

## The complaint

Mr E complains, as executor of the estate of the late Mrs E, that Bank of Scotland plc, trading as Halifax, failed in its duty of care to protect Mrs E's savings by allowing a third party to transfer all the funds out of her account.

## What happened

Mr E questioned the legitimacy of the payments from Mrs E's Halifax account and said Halifax failed to safeguard the money in his late mother's account. Halifax said Mrs E gave the third party authority to use her account.

Mr E complained to Halifax saying there was no power of attorney for the third party. And Halifax's website says that authority to use an account is granted on a temporary basis and, *'allows someone limited access to current and savings accounts,'* whereas the third party, *'had unlimited access on an ongoing long-term basis seemingly unchallenged.'* He requested that Halifax reimburse the full amount taken from the account.

Mr E said Mrs E lost some mental capacity at the end of her life and was hospitalised for her final weeks in 2021 when transactions were still being made. He said Halifax's comment that the majority of the transactions went to either Mrs E's or the third party's account is misleading in that by number and value they were in favour of the third party.

In terms of legitimacy, Mr E said he shouldn't have needed to raise any questions with Halifax as the third party's transactions were bizarre as they were very frequent, with irregular amounts at strange times of day. He said the transactions don't look like they were made on behalf of Mrs E or with her permission. Mr E said he doesn't understand how Halifax was satisfied that the activity on this account wasn't out of line for a woman of Mrs E's age.

In its response to the complaint Halifax said that Mrs E and the third party visited a branch of Halifax in April 2017 to register the third party for access. This allowed the third party to carry out certain tasks for Mrs E with her permission. Halifax said that payments over the next four years were made online either to Mrs E's or the third party's accounts.

Halifax said Mrs E registered for online banking in August 2017 and it made an authorisation call to her on a previously registered number for the account. It said new payment recipients would have gone through additional security with an authorisation call and security code. Halifax said if Mr E feels the transactions are fraudulent, then its fraud team can look into this.

Mr E wasn't satisfied with this response and referred his complaint to our service. Our investigator didn't recommend the complaint be upheld. She said a mandate was filled in at a Halifax branch by Mrs E and the third party on 27 April 2017 and this made the third party a representative on the account in question. Both parties were present for this visit, and provided ID in branch to prove their identity. Both parties signed the form in agreement.

The investigator said the mandate states the representative will be able to withdraw cash, produce cheques and other payment instructions, transfer money between accounts and request account information. She said Mrs E also signed for the third party to have his own card for her accounts and for internet banking to be set up. And so Halifax hadn't made an

error by giving the third party access as this was agreed by Mrs E. She said If Mr E felt the transactions are illegitimate, he should raise this with Halifax's fraud team.

Mr E disagreed with the investigator and requested an ombudsman review the complaint. He said the evidence shows that Halifax made errors and failed to adhere to its policy and its duty of care to safeguard Mrs E's money. Specifically, he said the third party didn't have the required level of access to the account as this was granted on a temporary basis, but was then used with unlimited access on an ongoing long-term basis and went unchecked by Halifax.

Mr E said checks made before online banking was set up, giving the third party access to Mrs E's savings, were neither sufficient nor robust. And account activity out of keeping with the historical activity was ignored and wasn't investigated.

### **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.

From viewing the account statements for Mrs E's account it would appear that the third party withdrew around £50,000 within 18 months of gaining access in 2017. I was sorry to learn about Mrs E's loss of funds. Mr E said Mrs E's account was emptied through Halifax's failings and he wants the funds to be reimbursed. Halifax said Mrs E gave the third party authority to use her account and it followed the proper procedures.

I've looked carefully at Halifax's handling of Mrs E's account to see if what took place was reasonable and whether Halifax followed the process correctly. In reaching my decision not to uphold this complaint I've taken into account the relevant rules and guidelines along with good industry practice. There are general principles that say a bank should conduct its business with due skill, care and diligence and pay regard to the interests of its customers. As a matter of good industry practice I'd expect Halifax to be monitoring accounts and payments to identify and prevent transactions that could involve fraud along with spotting and assisting vulnerable customers (including those at risk of financial abuse).

