

The complaint

Mr and Mrs D have complained about payments to a merchant deducted from their account by Bank of Scotland plc (trading as Halifax). They are also unhappy with the way in which their concerns about this were subsequently handled.

What happened

I have previously issued a provisional decision regarding this complaint. The following represents excerpts from my provisional decision, outlining the background to this complaint and my provisional findings, and forms part of this final decision:

“In January 2023 a payment from Mr and Mrs D’s account was made for £50.36 to a merchant. Mr D noticed this had been authorised under a card that had expired three months previously, and he had not requested the payment. He complained to Halifax about the payment being processed.

Halifax investigated matters and stated that the payment was to a genuine company. It also noted that a payment for £13.16 to the same merchant under the same card had been made in January 2022. It considered that these payments represented a subscription to the merchant. Halifax said that under the rules that cover such an arrangement, the fact that the card had expired would not prevent a payment being processed.

Halifax stated that if Mr and Mrs D had evidence that they’d cancelled the subscription directly with the merchant, or had asked Halifax not to honour the payment before it was made, they should let the bank know. But in the absence of such evidence, Halifax considered it had acted correctly when processing the payment. It also stated that it had put a block in place for 13 months to prevent the merchant from taking further payments, allowing Mr and Mrs D time to cancel the subscription directly with the merchant. And it provided the names of two organisations which might be able to help Mr and Mrs D if they had difficulties cancelling the subscription.

Mr and Mrs D were also unhappy about the service they’d received from Halifax once they’d raised their concerns about these payments. Mr D said that when he first contacted Halifax, he had requested that it not call him because he has a hearing disability. However, he says that Halifax proceeded to phone him on a number of occasions, ignoring his disability.

Halifax responded that its records showed that Mr D had rung it once, and that he had not mentioned in that call that he did not want phone contact. Halifax said that it could only find evidence of it making one outbound call to Mr D on 30 January, where a voicemail was left. It then received an email from Mr D on 31 January, asking that contact be limited to email, and that consequently it had made no further attempts to call. Halifax said that it could put a system in place across the banking group that it is part of to ensure Mr D is not contacted by phone in the future.

Mr D said that Halifax had been inaccurate in what it had said, because due to his hearing impairment, he would never have phoned it. Mr and Mrs D were unhappy with Halifax’s stance on their complaint, and so referred it to this service. They asked that Halifax refund

the £50.36 payment to their account, on the basis that this had been arranged on an expired card. They also requested that it pay compensation to reflect how it had handled matters.

Our investigator did not uphold this complaint. He stated that Halifax had acted correctly when it had made the £50.36 subscription payment, as there was no evidence that this had been cancelled. He also didn't consider that the service Halifax had provided Mr and Mrs D with merited a proposal of compensation.

Mr and Mrs D disagreed with the investigator's findings. Mr D questioned why the £50.36 payment had been honoured, when he said he had not given permission for it, and the debit card had expired months earlier. He asked what the point of the expiry date on the card was, if payments were still able to be made on it. Mr D reiterated that Halifax had rung him repeatedly, despite his hearing difficulties. He also felt that the investigator's assessment had not shown empathy to reflect the difficulties he encountered dealing with financial institutions due to his disability. Mr D repeated that Halifax had lied when it said that he had phoned the bank.

The investigator apologised to Mr D if he had appeared to lack empathy in this matter. But overall his view remained that Halifax had handled matters reasonably. He also stated that the way in which subscriptions work mean that they need to be cancelled separately to prevent future payments being taken, even if the debit card has passed its expiry date.

Mr D responded with an update on the events surrounding this complaint. He explained that in January 2024, a payment of £52.74 had been processed from the bank account to the same merchant as the £50.36 payment made in January 2023. He said that this had been authorised under his current debit card, not the expired card (as had happened in January 2023). Mr D questioned how the merchant had got details of his new card, and why Halifax had allowed the payment to go through when it knew he was still in dispute with it about the January 2023 payment.

The investigator asked Halifax how the payment was able to be made, bearing in mind that in March 2023 it had told Mr and Mrs D that it had put a block on payments to the merchant for 13 months. Halifax's response was that the block had been put in place by completing continuous payment authority ('CPA') forms, and that this would last for 13 months from March 2023. It also commented that the £52.74 payment had been credited back to the account, providing a bank statement to demonstrate this.

In correspondence with the investigator, Mr D highlighted that £52.74 had been deducted from the account in January 2024. He said the reason it had been refunded was because he had contacted the merchant, and he said the refund had been achieved "with great difficulty". Mr D reiterated that in his view, the January 2023 payment should not have been made under an expired debit card, and the January 2024 payment should not have been made as he had not given the details of the new card to the merchant or consented to the payment.

This case was passed to me to review. Noting that Mr D is adamant he never rang Halifax, I asked it to provide evidence to show that he had made such a call. I also asked for Halifax's records showing inbound and outbound calls relating to Mr and Mrs D's account, as Mr D had said that the bank had called him a number of times. In response Halifax questioned where in its correspondence it had suggested that Mr D had rung the bank, and it said it was forwarding a call log.

