DRN-5241811

The complaint

The estate of Mr S ("the estate)" complains failings by Halifax Share Dealing Limited ("Halifax") in the administration of the late Mr S's share dealing account, caused loss.

The estate says share sales and cash withdrawals on Mr S's account in 2023 can't have been carried out by Mr S himself as he had been suffering with dementia since 2020.

What happened

Mr S had a share dealing account with Halifax. The account had a value of £7000 to £8000 according to the Halifax call handler in May 2023.

In May 2023 Mr S's partner called Halifax saying Mr S wanted to make some transfers to his bank account and wanted her to deal with Halifax on his behalf. She was told Mr S could do this, but he would need to pass security first.

Mr S was unable to pass security – as he couldn't remember the names of any stocks held on his Halifax account. His partner told Halifax *"he can't do online access"* and *"you see he's got dementia"* to explain why Mr S wanted her to deal with matters on his behalf, was unable to do this himself online and was having trouble passing account security on the phone.

It isn't entirely clear, but there was a suggestion in the call that the money was needed to put Mr S in a 'home' and later a suggestion that Mr S needed money or he would lose his flat. In any case it was emphasised that the need for the money was urgent and much distress was being suffered due to the inability to access the money. Mr S's partner said they had already gone into a Halifax branch to try to sort all this out and had been told to call Halifax.

In an internal Halifax call for guidance, it was suggested that a power of attorney be added to the account (if Mr S had already lost capacity, this would've been a deputy instead) or that he be referred to a branch – but it was noted he had already gone to a branch and been referred to the call centre. The decision was made to call Mr S back and proceed from there. Halifax took the mobile number of Mr S's partner with a view to calling back with a resolution. The result was money was later transferred from the account to Mr S's bank account. Our investigator identified sums of £3567 and £625 paid into Mr S's bank account at that time.

The estate says the money wasn't used to benefit Mr S or for purposes like paying his bills, it was instead drained from his bank account by consecutive daily card machine withdrawals. The bank statements it has sent do show these withdrawals from the bank account.

In July 2023 there was another call from Mr S's partner. She mentioned Mr S's dementia again and said she had permission to deal with the account and had sent Halifax a form for this some time ago. Halifax said it didn't have this on file, so Mr S was asked again to pass security. In this instance he was able to pass security based on his pin number. He asked Halifax to speak to his partner, who asked Halifax to sell all his shares and transfer the cash to Mr S's bank account. She agreed the account should then be closed. She mentioned the cash might allow them to go on holiday. Our investigator identified £2696 paid to Mr S's bank account at that time. I gather Mr S's bank received the transfer on 17 July 2023 after Halifax actions on 11 July 2023. The equivalent dates for the May transactions were 10 and 9 May.

The estate again says this money was again drained from Mr S's bank account by daily card machine withdrawals and it says this wasn't used to benefit Mr S but for other purposes. The bank statements it has sent do show these withdrawals from the bank account.

The estate says towards the end of 2018 Mr S's partner had been appointed to act for Mr S in connection with his pension and benefits by the Department of Work and Pensions. But it says that Mr S's partner didn't have authority to deal with Mr S's other affairs, and Mr S didn't have capacity to deal with these matters himself.

The estate's view is the result of the transactions going ahead was money was transferred from Mr S's account to his bank account and was withdrawn and used for purposes that did not benefit Mr S. So in the estate's view Mr S lost the entire value of his account. This was also the view of our investigator. He thought the redress Halifax should pay the estate is the value Mr S's account would've had if the transfers and share sales hadn't gone ahead. But he said Halifax could be repaid from any redress the estate got from Mr S's bank.

Halifax accepts it failed in its duty of care to Mr S and that its final response outcome, which said the call recordings show Mr S was able to satisfy Halifax's requirements to operate his account and so rejected the estate's complaint, was wrong. But it said it appeared from the redress proposed that the estate was making duplicate claims. So Halifax asked for details of what the estate was claiming and from whom, which it said it needed before it could consider how to fairly compensate the estate.

Our investigator wasn't aware of any other claims. He said the arrangement he'd proposed for Halifax to recover redress was to avoid double compensation arising in future, given he had told the estate it might be sensible to also claim against Mr S's bank as it was *"ultimately responsible for the money leaving Mr S's possession"*.

Halifax said this was confusing because it suggested our investigator thought Halifax was not solely responsible and Mr S's bank was ultimately responsible for the money leaving Mr S's account. So Halifax didn't think it seemed fair to say that what Halifax should pay will depend on the estate's success in a claim against the bank. It asked for further clarification.

Our investigator replied to say he hadn't reviewed the bank's part in things, having not had a complaint about the bank to look at, but on the face of its Halifax was more responsible as it had dealt in person with Mr S and his partner in connection with these transactions whereas it wasn't apparent the bank had, as Mr S's bank card was used to drain his account of the funds Halifax released. So our investigator said he thought Halifax was mostly at fault and it was fair for Halifax to pay the redress he proposed while receiving an undertaking so it could recover some redress if the estate would otherwise be overcompensated.

Halifax said that while it did accept what the investigator had said about Halifax's failings to a point, it was crucial to note that it only allowed the payments from the account because they were to Mr S's bank, which would have its own protections in place, and there had been no change of bank details so the withdrawals triggered no 'red flags'.

