

The complaint

Mr A complains that Bank of Scotland plc trading as Halifax (hereafter Halifax) hasn't reimbursed transactions which he says he didn't make or authorise.

What happened

Mr A held an account with Halifax which held a balance of around £15,000 as of September 2008. Around that time, he moved to Ghana, where he resided until 2023.

Whilst living in Ghana, Mr A went to use his card in a cash machine in May 2010. He's said how the machine seized the card and that, when he contacted Halifax, it said it was because it was concerned about overseas spending. Mr A wished to discuss the matter further but was told he'd have to attend branch with ID before anything could be discussed.

Mr A couldn't visit a branch as he had no plans to return to the UK at the time. It wasn't until 2023 that he was able to do so.

When he did attend, he was told that the account balance was around £62. Mr A didn't think that was right, believing he should have had around £8,000 in the account. He asked for account statements at the time, but the branch said it couldn't provide them.

Mr A also became aware of a £20 cheque which was paid into his account in 2010, when he wasn't in the UK. He queried its origin, but Halifax couldn't provide any detail due to the amount of time that had passed.

From this point, Mr A queried what had happened with his account. He was sure he hadn't used all of the money in his account. Halifax considered what Mr A said but concluded that because any of the transactions that might have been in dispute had left his account more than thirteen months earlier, he wasn't entitled to a refund regardless of what might have happened; the transactions had been reported too late.

Mr A brought his complaint to our service and one of our investigators considered it. Ultimately, he found that Halifax had acted fairly and reasonably in denying a refund.

Mr A disagreed and so the complaint has been passed to me for a 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 I'm not upholding it and for broadly the same reasons as our investigator.

The relevant regulations here are the Payment Service Regulations (2009), given the date the transactions took place. These regulations were replaced in 2017, though much of what is relevant to Mr A's complaint remained the same in essence.

Broadly speaking, the regulations state that Mr A is responsible for any transactions made

from his account which are properly authorised. Halifax might be responsible for any payments that are unauthorised.

But, even where transactions might be unauthorised, the regulations state:

Notification of unauthorised or incorrectly executed payment transactions

59. (1) A payment service user is entitled to redress under regulation 61, 75, 76 or 77 only if it notifies the payment service provider without undue delay, and in any event no later than 13 months after the debit date, on becoming aware of any unauthorised or incorrectly executed payment transaction.

The above is echoed in the terms and conditions of Mr A's account.

The regulations go on to state:

(2) Where the payment service provider has failed to provide or make available information concerning the payment transaction in accordance with Part 5 of these Regulations, the payment service user is entitled to redress under the regulations referred to in paragraph (1) notwithstanding that the payment service user has failed to notify the payment service provider as mentioned in that paragraph.

It's then for me to determine whether Halifax has fairly relied on regulation 59 (1) and whether Mr A ought still to be entitled to redress under 59 (2).

It's clear that Mr A didn't report the disputed transactions for more than thirteen months. Indeed, it was over a decade before Mr A raised any concerns. So there's little doubt at first consideration that Mr A isn't entitled to redress in respect of the disputed transactions.

But I've considered this matter more closely, given the specific circumstances of the complaint. And my findings here begin to apply to considerations of regulation 59 (2) as well.

Mr A says he didn't report the transactions as he had no idea about them. And I can accept, to an extent, that this might have been true. It seems from May 2010 he could no longer check his balance at a cash machine, given he no longer had a card. And it appears he didn't ever update his address with Halifax, with correspondence being returned to the bank, meaning he had no access to statements.

However, I can't fairly and reasonably say Mr A's card was wrongly retained at the cash machine. For one, there is now no information or evidence from 2010 available to explain what might have been happening. Indeed, it is for reasons like this – where the passage of time sees the availability of evidence diminish – there are rules in place such as those set out at regulation 59 and in our complaint handling rules (DISP), which set time limits on when a complaint can be brought. The more time that passes, the less evidence is available. And I don't find it's unreasonable for Halifax to not have or to only have very limited records going back to the 2008 - 2010 period.

Nor can I say it is Halifax's error that meant Mr A didn't have access to his accounts. It might be that his access to services like telephone banking had been blocked following the card retention. But that is something that it would be fair and reasonable for a firm like Halifax a) to do in the first instance and b) to expect a customer to be able to resolve. Mr A's inability to do so was brought about by his leaving the UK and not through a fault on Halifax's part. The account in question is domiciled in the UK and the fair and reasonable expectation is that the customer is too.

I'm also mindful that Mr A appears to have made no arrangements to receive statements, or to notify Halifax in any way of his intention to leave the UK but keep the account open. It seems he didn't ask that Halifax stop sending any correspondence to his old address, given they were being returned to the bank by someone else. And so his inability to monitor his account was brought on by his own actions rather than those of the bank.

Furthermore, Mr A does appear to have been at least somewhat aware of the balance of his account for the period he is now disputing. He's said that he expected the balance to sit at around £8,000 in May 2010, with it having been around the £15,000 before his departure from the UK.

Mr A has acknowledged using the account to some extent, though that has been very much unspecific. No individual transaction or tranches of transactions have been specifically highlighted as fraudulent or genuine. And Mr A has also said that he only used the account for a couple of months before the card was retained. But the evidence (in the form of the account statements) shows that can't have been true, given there was no account activity between November 2009 and February 2010, at which point the balance had reached £62. There was then no spending or account activity from February through to May 2010.

Mr A has stated that he expected the balance to be around £8,000 in May 2010 which indicates he did spend a significant portion of the funds that existed in September 2008 and that he'd monitored that spending to an extent. It's then difficult to understand how he was spending from the account legitimately, somehow monitoring the balance throughout, whilst also not identifying what would have to be some £7,000 of unrecognised transactions.

It would seem fair and reasonable to conclude that Mr A ought fairly and reasonably to have had an idea his account was being misused long before the card was retained in May 2010, if that is what was happening. And it is also the case that Mr A would have had access to balance enquiries and telephone banking before that date.

To be clear, the blocking of the account, the requirement for Mr A to attend branch, and any potential lack of information supplied in 2023 doesn't mean that Mr A is entitled to redress under 59 (2). I don't find Halifax made any error in that respect.

I'm not going to go on to make a finding as to whether the transactions were authorised or not. I don't need to, given I find Halifax has fairly and reasonably relied on the PSRs and the account terms and conditions in denying a refund or further investigation. But I will note that there has been no explanation offered up as to how Mr A could have transacted freely with his card and PIN, seemingly with it never having gone missing or having been out of his possession, and yet for an unknown party to have also been able to use it at will without detection. The account statements clearly show the money was gradually withdrawn from the account over a long period, with regular and steady cash withdrawals in Ghana.

There are two final points for me to cover off as part of this decision. The first is that it took 24 hours for Mr A's dormant account to be reactivated once he'd attended branch. I don't consider that to be an unreasonable timeframe to reactivate an account that had been dormant for more than ten years.

Second, is the issue of the cheque paid into the account in 2010. I don't find this affects the consideration of the 13-month rule in any way. And I don't believe it's indicative of Mr A's account having been taken over or misused. It's difficult to set out much in the way of detailed findings as we know very little about the cheque. Halifax hasn't been able to locate a copy. But I don't find that to be unreasonable given the cheque was paid in so long ago.

My final decision

I don't uphold this complaint against Bank of Scotland plc trading as Halifax.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 3 January 2025.

Ben Murray
Ombudsman