

The complaint

Mr H is unhappy Bank of Scotland plc trading as Halifax (Halifax) won't refund a payment which he says he didn't authorise on his credit card.

What happened

On checking his account on 28 March 2024, Mr H noticed two payments had been made that he did not recognise or authorise. The first payment for £797 had debited his account on 28 February 2024 and had gone unnoticed, and the second payment for the same amount was taken on 27 March 2024.

Mr H relayed his concerns to Halifax. On review, it agreed to refund the second payment as it was taken as part of a Continuous Payment Authority (CPA) that had been set up without Mr H's permission. But it disagreed that the first payment was unauthorised.

Halifax said there was nothing to suggest that Mr H's details had been compromised and the transaction had been verified via a text message to Mr H's device.

Our investigator looked into the concerns raised but didn't uphold the complaint. He couldn't see that the payment wasn't authorised by Mr H.

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.

Where there is a dispute about what happened, and the evidence is incomplete or contradictory, I must reach my decision on the balance of probabilities – so what I consider is more likely than not to have happened in light of the available evidence.

The starting position, in line with the Payment Services Regulations 2017 (PSRs), is that Mr H is presumed liable for any payments he authorised, and that Halifax is liable for unauthorised payments. This position is reflected in Mr H's account terms and conditions.

My next consideration is whether I think it's more likely than not Mr H - or someone acting on his behalf – authorised the transaction that is in dispute. To consider a payment authorised, the PSRs explain that Mr H must have given his consent to the execution of the payment transaction – and that consent must be in the form, and in accordance with the procedure, agreed between him and Halifax. Put simply, unless Halifax can show that consent was given, it had no authority to make the payment or to debit Mr H's account and any such transaction would be regarded as unauthorised. So, I've gone on to consider whether consent was provided by Mr H.

Mr H has remained consistent in saying that he did not authorise the payment or agree to any future payments to the merchant. He said he does not recognise the company the payment was made to and suspects it to be fraud and has since reported it to Action Fraud and the police. But evidence presented by Halifax shows that the payment in dispute was

validated after a text message was sent to Mr H's registered device requesting consent. This was the same contact number that Mr H gave us and had recorded with Halifax. This is important, but it isn't enough on its own to say Mr H is liable for the transaction. Halifax must show it's more likely than not that Mr H made or otherwise authorised the transaction.

Mr H maintains his phone remained in his possession and that no third party had access to it. He also clarified that his device was protected by a four-digit passcode which is only known to him, and he has not shared with anyone. He also confirmed the Halifax app on his phone was accessed using his biometrics – Face ID.

Halifax has provided internal technical records. These show that the payment was made on Mr H's genuine device, with the same IP address noted on previous transactions on the account. The device can also be seen to have been regularly used by Mr H to make various payments, both before and after the transaction in dispute was authenticated. And the text message was sent to this number and mobile device. So, I'm satisfied that authorisation of the transaction originated from his genuine device.

I have reflected on the possibility of a third party somehow accessing Mr H's device and making the payment he is disputing, but conclude that even if it had been possible for a third party to somehow gain possession of Mr H's device, there is still the question as to how the passcode, that Mr H has told us was only known to him, was then used to subsequently bypass his device's security.

The information we have suggests a third party would have been required to know Mr H's card details and post code. They would also have had to intercept Mr H's phone, know his passcode to gain access to the device, and then input details for the payment before verifying the payment after receiving the SMS message - which was sent by Halifax to his registered device. All without Mr H being alerted. Whilst this is not entirely implausible, the likelihood of this happening is slight.

Halifax agreed that the second payment taken on 27 March 2024 was refundable due to the CPA being set up without Mr H's consent. And it also put a stop to any future payments being taken by the merchant, which is what I would expect. But considering the evidence provided supports that the first payment was authorised via a text message sent to Mr H's genuine device, under the account terms and PSR's, I am satisfied it was consented to and regarded as authorised by Mr H.

I appreciate Mr H's position and understand that he denies consenting to the disputed payment and that he does not recognise the merchant. But as there is no alternative explanation as to how a third party could have accessed his card details and genuine device, and to have authorised the payment - without him being present - and there is no point of compromise identified, I am satisfied it was reasonable for Halifax to hold him liable for the transaction.

Finally, I have considered what Mr H has said about his awareness of the transaction prior to him reporting it to Halifax. Mr H confirmed that he had access to the Halifax online banking facility. And it's evidenced that he used this frequently. On the day of the disputed transaction in particular, it looks like Mr H logged onto his online account more than a couple of times. Considering the payment in dispute accounted for a significant proportion of his overall account balance at that time, it's reasonable to suggest that Mr H would have noticed this payment going out at that time.

In summary, I understand this will not be the outcome Mr H was hoping for and he will be disappointed, but as I can't see another plausible explanation for how the payment was

possible, I have to make my decision based on what the evidence shows. In this case, as the evidence suggests Mr H would have needed to have been in the presence of his genuine device for the payment to be validated. I'm satisfied that its more likely than not that the disputed payment was made by Mr H.

I've not found any reasonable explanation that the payment could've been made by another third party without his consent, so I'm not persuaded that Halifax can fairly or reasonably be held liable here.

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 Mr H to accept or reject my decision before 12 May 2025.

Sukhdeep Judge
Ombudsman