

The complaint

Miss G complained because Bank of Scotland plc, trading as Halifax, refused to refund her for a transaction she said she didn't make.

What happened

On 22 July 2023, a debit card payment of £115.30 debited Miss G's Halifax account. It was to a well-known retailer, at a shop Miss G used regularly, and it was authenticated at 8.51am by the chip in her genuine card and Miss G's correct PIN.

There was another transaction to a different merchant at 12.12 pm on the same day. This used the same card and Miss G agreed she made this transaction.

On 5 September, after receiving her statement, Miss G contacted Halifax and said she didn't recognise the £115.30 payment. She confirmed she still had her card, and hadn't told anyone her PIN. She said she hadn't made the transaction because she'd been at home preparing to go to a wedding. Halifax didn't agree to refund Miss G, because the transaction had been made using her genuine card and correct PIN.

Miss G complained. She told Halifax the card had been in her bag in her bedroom, and she hadn't written down the PIN. She said she'd been to the shop to ask about the transaction, and had been told that the bill included alcohol, which she said she wouldn't have bought because she didn't drink alcohol.

Halifax didn't uphold Miss G's complaint. In its final response, it said that the payment had been made using Miss G's card and PIN, and she'd told Halifax that no-one else had access to these and that her PIN wasn't written down. So Halifax said it couldn't give Miss G a refund. Halifax said that if Miss G went to the police, it would be happy to provide the police with any information they needed.

Miss G wasn't satisfied and contacted this service. She said she wanted to complain about both the retailer and Halifax. Our investigator explained that this service only deals with financial complaints, and that if Miss G wished to complain about the retailer, she'd need to complain to the retailer direct.

Miss G told us that she wouldn't have been going shopping on the morning of 22 July, because she was at home in the bathroom at the time, preparing to go to a wedding. She said that she wouldn't have bought a lot of alcohol, which the retailer had told her had been bought, because she was a teetotaler. She was a retired pensioner and was upset about this, and worried that she might again be a victim. She said she hadn't authorised the transaction and believed her money should be reimbursed immediately.

Our investigator didn't uphold Miss G's complaint. She said that the genuine card and PIN had been used. She considered how an unauthorised third party could have obtained Miss G's card and returned it to her, without her realising. Also, Miss G had said she hadn't written down the PIN or told anyone what it was. And the payment had been made to a merchant Miss G had used before. So the investigator thought it was more likely than not

that Miss G had made and consented to the payment – because there was no explanation about how an unknown third party could have made the payment.

Miss G didn't agree. She explained that she had been getting ready to go to a wedding at the time of the disputed transaction, and that she didn't drink alcohol. She also said that the wardens at her home had keys. She said that normally she used her card for food purchases at the retailer, which were for a lower amount. She said that later the same day, she'd paid for her lunch at the wedding she'd gone to, which showed that she still had her card. She said that as a pensioner, she could ill afford to lose the money and she was upset because she had trusted Halifax for many years to take care of her money.

Miss G asked for an ombudsman's 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 do understand that Miss G is upset about this transaction, both because of the financial loss and because the purchase was to buy alcohol, which she neither buys nor consumes. But I have to decide the outcome in line with what the regulations say, about who is liable for a disputed transaction.

What the regulations say

There are regulations which govern disputed transactions. The relevant regulations here are the Payment Services Regulations 2017. 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 what decides the outcome is whether the evidence indicates that it's more likely that Miss G, or an unknown third party, authorised the payment.

Who is most likely to have authorised the transaction?

First, I've seen the computer evidence which shows that it was Miss G's genuine card that was used to make the transaction. It's not generally thought possible to copy the chip on a card, and our service hasn't come across any cases where we felt this was a likely explanation of what happened. So I accept that the payment was made using Miss G's original card, the same one she used later that day for a genuine payment, and had used regularly before that.

The computer evidence also shows that Miss G's correct PIN was entered for the transaction. Miss G said she normally uses contactless for her payments, but there are other examples on the computer records which show she entered her PIN for some undisputed transactions. There are also 10,000 possible combinations of a four-digit PIN, making it very unlikely that anyone else would correctly guess Miss G's PIN.

So a key factor here is how any third party fraudster could have obtained Miss G's genuine card, and known her correct PIN, to carry out the transaction. Miss G's card had last been used for an undisputed transaction the previous day at 12.51pm. So anyone who stole her card would have had to do so between then, and 8.51 am the next morning. I note that Miss G said that the wardens at her sheltered accommodation have keys to her home. So I considered this carefully, in case this was a way in which someone might have stolen her card and used it fraudulently. But Miss G said she was at home, in her bathroom, that morning, and getting ready for the wedding she was attending. She didn't say that she'd heard anyone coming into her home – which surely she would have done. Also, any third

party who'd stolen her card and made the transaction would also have had to sneak the card back into Miss G's bag in her home without her knowledge. So they'd have had to enter Miss G's home twice without her knowledge, while she was there. This makes this an unlikely scenario.

The other difficulty is that any third party who did get into Miss G's home and obtain her card, would have had to know her PIN. Miss G said she hadn't written down her PIN. So unless it was a number which someone she knew, such as the wardens, might easily guess eg her birthday, I can't see how any third party could have known the PIN to carry out the disputed transaction.

Also, when fraudsters obtain the means to make fraudulent transactions, they tend to make lots of transactions – and there was enough money in Miss G's account for more to have been stolen. It's also unlikely that a fraudster would return the card to the owner, not only so they could steal more, but also because of the risk of being caught.

Miss G hasn't said that she believes someone with access to her accommodation might have stolen, and replaced, her card. And as I've said, any such person would also have had to find out her PIN. If Miss G does believe that anyone with access to her accommodation might be likely to steal her card, I'd advise her to change her PIN, and be particularly careful not to leave her bag unattended in her home.

So the evidence I have shows that Miss G's genuine card, and correct PIN, were used. As I can't see any feasible way in which a fraudster could have obtained these, and returned her card without her knowledge, it's not open to me to uphold her complaint.

Finally, I note that Miss G wanted to complain about the retailer as well as Halifax. But this service can't consider Miss G's complaint about the retailer, only about the financial complaint which is against Halifax. As the investigator explained, Miss G would need to contact the retailer direct if she wishes to complain about the retailer.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss G to accept or reject my decision before 31 May 2024.

Belinda Knight
Ombudsman