

The complaint

Mrs H complains that Bank of Scotland plc trading as Halifax won't refund her for transactions she didn't authorise.

What happened

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here.

Between December 2022 and February 2023, Mrs H's Halifax account was used to make transactions to various gambling sites. When she complained to Halifax, she said there were four people in the house who had access to her phone, but the transactions were made by her ex-partner who had unlocked the phone by placing it near her face to activate the face ID. She said she was forced into doing this as she was scared he would become violent and she didn't want the children to hear.

Halifax said that when Mrs H reported the payments to it, she said she had completed some of the payments, so she had authorised those payments. But Mrs H wasn't satisfied and so she complained to this service. She said she had gambled with her wages and as the payments were still pending, she didn't understand why the bank couldn't cancel them.

Halifax further commented that Mrs H had said she'd allowed her ex-partner to make the initial transactions, but she didn't agree to all of them. It maintained Mrs H had authorised the transactions, therefore it was unable to provide a refund.

Our investigator didn't think the complaint should be upheld. She noted that Mrs H accepted that her card, account, and device were used and she commented that she had facilitated the payments by transferring money into the account from her current account. She explained that duress doesn't negate the payer's authorisation for the purposes of the Payment Services Regulations 2017 ('PSRs'), and she was satisfied Mrs H had consented to the payments either by making them herself or allowing her ex-partner to use her phone to make the transactions.

Our investigator also explained that Mrs H accepted she'd given the ex-partner the details to unlock her phone and access her stored passwords when he had taken her handbag and phone in December 2022, so she was satisfied she'd shared her personal banking information and was therefore in breach of the T&Cs of the account.

And she said it wouldn't have made a difference if Halifax had applied a gambling block to the account because the payments were to a gambling site outside of the UK and the gambling block only works for regulated gambling sites within the UK.

Mrs H has asked for her complaint to be reviewed by an Ombudsman. She said she allowed her ex-partner access to her phone because she was scared and she is upset that Halifax never spoke to her on the phone about her complaint.

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.

Having done so, I've reached the same conclusion as our investigator. And for largely the same reasons. I know Mrs H feels strongly about this complaint and this will come as a disappointment to her, so I'll explain why.

The PSRs primarily require banks to refund customers if they didn't make or authorise payments themselves. Certain other circumstances do apply – like the issue around apparent authority, which has an impact on this complaint.

Mrs H has given various explanations as to how the transactions were made. When she first contacted this service, she said she had used her wages for gambling, so I'm satisfied that she 'authorised' those transactions for the purposes of the PSRs.

She has also said she authorised her ex-partner to make some of the transactions and that there were other people in the house who had access to her phone. The PSRs say that someone acting as an agent on behalf of Mrs H can be treated as acting with apparent authority when making transactions on their account. Authority consists of two elements. The transactions must be authenticated, and Mrs H needs to have consented to the payments being made.

I'm satisfied the transactions were authenticated from the information provided to us by Halifax. In other words, Mrs H's genuine card details were used to make the transactions using her mobile phone from the same IP address that she used for her genuine account activity. And I'm satisfied that in transferring money from her current account and giving other people access to her phone to gain access to her security details, Mrs H granted apparent authority to them to make the transactions.

Mrs H has also said that the ex-partner stole her handbag and phone in December 2022 and that he was able to make transactions because she had given him the details to unlock her phone. As Mrs H accepts she gave the ex-partner the details to unlock her phone, I agree with our investigator that in sharing her personal banking information, she was in breach of the T&Cs of her bank account.

Mrs H has also said that some of the payments were made when her ex-partner trapped her in her bedroom and used her face to unlock the phone using the face ID. She has explained she allowed him to do this because she was scared he would become violent and she didn't want the children to hear.

There are circumstances where a third party has obtained security information without the customer's knowledge or involvement, but that didn't apply here because Mrs H would have known the ex-partner was using her face to unlock her mobile phone. If the evidence points to Mrs H having withdrawn apparent authority, we'd probably say the payment was unauthorised. But I must bear in mind that Mrs H accepts that she previously authorised her ex-partner to make transactions using her phone, and there's no evidence that she withdrew apparent authority. There's also no way to distinguish this incident from those instances when she accepts either she made the transactions herself or granted apparent authority to her ex-partner to do so. Further, she has given different accounts about how the transactions were made and she has admitted to breaching the T&Cs of the account by giving the ex-partner the details he needed to unlock her phone.

After taking all these factors into account, I think it's more likely than not that Mrs H authorised the transactions herself or otherwise allowed them to be made by someone with apparent authority. I know this is a difficult message for Mrs H to receive but, in the circumstances, I think it's fair for Halifax to decline a refund in this case

Compensation

Finally, Mrs H has said she was upset because Halifax didn't speak to her on the phone about her complaint, but I've considered the service she received when she reported the disputed transactions and I'm satisfied it was reasonable throughout.

My final decision

For the reasons I've outlined above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 24 January 2024.

Carolyn Bonnell
Ombudsman