

## **The complaint**

Mrs H complains about the lack of management and oversight of her bank account with a business owned by Yorkshire Building Society. Mrs H is elderly and is represented by her daughter who has power of attorney. I have just referred to Yorkshire in this decision.

## **What happened**

I set out the background and my provisional findings to Mrs H's complaint in my provisional decision and here.

*'Mrs H's daughter said that Yorkshire hadn't acted on a number of unusual transactions and transfers from Mrs H's account to gambling websites over the years. She complained to Yorkshire that no alarms had been raised and no monitoring of the account had taken place.*

*Yorkshire said the transactions in question were made with a debit card and the correct PIN and so it appears Mrs H chose to make the payments and hadn't raised any concerns. Yorkshire apologised for the late response to the complaint and offered £45 compensation.*

*Mrs H's daughter was unhappy with this response and referred the complaint to our service. Yorkshire said that Mrs H's complaint was outside of the six-years in which a complaint must be brought by the time limit set by the Financial Conduct Authority rules.*

*Our investigator said we can look at the payments between 2013 and 2018 as the complaint was brought to us within three years of when the complainant became aware of a reason to complain – and this started when Mrs H's daughter became aware of the transactions from the statements. But he didn't recommend the complaint be upheld. He said banks should review accounts and support vulnerable customers and Yorkshire did so by using technology and tools to spot signs of unusual activity, but this had to be balanced with customers' different use of accounts and what's unusual for one person may not be unusual for another.*

*The investigator said Yorkshire's support for Mrs H would depend on what it knew about her, but no vulnerabilities had been notified meaning it wouldn't have put additional measures in place. He said the account was used for general spending, and the frequency and type of transactions wouldn't have alerted Yorkshire to a problem. He said most of the gambling transactions, of about £2,200, were in 2013 and didn't suggest compulsive gambling. He didn't think there was evidence of fraudulent or unusual activity.*

*Mrs H's daughter disagreed and requested an ombudsman review the complaint. She said the investigator had justified his own and Yorkshire's interests, but hadn't considered if the account had been subject to third party coercion. She said her mother never had online facilities, but there were many payments to gambling websites and to credit cards and loan providers, some of which she thought belonged to third parties. She said there were payments for car repairs and petrol even though Mrs H had never owned a car, and some strange lifestyle payments.*

## **What I've provisionally decided – and why**

*Mrs H's account opened in 2003 and closed in January 2018 and her daughter disputes transactions between 2013 and 2018. Yorkshire says the complaint has been brought out of time and we should treat all transactions before October 2015 as outside of the six years allowed for complaints. Yorkshire doesn't consider the transactions between 2015 and 2018 to be unusual or suspicious considering normal account and payments activity.*

*The Financial Conduct Authority sets rules which we must follow concerning the time limits for complaints, known as the DISP rules. Alongside the six-year time limit runs a three-year time limit in which a complaint must be brought from when a complainant ought reasonably to have been aware that they had cause to bring a complaint. I agree with the investigator that this should be taken to have started from when Mrs H's daughter noticed the transactions that she considered to be erratic (and took steps to protect her). This was within three years of her bringing a complaint, and so I can consider all payments complained about.*

*The complaint concerns Yorkshire's lack of intervention into Mrs H's bank account. In response to our investigator's view, Mrs H's daughter has provided some details of what she considers to have been coercion exercised on her mother by another relative, who I have referred to as 'the third party'. I have considered this concern by means of a provisional decision in order to give the parties an opportunity to comment on the findings I have reached so far.*

*When reaching my provisional decision and considering what is fair and reasonable, I have taken into account the relevant law and regulations and, what I consider to have been good industry practice at the time. With all of this in mind, I have based my provisional decision on the balance of probabilities. In other words, on what I considered most likely to have happened, in the light of the available evidence.*

