bank should have spotted that Mr G had a compulsive gambling habit and should have notified her. (He had previously been using his credit card for gambling for some time prior to August 2019.) She also complained that the bank should have told her about the loan.

Halifax said it had done nothing wrong. It said its systems had not picked up on the transactions, because they had not been fraudulent. Even if Halifax had been aware of Mr G's gambling, it could not have told his wife, because that would have breached data protection laws. It said it had been under no obligation to tell Mrs G about the loan, because Mr G had applied for it in his sole name, and the fact that it had been paid into a joint account made no difference.

Mr and Mrs G brought this complaint to our service, but our investigator did not uphold it. He accepted that Halifax had had no reason to know or suspect that Mr G had had a gambling problem, or that he might be in financial difficulty. He had been managing his credit card account well, paying it off in full every month, and there had been almost no gambling on the current account before August. He noted that Mr and Mrs G had never told Halifax that Mr G had Parkinson's Disease, or that compulsive behaviour is a side-effect of his medication. He thought that even if the bank had contacted one of the account holders about the transactions, it would have contacted Mr G because it was his card which was being used, and he was not persuaded that Mr G would have admitted that he had a problem or asked the bank to block future gambling transactions. Even if the bank had contacted Mrs G, which he thought unlikely, Mrs G had said that her husband managed all of their finances, so she might have just passed the phone to him. So he did not agree that Halifax was responsible.

Mrs G asked for an ombudsman's decision. She said that if the bank had contacted her husband, this might have prompted him to open up about his problem.

I wrote a provisional decision in which I said I was minded to uphold this complaint. It read as follows.

What I've provisionally 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.

Before 1 November 2019

I agree with our investigator that Halifax is not responsible for what happened up until Mrs G complained on 14 October 2019. Halifax's systems did not pick up on the gambling transactions, because they are only meant to detect fraudulent transactions or signs of financial difficulty. The transactions were not fraudulent. And as Mr G was managing his credit card account well, and his joint current account was not overdrawn until 10 October, there was no indication of financial difficulty. It is not in dispute that Halifax did not know about his health and the side-effects of his medication until Mrs G complained.

I have considered Mrs G's argument that a large number of gambling transactions ought to be enough. But most of these transactions were for small sums, and even the larger ones were all less than £100. Added together, they still come to thousands of pounds. But gambling is not a reason for a bank to become concerned unless it leads to financial difficulty, which did not appear to Halifax to be the case until it was too late. As soon as the joint account was overdrawn, Halifax notified both account holders.

Even if I took a different view about that, Halifax would not have been able to alert Mrs G about the gambling on her husband's credit card, because she was not an account holder, and so to tell her would have breached data protection law. I don't agree that is also the case with the joint account, but since Mr G was responsible for dealing with both their finances at the time, it is likely that she would have asked him to take any phone call from Halifax. I won't speculate about how Mr G would have dealt with such a call, if one had been made, but I cannot be satisfied that it would have resulted in future gambling transactions being blocked.

The fact that the loan was paid into the joint account does not mean that Halifax had a duty to consult Mrs G about it. The loan application was in Mr G's sole name.

For these reasons, I do not uphold this complaint in relation to anything that happened before Mrs G complained.

Since 1 November 2019

As I have said, Mrs G complained to Halifax in a letter dated 14 October. According to the bank's records, its staff read the letter on 25 October. That is a bit of a delay, but there were only two gambling transactions on the joint account during that period, totalling £40, so I do not think that is significant. (The account was back in credit by then.)

However, I think that Halifax should have treated Mr G as a vulnerable customer once it read the letter. In the letter, Mrs G told Halifax:

My husband suffers from Parkinson's disease and takes drugs [for his condition], some of which have been associated with excessive obsessional behaviour, especially with regard to gambling.

Halifax does not appear to have taken any action based on this important information. I think it should have sought his permission to block all future gambling transactions. Given that his wife was now aware of the issue, I think it is more likely than not that he would have consented. This would have prevented any further gambling transactions on the account.

There were no further gambling transactions on the joint account in October. But in November, Mr G resumed, sporadically at first, making only two £5 payments on 1 and 22 November. In December, however, he made over a hundred transactions, usually for £5 at a time, but sometimes for £10 or £20. This could have been prevented.

He continued gambling in 2020. The statements I have only go up to May 2020, but he was still gambling continuously, and I presume this continued.