I noted that the bank statement provided showed a £52.74 debit on 12 January 2024 to the merchant which Halifax said it had placed a 13 month block on from March 2023. I asked Halifax to clarify why its block had not prevented this. I also commented that the January

2023 payment was made under an expired debit card, whereas the January 2024 payment was made under a new debit card. I asked Halifax to explain whether the subscription to the merchant remained valid, regardless of the debit card that was in force when the payment was due.

In response, Halifax highlighted that £52.74 had been debited on 12 January, but then credited on 15 January. It then said that the payment was “not a subscription from what I can see. This would suggest it isn’t a CPA and the card is registered on the account to be used when needed by the customer. These types of payments cannot be cancelled or stopped through a CPA block. The block doesn’t stop payments to the company, only payments made as part of the CPA.”

In response to my question about payments being taken in 2023 under an expired card, and then in 2024 under a new card, Halifax stated: “In relation to a CPA, cancelling a card or it expiring will not stop future payments being made. A CPA would continue to be valid on the new card.” It said this relates to the card scheme provider’s process, not Halifax’s.

What I’ve provisionally 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.

For ease of reference, I have used subheadings to determine what I consider are the key aspects of Mr and Mrs D’s complaint.

The service provided by Halifax

Mr D states that Halifax rang him several times, ignoring his hearing disability. He also says that Halifax’s suggestion that he rang it is untrue. I asked Halifax to provide evidence showing that Mr D had called it. It responded that it could not see that its complaint responses suggested this.

Halifax’s letter to Mr and Mrs D dated 16 March 2023 stated: “I’ve only found one call made by you which I’ve listened to.” Like Mr D, my reading of this sentence is that Halifax is saying that Mr D rang it. That was why I asked Halifax for evidence relating to this alleged call made by Mr D. Based on Halifax’s response to my question, and in light of Mr D saying that he never rang, on balance my conclusion is that Mr D did not ring the bank. Halifax’s comment, quoted above from its 16 March letter, is therefore inaccurate. In light of his hearing impairment, I can appreciate why Mr D was upset to read this.

To determine whether Halifax excessively called Mr and Mrs D, I asked the bank to provide me with records of calls logged for the account. It says that it has done this, but I have found it difficult to interpret the evidence it has forwarded. I was expecting to see a log of inbound and/or outbound calls, but this doesn’t seem to be what Halifax has sent me. If Halifax considers it has clearer records that it can provide in relation to this matter, it is able to send these in response to this provisional decision. In the meantime, it is difficult for me to determine the extent to which Halifax may have tried to call Mr D. But overall, based on Mr D’s testimony, my view is that Halifax did try to call him.

I understand that Halifax has now stopped contacting Mr D over the phone, and its records have been marked to reflect that. I consider that is appropriate on Halifax’s part. However my view is that Mr D has been caused some upset due to the bank’s suggestion that he had rung it, when he had not. He would also have been caused distress by Halifax attempting to call him. I provide my opinion about how these issues impact the issue of compensation later in this provisional decision.

Payments made in January 2023 and January 2024

When Mr and Mrs D initially complained about a £50.36 payment in January 2023 made to a particular merchant under an expired debit card, Halifax responded on 3 March 2023 that this payment was linked to a subscription. It said that the card scheme provider allows a merchant to debit a subscription payment onto an expired card. Halifax said that it was placing a 13 month block on the merchant taking any money from the account, and it said that Mr and Mrs D should contact the merchant to cancel any active subscription. Halifax's letter to Mr and Mrs D dated 16 March 2023 conveyed a similar message.

In light of Halifax's suggestion that the payment was linked to a subscription, my understanding is that the bank was indicating that there was a CPA arrangement in place with the merchant. That would seem to be consistent with Halifax's correspondence with this service, when it stated that the 13 month block on the merchant had been achieved through the completion of CPA forms. That would also seem to explain how the January 2023 payment was processed under an expired card. I understand that a CPA is linked to an account, not a card, so the expiring of a card would not prevent a payment being made.

But Halifax's latest correspondence in response to my questions, following the January 2024 payment, has said that it doesn't think the payments to the merchant relate to a subscription. It also suggested that a CPA was not in place, and the card is registered on the account to be used when needed by Mr and Mrs D. Halifax has commented that in these circumstances, a CPA block would not prevent payment.

I have carefully considered Halifax's recent submissions in this matter. My view is that regrettably, those submissions have made the situation less clear than was previously the case. The latest submissions would explain why the 13 month block that Halifax claimed it had put in place in March 2023 did not prevent the merchant taking the £52.74 payment in January 2024. And the suggestion that the block did not work in relation to this payment is supported by Mr D's testimony, where he has explained that he had to ring the merchant to get this amount refunded.

At the same time, if no subscription and CPA is in place for this merchant, it's not clear to me why the January 2023 payment was successfully requested by the merchant. That's because it appears that particular payment was taken under a card that had already expired. If "the card is registered on the account to be used when needed by the customer", as Halifax recently said, I'm unclear how an expired card could have been used to authorise the January 2023 payment.

