

The complaint

Miss R complains that Bank of Scotland plc (trading as Halifax) closed her account without an explanation and recorded a marker with the fraud prevention agency CIFAS. She'd like the account reinstated and an apology.

What happened

Miss R held an account with Halifax. In July 2018 this account received a large credit of just over £5,500 that was quickly dispersed – some faster payments, an ATM withdrawal and a debit card payment. Halifax later received a notification from the sending bank, saying the payment was fraudulent.

Halifax blocked the account and sent back what funds remained. They later took the decision to close Miss R's account. They also recorded a marker against her with the fraud prevention agency CIFAS for "misuse of facility".

In 2020 Miss R complained to Halifax, asking for an explanation for her account being closed, and that she cannot open another bank account. She said she didn't know anything about the credit into her account and had not provided her banking details to anyone. Halifax responded to say that comparing the information they had available, and the information she'd now offered them, they feel they made the right decision.

Unhappy with this Miss R referred the complaint to our service. One of our investigators looked into the complaint but didn't think the complaint should be upheld. Miss R told them that her online banking details and PIN were recorded in her phone, which she still had in her possession. They said the bar for recording a marker with CIFAS was high, and the evidence for recording one needed to be good reason to believe fraud or financial crime had been committed. They said they couldn't see how the money transferred in was then removed without her card, PIN and online banking details being compromised. And there was no plausible explanation of how this could have been done, except with Miss R being involved. They didn't feel Halifax needed to do anything further.

Miss R disagreed saying her online banking might have been compromised. But the investigator didn't think this was likely – they saw that several days before the fraudulent transaction entered her account another payment had been made to the same individual as some of the fraudulent funds were transferred to. They said there still wasn't a clear explanation of why Miss R wouldn't have reported this at the time. The investigator clarified that under Halifax's terms they were within their rights to close the account.

As no agreement could be reached the complaint has 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.

Firstly, it's accepted by all parties that the payment into Miss R's account was fraudulent – Miss R has made no claim to the funds. She's said she was unaware of either the payment in, or the payments out.

As the investigator has rightly pointed out the bar for recording a CIFAS marker is high and need to go beyond mere suspicion. The evidence needs to be clear, unambiguous and rigorous. So, the key question for me to determine is whether Halifax have the evidence to meet this standard.

Halifax have confirmed they no longer hold online banking records or payment audits for Miss R's account. But despite this I think the evidence they hold is sufficient to record a CIFAS marker. I say this for the following reasons:

- Looking at the account history I can see Miss R was using the account regularly up until the fraudulent payment was paid in. We know from the transactions out of the account that whoever removed the funds would have needed access to Miss R's online banking, as well as the genuine card and PIN to carry out the ATM withdrawal. She has confirmed she didn't share these with anyone else.
- Miss R has said she kept her PIN and online banking details in the notes app on her phone – but there's no indication that anyone else had access to her phone or that it was lost. In a branch visit in 2019 she told the bank the phone was still in her possession.
- The fraudulent funds were rapidly moved on, within several hours of the original payment. This suggests to me whoever was using the account was aware of money about to be paid in and was prepared to move it on.
- Only one debit card was ever issued on the account, which was never reported missing. There's no record of the PIN being changed. So, I'm satisfied it must have been Miss R's genuine debit card and PIN used to carry out the ATM withdrawal. The last genuine use of the card was in a shop several days before hand. It seems unlikely someone would have been able to oversee her enter her PIN, steal the card from her, then wait several days to arrange a fraudulent payment in. So, it would be difficult to see how someone other than Miss R carried out the ATM withdrawal.
- There was a payment of £10 to an individual six days before the fraudulent payment – this same individual then received two faster payments of £900 and £80 of fraudulent funds. This suggests the payee was set up in advance to allow funds to be quickly moved once received. Miss R hasn't offered plausible explanation of why this payee was set up without her knowledge.
- Miss R has suggested that malware may have been set up on her phone. Halifax have said they found no evidence of malware; but haven't retained these records for me to scrutinise. But even if I accept this as a possibility this wouldn't explain how the ATM withdrawal would come to be, as the physical card with the chip would be required. So, this isn't a plausible explanation of how the fraudulent funds were withdrawn.

Overall then I'm satisfied that the only plausible explanation of how the funds were withdrawn is that this was done either by Mr R, or someone she had allowed to do so. On that basis, I'm satisfied that the evidence strongly suggests Miss R was involved in the fraudulent payment. And I'm satisfied that this evidence is clear, relevant and rigorous enough to meet the standard of proof required by CIFAS. So, I don't consider it unreasonable for Halifax to record a marker against Miss R.

Miss R has suggested that her human rights have been breached by Halifax. Ultimately it would be up to a court to determine this, as our service's remit is what's fair and reasonable. And in any case, as the crux of this issue is whether Miss R allowed the payments out of her

account. And as I've explained above, this is the only plausible explanation of how they were made. It's not unreasonable or unfair that Halifax reached this conclusion.

I've likewise considered whether there was a duty of care to Miss R from Halifax to prevent fraud – but I don't feel this applies in this case, as it's only plausible these transactions took place with Miss R's knowledge.

Banks generally have to give some notice before closing an account, but there are exceptions. I've reviewed the terms of Miss R's account, and what they say about when they will close accounts with no notice. I'm satisfied that Halifax closed the account in line with these terms. They do not need to provide any further details of their reasoning for this.

I'm sorry to hear how the CIFAS marker has affected Miss R. But having reviewed all the evidence and carefully considered what she's said about how Halifax treated her, I don't find their actions to have been unfair or unreasonable.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss R to accept or reject my decision before 17 February 2023.

Thom Bennett
Ombudsman