

The complaint

Mr S complains that Bank of Scotland plc (trading as Halifax) won't refund the money he says he's lost to a fraudulent company.

What's happened?

Mr S made several debit card payments to an online casino, which I'll refer to as 'B'. He also received winnings from some of the bets he placed on B's website.

Mr S has now discovered that B isn't licensed to transact with consumers in the UK, and he believes he has been defrauded. He's said that Halifax should have stopped him from making payments to B. He's also unhappy that Halifax hasn't instigated chargebacks to recover his money from B after he says the bank guaranteed he would get his money back by this means. He says he has spent money in reliance on that advice.

Halifax has said that it wouldn't stop its customers from transacting with a merchant based on its licenses, and it doesn't hold any chargeback rights here because Mr S received the service he paid for in full.

Our investigator didn't uphold Mr S' complaint. Mr S asked for his case to be reconsidered by an ombudsman, so it 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.

When considering what is fair and reasonable, I'm required to take into account: relevant law and regulations; regulator's rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time.

Mr S has provided lots of convincing evidence showing that B was not licensed to trade in the UK. But the question for me to decide here is whether Halifax has done anything wrong that it needs to put right. Looking at everything, I don't think it has.

It's common ground that the payments Mr S made to B were authorised and consented to under the Payment Services Regulations. He made genuine payments to B using the debit card that's linked to his Halifax account. By Mr S' own admission, he was not defrauded in the sense that someone else made the payments from his account without his knowledge or consent and/or he wasn't tricked into making payments to an unintended destination by a scammer. So, the starting point is that Halifax had an obligation to follow Mr S' payment instructions, and Mr S is presumed liable for his loss in the first instance. But that's not the end of the story. There are circumstances in which a bank should make additional checks before processing a payment, or in some cases, decline to make a payment altogether, to help protect its customers from the possibility of financial harm. I consider that Halifax should:

- Have been monitoring accounts and payments made or received to counter various risks, including fraud and scams, money laundering and the financing of terrorism.
- Have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (amongst other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer.

I've looked at Mr S' bank account statements and I'm not persuaded there was a reasonable indication of possible financial harm that I would've expected Halifax to pick up on. The payments made to B were relatively modest, made over a prolonged period of time and mixed with lots of other genuine transactions. They were also in line with prior account activity. Mr S' account wasn't quickly drained of funds and winnings were being received back into the account. So, I don't think it's reasonable to expect Halifax to have intervened in this instance.

But even if it had intervened, by contacting Mr S and asking him some questions about the payments he was making to B, I don't think this would have made a difference in the circumstances. Mr S was making the payments of his own volition, he held an account with B which he was paying money into in order to place bets, and he was receiving winnings back into his account from some of those bets. If Halifax had reached out to him, I think it's likely that it would've been satisfied, from the information he gave, that nothing was amiss.

I've seen that Mr S was registered for GAMSTOP when he was transacting with B. But it doesn't appear that Halifax was made aware of this until recently. It's possible that Halifax should've realised there might be a potential problem with gambling at some point from the account activity and so checked in with Mr S to see if he needed any additional support. But, even if it had stepped in, I'm not persuaded that it would have been successful in stopping any further spending of this type. I say this because Mr S' GAMSTOP registration, which was intended to prevent gambling transactions, did not have the desired effect – Mr S continued to gamble. And ultimately, Mr S was predominantly transacting with B using his own money rather than an authorised or unauthorised overdraft. So, the bank wasn't, for example, making lending decisions when permitting the transactions to be made (which tends to require somewhat closer scrutiny in order, amongst other things, to assess the consumer's liability to repay).

Mr S is unhappy that Halifax hasn't instigated chargebacks to try to recover his money from B, but banks don't have to raise chargebacks if it looks clear that the cardholder would lose. Here, I'm satisfied that's the case. I've looked at the card scheme's chargeback reasons and I don't think any chargeback the bank might've raised for Mr S in these circumstances had a reasonable prospect of success. That's because Mr S seems to have got what he paid for – the money was credited to a gambling account, he gambled it and sometimes won money back. So, I don't think Halifax has done anything wrong in this respect. And, from looking at the contemporaneous call notes that were taken when Mr S spoke to Halifax about the matter, I can see that Halifax agreed to look at whether a chargeback could be raised, but I haven't seen anything to suggest that he was advised a chargeback would be successful or guaranteed his money would be refunded. In fact, it seems that Halifax told him there was no guarantee.

I'm very sorry to hear about Mr S' financial difficulties, as well as the distress he has experienced recently along with his poor state of health. I can see that he has been going through a very challenging time. But I don't think Halifax has done anything wrong here which has impacted his current situation. So, I don't think it would be fair or reasonable to require Halifax to reimburse Mr S' loss.

My final decision

For the reasons I've explained, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 20 June 2022.

Kyley Hanson
Ombudsman