

## **Complaint**

Ms P is unhappy that Bank of Scotland plc trading as Halifax ("Halifax") didn't do more to protect her from fraud.

## **Background**

Between 2012 and 2019, Ms P lost significant sums of money from her accounts with Halifax because they were under the illicit control of her ex-husband. The background to this complaint was set out in detail in the Investigator's assessment, so I don't intend to repeat it in full here. Ms P is fully aware of the events that led to her bringing her complaints to this service and I don't want to needlessly distress her by setting it out at length a second time. Furthermore, the perpetrator is now the subject of criminal proceedings and so I'm reluctant to provide any more background detail than is strictly necessary.

Ms P has 4 accounts in her name with Halifax. She has other accounts which she holds jointly with other family members, but they are being considered by this service as part of separate complaints.

For several years, her accounts were controlled by her Mr B. Ms P and Mr B were married during this time, but they have since divorced. She says that in 2012 he asked her to sign a document relinquishing control over one of her accounts. He apparently told her that his business account had been closed by his bank. He needed access to an account to receive his salary. Ms P felt like she had no option but to comply with this request. She also says that she handed over all her bank cards to Mr B, including those that were connected with her other accounts. From this point on, Ms P had no access to any of her own bank accounts. Shortly after this, an application for an online banking facility was made to Halifax. The application appears to have been made by Mr B, presumably by taking advantage of having access to Ms P's security credentials.

This situation persisted until 2019. It only came to light when Ms P contacted the police to let it know about Mr B's abusive behaviour. Around the same time, she'd been considering setting up her own business. She approached Halifax because she wanted to apply for a business account. It was at this point that she became aware of the position of her Halifax accounts. The balances were considerably lower than she'd expected.

She notified Halifax that she'd been a victim of fraud. It investigated, but it didn't agree to refund her. Ms P wasn't happy with that response and so she referred a complaint to this service.

It was looked at by an Investigator who didn't uphold it. The Investigator said that it was fair and reasonable for Halifax to treat the transactions as authorised. Although she hadn't given Mr B permission to make any of these individual transactions, she had handed control of her account to him. All these transactions would've appeared to have been authorised by him and so, under the principle of 'apparent authority', it was reasonable for it to treat them as authorised. The Investigator also said that if Halifax had been closely monitoring her account to detect potential fraud, it wouldn't have seen anything in the way the account was being used that would've reasonably given rise to any suspicion.

Nonetheless, she didn't think that Halifax had handled things particularly well when Ms P notified them about what Mr B had been doing. She was promised calls from bank employees that never took place and Halifax could've done more to support her given the exceptionally difficult situation she'd found herself in. Halifax had already offered Ms P £200, but the Investigator thought this should be increased to £400.

Halifax agreed to pay the additional compensation in line with the Investigator's recommendation. Ms P disagreed with the Investigator's view. She set out the scale of the impact Mr B's abuse had on her and argued that she'd never given Mr B permission to spend any of her money. She'd handed over the bank cards to him because she was fearful of the potential consequences of not simply going along with his wishes.

Because Ms P disagreed with the Investigator's view, the complaint has been passed to me to consider and come to a final decision.

## **Findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

It isn't my role to determine whether or not Mr B committed a crime. I understand he has been investigated by the police and a decision was made by the Crown Prosecution Service to charge him in connection with the offences that Ms P has alleged. My role is to determine the extent of the bank's liability for the transactions.

The regulations that apply to this case say that Halifax can't hold Ms P liable for any transactions if she didn't authorise them. Furthermore, a transaction can only be considered authorised if it was made with Ms P's consent. It's quite clear from the account that Ms P has given us that she didn't consent on an individual basis to every transaction that was made from her accounts. However, it is possible for her to give someone else authority to carry out transactions so that she would be legally responsible for them, even if she didn't physically make them or give explicit permission for each individual payment. Halifax can hold a customer responsible for any spending that happened because they gave someone else permission to carry out transactions on their behalf. The legal term for this is 'apparent authority'. So even though Ms P didn't agree to or know about these payments, providing Mr B with the ability to make some payments served to, in effect, authorise the further spending Mr B went on to undertake.

Ms P has questioned whether the online banking transfers should be treated differently since she never specifically allowed Mr B to set this up. However, the fact that he was only able to do so using her security credentials, there was no way for Halifax to have known that this request hadn't legitimately been made by her.

I do recognise that Ms P only handed over control of her finances to Mr B because she was terrified of the consequences of her not complying with his demands. I cannot begin to comprehend such a situation or how difficult this must've been for Ms P. However, from Halifax's perspective, it wouldn't have had any way to know about the appalling reality of the situation. Unfortunately, I agree with the Investigator's conclusion that Halifax can treat these transactions as if they were authorised.

## ***Other considerations***

Although in general terms Halifax was required to process authorised payments as requested by its customers, it nonetheless had some additional obligations to intervene to protect its customers from financial harm due to fraud. It was required to be on the lookout

for transactions that had an increased risk of being connected with fraud. It now looks clear that Ms P was an ongoing victim of a fraud throughout this period. But the question I must address is whether it should've been clear to Halifax that she was at risk of financial harm such that it should've intervened and questioned individual payments.

I've looked at the statements for the accounts that are the subject of this complaint. Unfortunately, I don't think there would've been any clear indication from the way the account was being used that Ms P was at risk of fraud. There were two large payments (£10,000 and £6,000) made from her accounts. At least one of these payments was made to an existing payee, which would generally be indicative of a lower risk of fraud. I recognise that if Halifax *had* intervened, there was a possibility that it could've prevented some of the later payments and so reduced the amount of money Ms P lost to the scam. But unfortunately, I don't think there was any clear indication of a fraud risk such that Halifax should've questioned the payments with her before processing them.

Finally, the Investigator recommended that Halifax increase its payment for distress and inconvenience to £400. I agree with the Investigator that it should've recognised the unusually difficult circumstances that Ms P was in and been more proactive in supporting her. This wasn't a typical complaint, but it appeared to not have borne this in mind when responding. I agree with the Investigator that £400 is an appropriate sum to reflect the distress caused by the way it responded when she reported what had happened.

### **Final decision**

For the reasons I've explained above, I uphold this complaint in part.

If Ms P accepts my decision, Bank of Scotland plc should pay her £400 in recognition of the distress and inconvenience it caused her, less any money it has already paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms P to accept or reject my decision before 13 July 2022.

James Kimmitt  
**Ombudsman**