*Mrs H's daughter says the transactions on her mother's account show that all was not right as there's 'overwhelming evidence of wrong doing and misappropriation on an industrial scale'. She said Yorkshire should have enquired with Mrs H about her spending and there was a failure of duty of care to a vulnerable person. Mrs H's daughter said there were numerous cash withdrawals on the same day, large payments to gambling websites, loan repayments and payments to dating and training websites. She said Yorkshire should have intervened.*

*In considering whether Yorkshire should have blocked or withheld the transactions subsequently complained about I have looked at the records of Mrs H's account, the transactions themselves, and what the bank knew about her at the time. In doing so I have borne in mind Yorkshire's general obligation to monitor customer accounts and support vulnerable customers.*

*The customer information held by Yorkshire shows no notification of any vulnerabilities by Mrs H or by any of her relatives, other than a physical medical condition. The transactions in question were carried out over several years, but at no point was Yorkshire put on notice about potential coercive control. I'm not aware of a power of attorney granted by Mrs H at that time, or a third-party mandate set up on her account in order to give anyone else access or permission to manage, or help Mrs H manage her financial affairs.*

*I've seen nothing to suggest that anyone who may have had concerns about Mrs H told the bank she needed any sort of assistance. And, while physical frailty and age might well have been visual indicators of vulnerability, the bank had no concerns about her mental capacity. To say, in these circumstances, that Yorkshire should have blocked Mrs H's transactions would be to put more responsibility on the bank than on Mrs H's family.*

*One of the things we consider in this type of complaint is whether the customer consented to (and, thereby, authorised) the disputed transactions. Consent includes making the transaction themselves or allowing the transaction to be made by someone else. In broad terms, banks are expected to process payments and withdrawals that customers authorise them to make, in accordance with the payment regulations and the terms and conditions of the account. Mrs H consented to, and didn't dispute any transactions.*

*Mrs H's daughter has highlighted cash withdrawals of £340 over two days in January 2013, but these don't look excessive over the month as a whole. And, as Mrs H's daughter has said, cash withdrawals increased a little over the following five months of 2013 and then dropped back, but at no point did these or later withdrawals look suspicious. Mrs H's daughter also mentions gambling and other transactions which she says weren't in accordance with Mrs H's lifestyle.*

*The transactions that Mrs H's daughter is concerned about are amongst many others on the account. All of the transactions were authorised by Mrs H and involve spending her own money as opposed to borrowing. I make this point as coercive control often involves the account holder in borrowing money, and for this purpose we expect lenders to check the reasons and signs of abuse that might be present.*

*I can see that some of these transactions may have been for the benefit of third parties, as Mrs H's daughter suggests, but in itself that doesn't demonstrate coercion. Another interpretation is that the third party was assisting Mrs H, (I can see that the third party helped Mrs H to close the account later on) and was possibly staying with her at the time. The transactions in favour of the third party under this interpretation might be a quid pro quo for help given. In the circumstances, I think it more likely than not Mrs H would have reassured the bank that everything was under control if it had proactively flagged any concerns with her. And so I'm not persuaded that an enquiry by Yorkshire would have made a difference.*

*Mrs H's daughter suggests Yorkshire should have made a criminal check on the third party and credit reference checks on credit card payments. I don't think this was possible for the bank and I see no reason why it would do so in the absence of any alerts about the account.*

*In conclusion, I don't think the transactions Mrs H's daughter has highlighted stand out as being particularly unusual or suspicious such that the bank ought to have intervened. There is nothing in Yorkshire's records to suggest Mrs H wasn't capable of managing her own affairs or was under any coercive control, and there's been no direct testimony from Mrs H. Mrs H's daughter hasn't suggested that there has been any communication between Mrs H's family and Yorkshire about Mrs H or the management of her account.*

*I can see that it has been very stressful for Mrs H's daughter to discover details of Mrs H's financial situation and I'm sorry to learn of the effect on family relationships. But I haven't found that Yorkshire acted wrongly in not challenging the payments Mrs H made from her account or failed to take care of her as a customer, and so I can't fairly hold Yorkshire liable for the losses that have been claimed. Subject to any further information that I receive I don't currently intend to uphold this complaint.'*

For these reasons, I provisionally decided not to uphold this 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.