Mr E said Halifax had clearly failed in its duty of care to an elderly customer as it had full visibility of the transactions. Mr E may be referring to the Consumer Duty that was introduced by the Financial Conduct Authority in July 2023, which has imposed higher and clearer standards of consumer protection on businesses. The Duty did not apply during Mrs E's lifetime.

At the time, Halifax was required to intervene in transactions where there was a suspicion of fraud, but it wouldn't be liable for customers' spending patterns, and cannot stop customers or their authorised third parties making authorised payments from their accounts. Halifax has to support customers that are in financial difficulty, but beyond that, a bank is only likely to become aware of a potential problem if it has been alerted by the account holder or third party, or flagged up for some other reason.

And so to reiterate the point, Halifax, in common with other banks, is unlikely to intervene unless it is made aware of a problem or a vulnerability. There is nothing to show that any issue was raised to Halifax during Mrs E's lifetime about account transactions in favour of the third party. Following his complaint, Mr E was invited to refer the transactions to Halifax's fraud department, but I am not aware that he has done so. And so I have considered whether Halifax should have intervened in any event.

Banks don't monitor customer accounts for authorised third party transactions as a matter of course as this is a legitimate activity. And although there was heavy spending on the account there were no signs of financial difficulty that should have prompted Halifax to realise there might be a problem. The signs of financial difficulty are generally, regular use of

an unplanned overdraft, returned direct debits, exceeding a credit limit or missing expected payments.

Although I can well understand Mr E's concerns about the transactions which are in favour of the third party's account, it would not have been possible for Halifax to have said with certainty that these did not involve any benefit to Mrs E or that they weren't carried out with her knowledge and approval. Unfortunately it is only after Mrs E died that any questions were raised to Halifax about the use of her bank account.

Mr E said the third party didn't have the required level of access for the transactions as this was granted on a temporary basis, but was used with unlimited access on an ongoing long-term basis. I have checked Halifax's records and it is clear that the third party was given the required level of access by Mrs E on a visit to Halifax's branch in April 2017. I have seen a copy of the third-party mandate which records verification of Mrs E's driving licence and includes confirmation that the account holder is mentally capable and carries Mrs E's signature.

The policy for this level of access is set out within the mandate document in terms of the transactions permitted. The mandate has a declaration signed by Mrs E which states, *'My authority [to carry out transactions] will continue until you receive written notice from me.'* It goes on, *'I understand that I am responsible for monitoring the use of the account and making sure the person or people ... appointed to operate the account understand and follow the terms of the account.'* From this we can see that the arrangement is not time limited, gives wide authority to operate the account and responsibility for monitoring its use remains with the account holder.

If Mrs E or her relatives had concerns about the arrangements in place for her account, it was open to Mrs E to grant a Power of Attorney to the third party or another person. As Mr E has said, this would have meant the use of Mrs E's funds would have been subject to scrutiny at a later date.

Mr E questions why Mrs E would have either needed or wanted online banking when all of her income went into a separate account. Mr E expected the specifics of her request for online banking to be provided, such as the contacts; the checks carried out and what questions were asked of Mrs E.

Banks encourage customers to use online banking as it provides a higher level of security for payments and accounts, and they welcome assistance given to elderly customers with their accounts. This includes granting access to third parties, particularly as here when they are close relatives. I can see that Mrs E registered for online banking in August 2017. Halifax placed a call to Mrs E on the landline number it held for her account since the account opened in 2011. This was part of the authorisation process, which required Mrs E to enter a security code. From what I have seen, Halifax followed the correct process in setting Mrs E up for online banking.

In conclusion, I have seen evidence from Halifax's business records that Halifax followed its procedures for when customers request that a third party is given access to their bank account and for when a customer requests access to online banking. I think Halifax treated Mrs E fairly and reasonably in these circumstances and it follows that I cannot uphold this complaint.

### **My final decision**

For the reasons I have given it is my final decision that the complaint is not upheld.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mrs E to accept or reject my decision before 24 December 2024.

Andrew Fraser  
**Ombudsman**