

The complaint

Miss F complains that Bank of Scotland plc trading as Halifax (“Halifax”) failed to refund transactions she didn’t recognise and granted a loan she didn’t apply for.

What happened

Miss F explained that she was attending an evening out in London with friends, staying at a short-term rental property. She left the venue early in the morning to make her way back to her accommodation. She was approached by several men and became worried. Miss F felt unsafe and took out her phone and unlocked it. At this point it was snatched from her by one of the men who then ran off.

Miss F was left upset and concerned for her safety. Together with a friend, Miss F returned to her accommodation to collect her belongings and returned home on an early train. When she got home, Miss F collected some documents and visited a local branch of Halifax to report that her phone had been stolen. She also reported it to the police.

Miss F explained to Halifax about the stolen phone and it became apparent that a number of payments had been taken from her account. A loan for £6,000 had been granted and paid into her account earlier that morning.

Halifax conducted an investigation and noted that the IP address of her phone was consistent with her use prior to the report of the theft. They also remarked that the account audit didn’t record any changes to the details on the account. Also, Miss F had confirmed none of her security details were recorded on her phone, so it wasn’t likely that the transactions had been carried out by anyone other than Miss F.

Halifax also noted that payments had been sent to another account held in Miss F’s name (a merchant I’ll refer to as R) and they questioned how a fraudster would know those details. They declined to refund Miss F and held her responsible for these transactions.

Miss F complained to Halifax about their decision, who again decided not to refund her. They told Miss F that it wasn’t typical for a fraudster to send money to another account held by the account holder. They also said there was no evidence of a compromise of her device and no-one else had access to authorise payments. Halifax also closed her account.

Miss F remained unhappy with Halifax and their decision, so she brought her complaint to the Financial Ombudsman Service for an independent review where it was looked into by an investigator.

The investigation so far

Both parties were asked to provide information about the complaint. Miss F confirmed what had happened to her and provided evidence of her report to the police about the theft. Halifax provided details of the payments made using her account. This showed that:

- There were multiple attempts to use the Apple pay function on her phone, some of

these were as “contactless” payments at a supermarket in North London and some used internet-based payments.

- Miss F only used her debit card (which wasn't stolen) after she'd reported the loss of her phone.
- She reported the loss about 10.30 in the morning and Halifax data shows an attempt to use her phone to make a payment a few hours later (which wasn't successful).
- A loan (£6,000) had been successfully applied for earlier that morning and transferred into her account.
- Transfers had been made from Miss F's savings account into her current account before being transferred to another account in her name with another business.
- A new payee was set up and payments were made to it, including two payments received back into the account.

Halifax concluded that as no changes had been made to the account and there was no evidence of a compromise, they believed that Miss F was responsible for the payments.

After reviewing the evidence, the investigator concluded that Miss F wasn't responsible for the payments made from her account and recommended that Halifax make a refund of her own losses, write off the loan and cancel any charges or interest resulting from it. Also to add an interest payment and update her credit file to remove the loan from it.

Halifax disagreed with the investigator's recommendations and asked for a further review of the complaint which has now been passed to me for a decision.

Following the initial investigation, Miss F confirmed she'd received a refund from R. She also said she was being asked to repay the loan which she denied applying for.

As part of my own investigation, I wanted to better understand the movement of funds between the accounts, including the refund received by Miss F. In summary, Miss F had some of her own funds taken from her account and the rest of the disputed transactions were from the loan. The disputed transactions amounted to £7,047 which was made up from £6,000 (loan) and £1,047 of Miss F's own funds. She received back all the funds sent to R which amounted to £1850. That means Miss F received some of the loan payment back as a refund (£803) and she's confirmed that she's retained those funds for return back to Halifax once the complaint has been finalised

Additionally, it was apparent that in the audit log provided by Halifax, their system had recorded the loan being confirmed after the security details were entered into the banking app. That meant the user somehow knew those details to apply for the loan. Other details present in the log indicated a secondary device had been detected and earlier that morning the log recorded the user biometrics had been updated and a payment decision had been referred.

It was also noted that an attempt to move funds was made several hours after the report was made by Miss F to Halifax (which was declined).

Multiple attempts were recorded showing the Apple Pay function on the phone was being used at a supermarket and numerous attempts were declined.

I issued my provisional findings on the merits of Miss F's complaint on 31 July 2024. In my provisional findings, I explained why I intended to uphold Miss F's complaint and offered both sides the opportunity to submit further evidence or arguments in response. An extract of that decision is set out below and forms part of this final decision:

“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.

The relevant law surrounding authorisations are the Payment Service Regulations 2017 and the Consumer Credit Act 1974. The basic position is that Halifax can hold Miss F liable for the disputed payments if the evidence suggests that it’s more likely than not that she made them or authorised them, but Halifax cannot say that the use of Apple Pay, online payment details or internet banking conclusively proves that the payments were authorised.