Because Halifax appears to have done nothing to prevent this, once it had been made aware of the situation, I currently think it would be fair to order Halifax to refund all of the online payments Mr G made to gambling websites (indicated on his statements as WWW.SKYBET.COM and B365) from 1 November 2019 to date, minus the credits received from the same websites (*i.e.* his winnings).

So my provisional decision is that I intend to uphold this complaint.

Responses to my provisional decision

Mr and Mrs G accepted my provisional decision. They provided up to date statements, and drew my attention to some other gambling websites Mr G had used. They said he had stopped gambling at the end of June 2020, when he had started using Gamban, an anti-gambling app which blocks online gambling transactions. So they asked to be refunded up to 30 June 2020.

Halifax did not agree with my provisional decision. It pointed out that in its final response letter, dated 21 November 2019, it had asked Mrs G to contact its Customer Priority Team (CPT), provided the number to call, and told her that the CPT would be able to provide more help. Halifax said it had no record of Mr or Mrs G calling that team, and it argued that Mrs G ought to have called, since then the CPT could have taken steps to prevent further gambling on the joint account. Halifax argued that I had not given enough weight to that point in my provisional findings, and that the bank should not have to refund money that would never have been spent if Mr and Mrs G had accepted the offered help, just because they had not accepted it.

Further information

I asked Halifax to provide me with further information about what the CPT does, and how it could have helped. I also asked Mr and Mrs G if they ever called the CPT (and if not, why they hadn't), why Mr G had not used Gamban earlier than June 2020, and whether they had sought help from anyone else between November 2019 and June 2020.

Halifax said that the CPT's support is individually tailored for each customer, but the most likely solution for Mr G would have been a freeze on gambling transactions, and also referring him to gambling support organisations. Halifax suggested that this could have prevented the whole situation from continuing after October 2019. It provided (in confidence) its internal guidance document for its staff on the CPT.

Mrs G told me that she remembered calling Halifax towards the end of October 2019, and asking if a stop could be put on her husband's credit card. She said that Halifax had told her that as she was not a joint account holder on the credit card account, but only an additional cardholder, Halifax could only put a stop on her husband's card if he asked for it himself. She said Halifax had also given her the names of some other organisations for her to pass on to him, so that he could ask them for help and advice. She described the call handler as kind and helpful.

Mrs G also told me that both herself and her husband had been helped by a Parkinson's neurological team, and that Mr G had received counselling from the NHS counselling team. She said he had eventually recognised the benefits of counselling, and this was what had led him to start using Gamban in June. She explained that it takes time for a person with an addiction to recognise that they have a problem, and that Mr G had moved forward when he could.

My findings

I have reconsidered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I have decided that I should not uphold it after all. I very much regret that this will come as a disappointment to Mr and Mrs G.

I have read Halifax's internal guidance, and I accept that a gambling freeze would certainly have been offered to Mr G if he had been willing to avail himself of it. I also accept that Halifax would have referred him to other organisations, including Gamban, which is one of the named organisations in Halifax's internal guidance for its staff.

Since Mrs G phoned Halifax in October, and Halifax's letter asking her to call the CPT was in November, I don't think her call was to the CPT, but to some other Halifax phone number. Also, her call in October was about the credit card account, not about the joint current account, which meant that the call handler's hands were somewhat tied, because she was not the account holder. Perhaps when Mrs G read the November letter, she assumed that making another call to Halifax would not result in a better outcome than the October call. If so, then I can understand that, but it does not change my view that a call to the CPT about the current account would most likely have been more fruitful than the earlier call, and I think Mrs G or her husband should have tried it.

I have considered whether Halifax ought to have instructed the CPT to pro-actively call Mr G, instead of putting the onus on its customers to get in touch. I think there is a case to be made for that, although I have noted that it is not Halifax's policy to do so. But it's not entirely clear whether Mr G was ready, in November 2019, to accept that he had an addiction, or that he would have agreed to freeze his account if the CPT had recommended it (they couldn't do it without his permission). It seems that it took some time for him to perceive that he could not control his gambling on his own.

I can only uphold this complaint if I accept that a conversation between Mr G and the CPT would have made a difference earlier than June 2020. On balance, I do not think that the available evidence suggests that it would have done, and so I am afraid that I have had to change my mind about this complaint. I think that Halifax did offer help to Mr and Mrs G, and that Halifax is not responsible for the fact that this offer did not result in an earlier solution to the problem.

My final decision

So my decision is that I do not uphold this complaint after all.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs G to accept or reject my decision before 21 October 2021.

Richard Wood

Ombudsman