Mrs H's daughter said she fundamentally disagreed with my provisional decision, and I had failed to grasp substantive matters in her complaint and the bank's duty of care. She said

only lip service had been paid on the matter of coercion and just because the bank had received no notice, that was no justification to ignore the probability of coercion - where a cursory examination of the account's history would suggest something wasn't right.

Mrs H's daughter said there were numerous cash withdrawals and significant amounts deposited into and transferred out of the account. She said many would argue that spending £2,000 on gambling in a year when living on a pension would indicate a problem. She asked if we had considered transactions going back to 2004.

Mrs H's daughter refers to 'her' complaint, whereas she is complaining on behalf of her mother and her mother's 'losses' to a third party. It's also worth bearing in mind that the duty of care to which Mrs H's daughter refers was only introduced this year, although there was a general obligation on banks to support vulnerable customers at the time.

I can see the strength of Mrs H's daughter's feelings about the control she believes that was exercised on her mother's finances and I have reconsidered the use of her mother's account and Yorkshire's response. I agree with Mrs H's daughter that coercive control is a very complex issue, but much of the transaction activity to which she refers took place in 2004/2005. As the investigator and I have said we are only able to consider events from 2013 onwards due to the time limits that apply to complaints referred to our service.

In common with other banks, Yorkshire has various tools and technology to spot signs of unusual, or potentially coercive activity. However, this has to be balanced against a customer's right to authorise a range of different transactions and that customers will use accounts differently, and so what may be unusual for one person may not be unusual for another. The technology and techniques deployed by banks are commercially sensitive information, but they can ensure intervention, particularly when allied to notification of vulnerability.

Mrs H's daughter strongly believes that the spending on her mother's account should have raised enquiries and the bank failed to consider misuse of her account. However, the account was operated by her mother via her debit card and PIN, and she didn't raise any concerns herself and hasn't provided anything about her situation or complaint.

Whilst there's a general expectation on Yorkshire to support vulnerable customers, this would be largely dependent on what it knew about the circumstances. No one notified any vulnerabilities on behalf of Mrs H, other than a physical condition. The transactions in question were carried out over several years, but at no point was Yorkshire put on notice about potential coercive control or any concerns. Yorkshire had no concerns about Mrs H's mental capacity and so to say, in these circumstances, that it should have blocked Mrs H's transactions would be to put more responsibility on the bank than on Mrs H's family.

Mrs H's daughter has said that the coercive transactions were 'on an industrial scale'. I disagree, though clearly some transactions were made for the benefit of a third party who staying with Mrs H, but no indication that this person made the transactions themselves or that this demonstrate coercion. And so I'm not persuaded that an enquiry by Yorkshire into close family members would have made a difference.

I can see the account was used for general spending, and these transactions were generally for small amounts. There were some larger amounts, but I haven't seen anything from the nature of these transactions that ought to have triggered an alert. I don't think the transactions Mrs H's daughter has highlighted stand out as being particularly unusual or suspicious such that Yorkshire should have intervened.

There's nothing to show that Mrs H wasn't capable of managing her own affairs or was under any coercive control and I haven't found that Yorkshire acted wrongly in not challenging the payments Mrs H made or failed to take care of her as a customer, and so I can't fairly hold Yorkshire liable for any financial loss that has been claimed.

When we reach a decision we have to side with one party over the other, and this is based on the evidence, and the balance of probability as to what is most likely to have happened. Having done this, I remain of the view set out within my provisional decision that the transactions that have been highlighted by Mrs H's daughter are not particularly suspicious in themselves or in light of the lack of concerns from other family members. I realise that Mrs H's daughter will be disappointed with this decision, but I hope she understands the reasons that I have reached it.

### **My final decision**

For the reasons given here, it is my final decision that the complaint is not upheld.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 29 December 2023.

Andrew Fraser  
**Ombudsman**