A further uncertainty also seems to apply to how the January 2024 payment could have been made using up to date card details, when Mr and Mrs D say that they had not given the merchant the details of their new debit card. As it seems unlikely to me that Halifax would have given the merchant the new card details either, my view is that that suggests the January 2024 payment would have been authorised under a CPA, this being linked to an account, not a card.

In terms of where that leaves matters, at the very least there is some uncertainty about what type of arrangement has allowed the merchant to successfully request payments in successive Januarys in 2023 and 2024. On the basis that Mr and Mrs D do not want to make any further payments to the merchant, my view is that Halifax should be assisting them to prevent that happening again. Based on the previous payments, it would appear that it is likely the next payment will be requested by the merchant in January 2025, and so there is a substantial amount of time available to find a solution to this situation.

In response to this provisional decision, I request that Halifax confirm what steps it can take to prevent the merchant successfully requesting another payment. If it considers that only Mr and Mrs D can prevent this, it should explain exactly what payment arrangement is in place with the merchant, and provide evidence to demonstrate that. It should also explain what action it considers Mr and Mrs D would need to take.

And if Halifax considers that above I have misinterpreted any of its submissions in this regard, it can of course clarify the position in its response to my provisional decision.

Compensation

I assess complaints based on the balance of probabilities. The January 2023 payment was made under an expired debit card. On balance, and despite the content of Halifax's latest submissions, my view is that it is more likely than not that this payment was taken under the reference of an expired card because it resulted from a subscription that Mr and Mrs D had in place for the merchant under a CPA. This is in line with Halifax's original investigation of this matter, and was reflected in its complaint response directly to Mr and Mrs D.

For that reason, I do not consider I have sufficient reason to require Halifax to refund the January 2023 payment of £50.36 to Mr and Mrs D. That's because it was authorised under an existing CPA that was in place, and Mr and Mrs D did not ask Halifax to cancel the payment before it was requested by the merchant.

The January 2024 payment of £52.74 was refunded to Mr and Mrs D. As a result, this has not caused them a financial loss.

However, Mr D says that he was only able to obtain the £52.74 refund by contacting the merchant, and that it was achieved with great difficulty. I am mindful that Halifax had told Mr and Mrs D that there was a block on this merchant for 13 months with effect from March 2023. Undoubtedly seeing a payment from their account to the merchant in January 2024 would have caused Mr and Mrs D distress, as they were still contesting the January 2023 payment. It would appear that Halifax provided false reassurance to Mr and Mrs D that the merchant would not be able to successfully apply for a payment again during the 13 month block, and in my view this would have exacerbated their distress.

As I explained above, I consider Halifax also caused Mr D upset by stating that he had rung it when he had not, and by attempting to call him. Overall my view is that Halifax has caused Mr and Mrs D significant unnecessary distress and inconvenience. To reflect this, and taking into account awards made on cases with similar circumstances, I currently consider that Halifax should pay Mr and Mrs D £250 compensation."

Responses to my provisional decision

Mr D provided some excerpts of Halifax's letter dated 16 March 2023 in which it stated that he had phoned the bank. He reiterated that he'd never called Halifax, and he was pleased to see that I had also come to that conclusion. Mr D highlighted that although Halifax had told him it would block payments to the merchant for 13 months, this had not happened. He confirmed that he was happy to accept the provisional decision.

Halifax confirmed that it was willing to pay Mr and Mrs D £250 compensation for distress and inconvenience caused, as I had proposed. It said that although it had already applied a CPA block to the merchant for 13 months, it cannot block all payments from that merchant specifically. It commented that the merchant "*can change a letter or some aspect on the CPA and this would result in the payment being authorised.*"

Halifax therefore recommended that Mr and Mrs D contact the merchant and cancel any arrangement they have with it directly, to ensure no further payments are taken by it.

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.

My reading of Halifax's response to my provisional decision is that it considers the payments made in January 2023 and 2024 were the result of a CPA being place. That would be in line with the conclusion I reached in my provisional decision, where I said that on balance it seems the payments resulted from a subscription that Mr and Mrs D had in place for the merchant under a CPA.

Halifax has recommended that Mr and Mrs D contact the merchant and cancel any subscription they have with it. I would agree that this would seem to be the best action to take if Mr and Mrs D do not wish the merchant to attempt to take another payment from them in January 2025. I would ask that Halifax assist Mr and Mrs D with any questions they may have about this if they are unsure about the action they need to take.

In respect of the remainder of my findings made in my provisional decision, having taken into account the replies to it, I do not consider that I have reason to alter the conclusions reached in that provisional decision.

My final decision

My final decision is that I uphold this complaint and require Bank of Scotland plc (trading as Halifax) to pay Mr and Mrs D £250 compensation for distress and inconvenience caused to them.

I would also ask Halifax to assist Mr and Mrs D if they have any questions about the action they need to take to cancel their subscription with the merchant in question.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D and Mr D to accept or reject my decision before 19 April 2024.

John Swain
Ombudsman