

## The complaint

Miss M complains Bank of Scotland plc trading as Halifax recorded a marker against her at Cifas, a national fraud database. She doesn't think it's treated her fairly.

## What happened

A summary of what happened is below.

Miss M opened an account with Halifax in September 2023. On 5 October 2023, the account received several credits by bank transfer, totalling a little over £3,000. The funds were spent at an Apple Store, and some withdrawn at a cash machine. However, the incoming payments were later identified as fraudulent because the banks from which they had come, notified Halifax its customers had been the victim of a fraud and scam.

Halifax restricted the account and requested some information from Miss M to explain the purpose of the payments that had come in and out. She spoke with the bank and said she didn't recognise them, and that she'd lost her card and PIN a few days before. When Halifax questioned her some more, she confirmed she hadn't given her card and PIN to anyone. Following a review, Halifax decided to close the account as it couldn't see how someone could have utilised the payments without her knowledge. It sent her notification of the closure and at the same time, it also loaded a misuse of facility marker at Cifas because it thought the activity on the account suggested she had been complicit in fraud.

Miss M learned of the marker in 2024 after she did a data subject access request (DSAR) to see what information was held about her. She complained to Halifax to say she'd not done anything to cause this and was a victim herself. She provided additional information for the bank to consider; she said she was aware of the transfers and the corresponding debits. This was to do with someone she'd met on Snapchat (a friend of a friend). She was naïve to give them her card and PIN, but she only expected to receive £30 into the account and not over £3,000.

Halifax thought about this but didn't think it had done anything wrong, considering what Miss M had told it before – it also had regard for the account activity. Dissatisfied, she referred her complaint to us. In doing so, she told us what had happened:

- The friend asked if he could send money to her account and use her card as his card wasn't working.
- She didn't think much of it at the time because she thought she could trust him.
- She gave him her card and PIN and he said he'd come back with it. However, he later messaged to say he had to run an errand and didn't think he would be back in time. She never got her card back.
- The next day she received a notification from Halifax to say that £3,000 had been paid into her account. She called Halifax.

- The friend blocked her and changed his number.
- She didn't have any messages of him asking to use her account, as this had been done over Snapchat, and messages disappear straight away.

One of our Investigators reviewed matters. She acknowledged what Miss M had said but she didn't think Halifax had treated her unfairly. She felt there were inconsistencies in her testimony. For example, she noted that she had spoken with the bank immediately after the activity on her account. Halifax had questioned her about the payments, but she'd said she didn't know anything about them, and she'd said she'd lost her card and PIN. However, her explanation now was different, which suggested she'd been complicit in what had happened.

Miss M disagreed. She said she'd been to the police, told the same story consistently and been let down by Halifax. She hadn't known how much would come into her account and that the person would block her. She added that the situation was having a negative effect on her day-to-day life.

When an agreement couldn't be reached, the case was put forward 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.

I'm sorry to disappoint Miss M but I'm not upholding her complaint.

The marker that Halifax has filed is intended to record that there's been a 'misuse of facility' – relating to using the account to receive fraudulent funds. To file such a marker, it's not required to prove beyond reasonable doubt that Miss M is guilty of a fraud or financial crime, but it must show that there are grounds for more than mere suspicion or concern. The relevant guidance says, there must be reasonable grounds to believe that an identified fraud or financial crime has been committed or attempted and the evidence must be clear, relevant, and rigorous.

What this means in practice is that a bank must first be able to show that fraudulent funds have entered Miss M's account, whether they are retained or pass through the account. Secondly, the bank will need to have strong evidence to show that Miss M was deliberately dishonest in receiving the fraudulent payments and knew it was, or might be, an illegitimate payment. This can include allowing someone else to use their account to receive an illegitimate payment. But a marker should not be registered against someone who was unwitting; there should be enough evidence to show complicity.

To meet the standard of proof required to register a fraud marker; the bank must carry out checks of sufficient depth and retain records of these. This should include giving the account holder the opportunity to explain the activity on their account to understand their level of knowledge and intention.

So, I need to decide whether I think Halifax has enough evidence to show fraudulent funds entered Miss M's account and she was complicit. And I'm satisfied that it has. I'll explain why by addressing what I consider are the salient points.

I've seen evidence from Halifax that it had received reports saying that funds which entered Miss M's account was because of a fraud. She doesn't dispute this either.

I've also looked at Halifax's notes from 6 October 2023, when it spoke to Miss M. This is

evidence from the time and so likely to be reflective of what was discussed.

The notes are detailed and show Miss M was asked whether anyone else had control of the account and whether she knew anything about the payments. She answered no to these questions. Halifax also asked her to explain how someone could have made the transactions referencing her card and PIN. She said she lost the card, and the PIN wasn't working. The notes state Miss M said the PIN was on a letter, and she intended to go to the branch to sort it out, but the letter was missing.

Looking at the exchanges, it seems Miss M gave untruthful information to the bank, and I don't think there's any reason why she couldn't have been honest with it, unless she was aware the activity was illegitimate. The account had also recently been opened, so it's possible it may have been opened for this purpose.

I understand Miss M is upset about the effect of the marker, but ultimately Halifax's evidence shows there was a misuse of its facility, with fraudulent funds entering her account and them being spent through her card, which she handed over willingly. In view of this, I don't think Halifax was unreasonable in recording the marker or closing the account. I note the entry is due to come off after two years (from when it was loaded) but given my conclusions there's no basis for it to be removed before then.

This now completes our review of the complaint.

### **My final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 14 April 2025.

Sarita Taylor  
**Ombudsman**