

## **The complaint**

Mr N complains over £5,000 was transferred out of his Bank of Scotland plc trading as Halifax bank accounts without his authorisation.

## **What happened**

Mr N explained several transactions totalling £5,745 occurred via the Halifax banking app from his two Halifax bank accounts to three named individuals without his authorisation. These transactions happened over a short period of time on 26 October 2023. He contacted Halifax to dispute these transactions on 28 October 2023.

Halifax issued a final response on 6 November 2023. It said it had investigated Mr N's complaint and couldn't see anything indicating fraud. Halifax said the funds were transferred using a mobile banking app which had been downloaded on 14 October 2023.

Mr N explained he had not downloaded the Halifax app to his phone on 14 October and said the manufacturer of his phone had confirmed this, explaining he hadn't downloaded any apps since late September 2023.

Halifax said someone would need to have known Mr N's account information and online banking details, including information only Mr N would have known, to download the app. Mr N confirmed no-one else knew these details.

Halifax said its records show it successfully called Mr N's mobile number shortly after the app had been downloaded to confirm it was him. Halifax also provided evidence it had sent five text messages to Mr N's registered mobile phone.

The first one asked him to contact Halifax if he had not registered for mobile banking and the four further texts between 14 and 26 October asked him to contact Halifax if it was not him setting up new recipients on his account. Mr N has confirmed receiving these text messages.

Halifax concluded they couldn't see how anyone else could have made these transactions in the circumstances.

Our investigator didn't think Halifax needed to repay the transactions. They explained the mobile banking app had been set up 12 days before the transactions and the evidence supported Halifax had called Mr N's correct registered number and confirmed it was him setting it up.

Our investigator also agreed any third party would have needed Mr N's secure private banking information to set up the app and as Mr N had said no one else had access to this information, it was unlikely someone else could have made these transactions.

Our investigator also recognised Halifax had further sent text messages asking Mr N to contact it if the activity on his account was not him. Mr N confirmed he had received these messages but had not contacted Halifax. Our investigator also thought the evidence suggested Mr N was actively using his account when the disputed transactions occurred.

Mr N disagreed with our investigator's recommendation. Mr N provided our service with information and comments regarding these transactions, including evidence from his mobile phone manufacturer showing he last downloaded the Halifax banking app in 2015.

As Mr N has rejected our investigators recommendation, his complaint has been passed to me to make a 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.

I appreciate how strongly Mr N feels about his complaint. Although I may not mention every point raised, I have considered everything but limited my findings to the areas which impact the outcome of the case. No discourtesy is intended by this, it just reflects the informal nature of our service.

Where evidence is incomplete, inconclusive or contradictory, I have to make decisions on the balance of probabilities – that is, what I consider is more likely than not to have happened in light of the available evidence and the wider surrounding circumstances.

The relevant regulations here are the Payment Services Regulations 2017 (PSRs). In general terms, the bank is liable if the customer didn't authorise the payments, and the customer is liable if they did authorise them.

So, the issue for me to determine was whether it was more likely than not that Mr N carried out the transactions himself. If he authorised someone else to carry out the transactions for him, this would also be considered as carrying out the transactions himself.

I have considered the evidence carefully and can see that Mr N has consistently said he does not have mobile banking on his mobile phone. He has stated he exclusively uses his laptop for online banking and, although he accepts he received the text messages regarding setting up mobile banking on 14 October and the new payees on 26 October, has explained he didn't respond to them as he was using his laptop for banking so thought they were regarding this. Mr N has clarified he was making other legitimate transactions and thought the text messages were related to these.

Having viewed the text messages, which Mr N has provided himself, I am satisfied they are clear. For reference one of the texts sent on 26 October said *'Confirmation: You set up a new recipient on 26/10 at 15.48.23 from account ending [xxxx]. If this was not you please call ...'* and the text sent on 14 October said *'Mr [N], you registered for Mobile Banking on 14/10 at 15.47.44 if this WASN'T you, call us on ....'*

I appreciate what Mr N has said but think on balance it is reasonable to expect someone to respond to a series of text messages such as these if it was not them undertaking the actions so specifically described.

Halifax has consistently said Mr N must have made these payments. Explaining there is no evidence of a compromise of his banking information and, importantly, Halifax has provided evidence it checked with Mr N it was indeed him who had downloaded the app by calling his registered mobile phone, the number of which is not disputed.

Whilst Halifax has explained this call was not recorded, I think on the balance of probabilities from the evidence I have seen, Halifax did make this call to Mr N's registered telephone number and no concerns were raised about the app being downloaded.

I appreciate from the notes recorded during the early stages of Mr N's complaint, Mr N isn't sure whether this happened. However, I am satisfied there is evidence provided by Halifax recorded at the time this confirmation happened.

Mr N has not provided evidence to the contrary, despite providing our service with documents showing he had made enquiries in December 2023 about calls to his mobile phone during this period with his service provider.

I therefore think, on balance, it is fair and reasonable to prefer Halifax's evidence, that it checked and confirmed it was Mr N who had downloaded the app by calling him.

Secondly, I accept for a third party to have set up the app and made these transactions, detailed knowledge of Mr N's banking information would have been required. Mr N has not provided any evidence of a potential compromise, explaining he has not given his banking information to anyone else. This again points to Mr N as being the sole person who had the necessary information to download, set up the app and make the transfers.

I can also see Mr N made non-disputed transactions around the same times as the disputed ones. Mr N has said he transferred £90 to a friend and £1,000 between accounts during this period. I appreciate Mr N has said these transactions were made by online banking, but it does suggest Mr N could have seen or noticed the transactions. I am satisfied it certainly shows Mr N was active on his account around the same time the transfers happened.

Since our investigator issued their view, I asked for further information from Halifax regarding the device used to download the app. Halifax has provided evidence the device used for downloading the app was first registered with Halifax as Mr N's mobile phone in 2016. It provided evidence of a unique identified code for Mr N's device which was consistent for the download of the app and the registered device. Halifax further provided evidence this same device is still being used.

Thirdly, in cases of fraud, it is usually the case that fraudsters, once they have gained access to a banking facility, will withdraw as much as possible as quickly as possible. This has not happened here. There was a significant gap of 12 days between the app being downloaded and set up and the withdrawals taking place.

I also note there was a significant positive balance across the accounts available to withdraw at any point during these 12 days. This is not something I would rely on as evidence on its own, but considering the other factors here, I think on balance, it is consistent with pointing away from a third party being involved.

Mr N has provided evidence suggesting he did not download the app to his registered device on 14 October. Whilst I appreciate the evidence shows the last time an app was downloaded for Halifax was 2015, I am not sure of the parameters for this document. For example, there is no device ID or telephone number associated with this search. I do appreciate from the various correspondence Mr N has provided to our service, he has struggled to get information from his phone manufacturer.

For these reasons I broadly agree with our investigator's recommendation. I appreciate Mr N will be disappointed with my decision, but I do not think there is enough evidence to hold Halifax liable for these transfers under the PSRs.

I do hope this decision explains in satisfactory details why I believe this is fair and reasonable in the circumstances, and why I have come to this conclusion on balance.

### **My final decision**

For the reasons I have given, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 27 December 2024.

Gareth Jones  
**Ombudsman**