Unless Halifax can show that consent has been given, it has no authority to make the payment or to debit Miss F’s account and any such transaction must be regarded as unauthorised. To start with, I’ve seen the bank’s technical evidence for the disputed transactions. It shows that the transactions were authenticated using the payment tools issued to Miss F.

It’s not our role to say exactly what happened, but to decide whether Halifax can reasonably hold Miss F liable for these transactions or not. In doing so, I’ll be considering what is most likely on a balance of probabilities.

Miss F described how she was confronted by a group of men early one morning. I’ve no doubt this was a very unpleasant encounter for Miss F to experience and I was sorry she had to endure it. At the time she said she got her phone out as she was frightened, which was completely understandable in the circumstances. She would want to be able to call the police if necessary, but before she could act, her phone was taken whilst unlocked.

She returned home which was outside London and reported the matter to Halifax and the police. It appears that Halifax didn’t believe Miss F’s version of events because they couldn’t find how a thief could obtain the necessary information to access her banking app on her phone.

From this they concluded it was Miss F herself who was responsible, using the IP address evidence to support their case. Having reviewed the evidence, I also can’t determine how this detail became known to the thieves, but it’s not my role to specify how it happened, but to arrive at a fair and reasonable decision based on all the evidence. From this it’s apparent to me that Miss F was involved in a frightening event and later contacted her bank and the police. Her actions here after her experience are entirely normal and what I’d generally expect to see in such circumstances.

Additionally, the use of her account supports the case that third parties had her unlocked phone and were able to use it via Apple Pay. The multiple attempts to use it followed a common enough pattern of unauthorised access to someone’s account. Added to this was the loan, applied through Halifax’s systems and quickly authorised early that morning. If Miss F was travelling back to her home, then why would she make payments at a supermarket that’s situated in the opposite direction to her travel and then apply for a loan?

Somehow the thieves gained access to her banking app and used the loan and some of Miss F’s own funds to send several payments to her account with R. Halifax have said this is unusual but that’s not my experience in these matters. It’s not that uncommon to see payments sent to other accounts held by their customer before they’re transferred again. The money that was sent to R was later exchanged for crypto currency – again a fairly common way for stolen funds to be taken. Later there was an attempt to use the stolen phone after Miss F had already reported it which supports her case that someone else had her phone and was using her account without her permission.

There are some indications within the audit log of suspicious activity, including the notification of a second device attempting to access the account and Halifax's own fraud transaction monitoring system noting something that triggered a referral about one of the payments.

When I've assessed all the evidence, I'm currently more persuaded by Miss F's testimony and actions, including the patterns of payments into and out of her account than I am the position that Halifax have taken here. Whilst I can't explain how the thieves obtained her details, on balance, I currently think it's more likely than not that Miss F wasn't responsible for the payments made from her account or for the loan applied for in her name.

There are some circumstances where Miss F could be held responsible for the loss of her own funds if she was grossly negligent with how she kept or used her security details. I haven't seen any evidence that Halifax made that case, nor have I seen anything myself that would indicate Miss F was grossly negligent.

My provisional decision

Miss F has since received refunds from R which are relevant to the overall redress of her complaint. They repaid her £803 more than she lost from her own funds. These funds are part of the loan provided by Halifax. So, in order to ensure Miss F is put back in the position she was in prior to the loss and that Halifax recover their remaining funds, I'm currently intending to recommend that Halifax write off the loan (plus any additional charges or interest accrued as a result of it) and Miss F repay the £803 to Halifax – to which she's already agreed.

Halifax will also be required to update the credit file and remove all references to the loan. As Miss F's own losses were refunded by R, I don't intend to ask Halifax to make any further payments or interest payments.

I now invite Miss F and Halifax to send me any further information or evidence they'd like me to consider before I make my final decision."

I invited Miss F and Halifax to give me any more evidence and information they wanted me to consider before issuing my final decision. Neither party had anything further to add. Miss F accepted my provisional 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.

Having done so, and as neither party had anything further to add, I see no reason to reach a different conclusion. So, this final decision confirms the findings set out in my provisional decision.

Putting things right

In order to ensure Miss F is put back in the position she was in prior to the loss and that Halifax recover their remaining funds, Halifax should now write off the loan (plus any additional charges or interest accrued as a result of it). Miss F has already agreed to repay the £803 to Halifax. Halifax will also be required to update the credit file and remove all references to the loan.

My final decision

My final decision is that I uphold this complaint against Bank of Scotland plc trading as Halifax and they're instructed to settle the complaint as I've outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss F to accept or reject my decision before 6 September 2024.

David Perry
Ombudsman