

The complaint

Mr T has complained Bank of Scotland plc, trading as Halifax, won't refund a transaction he didn't make.

What happened

In April 2023 Mr T was out in a nightclub and had his phone stolen. The following morning he reported this to Halifax at 09:05. He noted money had been transferred from his ISA account with Halifax and then £5,000 sent to his account with another bank (who I'll call R).

Halifax refused to refund £5,000 as this was sent to another account in Mr T's name. They did refund four disputed transactions, using Mr T's debit card details, which took place early in the morning. Mr T brought his complaint to the ombudsman service.

Our investigator reviewed the evidence but as the money in dispute had gone to another account in Mr T's name, he didn't believe it would be fair to ask Halifax to refund Mr T.

Mr T didn't agree with this outcome and has asked an ombudsman to consider his complaint. He was also able to confirm the status of the police investigation into what had happened.

I completed a provisional decision on 25 September explaining that although I was upholding the complaint, I wasn't asking Halifax to do anything further.

Both Mr T and Halifax accepted this outcome. I now have all I need to complete my final decision.

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 outcome as I did in my provisional decision. What follows explains my thinking and reflects both Halifax and Mr T accepting the provisional outcome.

Where there is a dispute about what happened, I have based my decision on the balance of probabilities. In other words, on what I consider is most likely to have happened in the light of the evidence.

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

The regulations which are relevant to Mr T's complaint are the Payment Services Regulations 2017 (PSRs). These primarily require banks to refund customers if they didn't make or authorise payments themselves. Other factors do apply but nothing else specific in Mr T's case.

So to help me decide what happened, I've looked at the evidence of the transactions as well as what Halifax and Mr T have confirmed to us. Specifically I can see:

- Mr T has told us his phone went missing during the evening of 1 April 2023 (or early morning of 2 April) after a night out with friends.
- Mr T's email address with R, along with his Apple ID were changed in the early hours of 2 April. His ability to use the find his phone feature was also disabled.
- What followed was many transactions Mr T has said he didn't make. These were made using his phone and app with Apple Pay and included online transfers from within Mr T's account with Halifax and then £5,000 to his account with R as well as a purchase for £7,141 in a shop in London.
- Mr T was able to get refunds of Uber transactions direct from Halifax as they accepted these were not him. Halifax wouldn't refund £5,000 as this was transferred to Mr T's own Revolut account.
- Two small (£1) transactions were also refunded by Halifax in error as Mr T initially was unclear about whether he authorised these. He's confirmed he did make these payments, but Halifax hasn't insisted on this small amount being returned.
- Evidence from Halifax shows Mr T reported fraud with them just after 9am. So I see no reason to doubt Mr T when he says he tried to report what happened with his phone to R that morning and before the disputed transaction with them even took place.
- Mr T reported what happened to the police. They've been able to confirm that transactions made at a garage and within the shop in London were not carried out by Mr T. Other evidence shows Mr T couldn't have been in London at the time of the disputed transaction.

I have considered whether Halifax can hold Mr T responsible because there's no simple explanation for how the payments were made without his involvement as our investigator has suggested. However the test under the PSRs isn't whether I can exactly pinpoint how the fraud happened but whether these transactions were authorised by Mr T. And I believe there are various scenarios which explain how his password could have been known – particularly if Mr T's phone had been targeted by fraudsters during the evening. I also note the details that were changed after the fraudsters initially accessed Mr T's phone which shows they tried to limit Mr T's ability to access his own accounts.

I've also considered the nature of the disputed transactions. These clearly follow the type of transactions we see when fraud is being committed. Transfers were made in the early hours of the morning. I don't believe that these transfers were anything but out of character for Mr T, as were the rest of the transactions that followed. Whilst we need to be careful about saying certain payment patterns look like fraud, in this case I'm in no doubt what happened here matches fraud-related activity.

When money was transferred from Mr T's Halifax accounts, this was money Mr T had been saving for his future. I can see no reason why Mr T would spend this himself.

I have considered whether Mr T may have authorised these transactions but if this were the case, he'd have to have committed extensive and varied first party fraud – with the involvement of a third party – and I don't see any reasons for him doing this.

Putting things right

Based on the evidence, I'm satisfied Mr T didn't authorise the disputed transactions. However as the money was transferred to Mr T's own account with another bank, I'm not asking Halifax to do anything further. Mr T's complaint with R is being dealt with as another complaint with the ombudsman service.

My final decision

For the reasons given, my final decision is to uphold Mr T's complaint against Bank of Scotland plc, trading as Halifax.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 27 October 2023.

Sandra Quinn
Ombudsman