

The complaint

Mr B complains that Bank of Scotland Plc trading as Halifax won't refund all the unauthorised transactions that they should.

Mr B has used a representative to bring his complaint. But for ease of reading, I'll mostly just refer to Mr B himself.

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.

Mr B's account statements show that between 20 January 2021 and 20 February 2023 a series of £15 payments debited his Halifax account to a merchant I'll refer to as 'C'. Halifax say that Mr B contacted them on 28 February 2023 to report all the transactions to C as unauthorised.

Halifax investigated and blocked further payments to the same merchant. They also said they would only refund the disputed payments from the last 13 months. The statements show that on 28 February 2023 Halifax credited Mr B's account with 12 payments of £15 which together totalled £180.

Mr B complained as he was unhappy that outstanding payments weren't also refunded. When Halifax maintained their position, the matter was referred to our service. One of our Investigators considered the complaint. She thought Halifax had made an error and one additional £15 payment ought to have been refunded as it fell within the 13-month time period from Mr B raising his dispute. She also recommended that 8% simple interest be added to that amount. Halifax accepted this outcome, but Mr B didn't. He asked for an Ombudsman to review his 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 outcome as our Investigator and for essentially the same reasons, I know this will be disappointing for Mr B as I can see he feels very strongly that he should be refunded in full, so I'll explain why.

The relevant regulations here are the Payment Services Regulations 2017 (PSRs). Broadly speaking, these say that if a payment isn't 'authorised' then it must be refunded by the payment service provider (PSP)/bank. This is covered in section 76 of the PSRs.

But a further section (74) also states that:

“A payment service user is entitled to redress under regulation 76... only if it notifies the payment service provider without undue delay, and in any event no later than 13 months after the debit date...”

There is further provision that section 74 won't apply where the PSP has failed to make available information concerning the payment transaction(s).

The above regulations are reflected in Halifax's account terms which say:

“You must tell us about an incorrect payment within 13 months of the payment being made. If you don't tell us in this time, we may not refund you.”

“To get a refund you must tell us about the unauthorised payment within 13 months of it being taken from your account.”

“Please check any information we send you in texts, letters, mobile alerts and statements. We will correct any errors as soon as reasonably possible once we know about them.”

Halifax have checked their systems and have no record of Mr B contacting them to dispute these payments prior to 28 February 2023. So whilst some of Mr B's submissions refer to contact being made in December 2022, due to the passage of time its also possible he might be mistaken in his recollection. In cases like this I have to decide on balance what I think is most likely. So in the absence of any further evidence of contact in December 2022, I'm more persuaded by Halifax's records. I think had Mr B contacted them sooner, it's likely there would have been a record of that. Based on this I think its most likely that 28 February 2023 was when the unauthorised transactions were first reported to Halifax. And 13 months prior to that date is 28 January 2022.

I've been through Mr B's statements from that date until 28 February 2023 (when the refunds were applied) and there are 13 instances of the £15 payment being taken totalling £195. Given Halifax refunded £180 on 28 February 2023, I agree with our Investigator that a further £15 in lieu of the 20 February 2023 payment is due and that adding 8% simple interest to this amount is appropriate.

I appreciate Mr B feels that Halifax should have done more to highlight these payments to him. But as they were made available to him within his statements, I don't agree. Mr B also feels that not getting all the payments back goes against overall fairness and means Halifax are hiding behind their terms and conditions. I've considered this, and can see Mr B's point, but the PSRs and account terms on unauthorised transactions are clear. And in the circumstances of this complaint, I've not seen anything to persuade me that its unfair for Halifax to apply the regulations and terms of the account or that this is a case where I should disregard these in the interests of fairness.

My final decision

For the reasons outlined above, my final decision is that I uphold this complaint in part. Bank of Scotland Plc trading as Halifax must pay Mr B £15. They should also add 8% simple interest to this amount to be calculated between 20 February 2023 and the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 13 December 2023.

Richard Annandale
Ombudsman