Halifax said our investigator's view shows he agrees with this but was retreating from it and saying instead that responsibility for the withdrawal of the cash was solely with Halifax. It asked our investigator to clarify his position in a revised assessment.

Our investigator said he still thought Halifax was responsible for monitoring Mr S's share dealing account and his view still remained the same. Halifax asked the investigator to issue a revised view addressing the bank's responsibility – which Halifax said our investigator's assessment recognised. If instead the investigator thought the bank had no responsibility and Halifax was fully responsible, Halifax said the decision should be revised to reflect this.

The estate accepted our investigator's proposals but as Halifax didn't and the matter couldn't be resolved informally, it has been passed to me to decide.

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 share our investigator's view that Halifax should not have allowed Mr S's funds to be transferred from his account, and his shares sold, in the way they were, even though the proceeds were paid into Mr S's bank account.

I'm sympathetic to Halifax as I do see that a loss of capacity may have posed genuine problems for Mr S if Halifax hadn't released funds in the way that it did – this was certainly what his partner was saying. Also, the process of appointing someone to act for him may have taken some time and so exacerbated any financial problems he was having.

That said, I gather the parties agree the transactions in question shouldn't have gone ahead in the way they did. In the end I tend to agree with Halifax that there were shortcomings in how it proceeded. Mr S's potential loss of capacity ought to have been better explored.

I'd mention that if Halifax had refused to proceed once it knew Mr S may have lost capacity, the question of who should act for him would have been determined by relevant authorities such as the Office of the Public Guardian or the Court of Protection. In that situation whoever was allowed to act for Mr S may have also been subject to a certain amount of extra scrutiny and supervision from the authorities or family members. We can't say now exactly what the outcome would've been, but Mr S's spending patterns may have been somewhat different.

There is some uncertainty about what might have happened instead, but I'm inclined to take the view on balance that had Halifax made proper enquiries into Mr S's capacity and had his affairs been better supervised as a result, the account funds and shares wouldn't have been transferred from Halifax and then withdrawn straightaway in the way they were.

The estate says Mr S didn't benefit from the funds that were transferred. It has said Mr S's finances deteriorated due to his involvement with his partner from 2018. Halifax hasn't said Mr S did in fact benefit from the sums that were transferred after the shares were sold. The dispute that has arisen instead concerns whether it was Halifax's transfer that caused the loss or whether Mr S's bank is ultimately responsible - or how to share that responsibility.

It isn't unusual for loss to arise where the fault of more than one firm might be said to have caused or contributed to that loss. In such cases it may be fair and reasonable to award full redress against one firm and allow the firms to resolve between themselves the question of their relative share of responsibility – rather than the consumer pursuing both parties. This is also an approach I may take where we receive a complaint against only one firm or where the consumer may have difficulty recovering from the other firm or firms.

This is in essence the approach our investigator took, while also suggesting the estate might complain against Mr S's bank in which case the estate should repay Halifax.

Of course, I can only award full redress against Halifax in this way if I consider it fair and reasonable for Halifax to bear full responsibility in this way in all the circumstances. In this case I think it is fair and reasonable.

I bear in mind that I am unable to compel the estate to make a complaint against Mr S's bank – and that in the absence of such a complaint, and therefore the absence of the bank's representations, determining proportionate responsibility would not seem feasible or likely to result in a fair outcome.

In those circumstances I don't see that it is unfair to say Halifax can take up with Mr S's bank, should it wish to do so, the question of any part that Mr S's bank might have in responsibility for the loss the estate has suffered, given that the loss would not have been suffered but for Halifax's failings. I note also Halifax hasn't put forward proposals of its own as to how responsibility ought to be divided otherwise.

Our service is set up to deal with disputes quickly with minimum formality, on a fair and reasonable basis. With that and all I've said above in mind, I think it fair to proceed to award redress here on the same broad basis as was proposed by our investigator.

I note in passing that the measure of the loss caused by Halifax is the value Mr S's account would've had when the estate first contacted Halifax for it, but the measure of loss as caused by his bank could be different (it could be the value of the cash withdrawals for example) – so I reflect that possibility in my award.

In conclusion, I find Halifax was at fault in how it dealt with Mr S's account - and its duty of care as it says. The result was funds were transferred from Mr S's account and subsequently lost to him and to his estate, as they weren't used for his benefit. I find Halifax should compensate Mr S for this loss.

So I uphold the complaint.

Putting things right

To put things right, Halifax Share Dealing Limited should work out the value Mr S's account would've had on the date the estate first contacted Halifax for the funds ("the calculation date") assuming that Halifax hadn't allowed the transfers from the account that took place in May and July 2023 about which the estate of Mr S complains. This is the primary loss.

Halifax Share Dealing Limited should pay the estate of Mr S a sum equal to the primary loss. It should also pay the estate of Mr S interest on the primary loss at the gross yearly rate of 8% simple from the calculation date until the date the redress is paid.

When it pays the redress Halifax Share Dealing Limited may if it wishes insist on the estate of Mr S assigning to Halifax any rights the estate has to pursue a complaint against Mr S's bank in respect of the money received by his bank from the transfers from Halifax in 2023 that are covered by this decision.

If Halifax Share Dealing Limited does choose to insist on such an assignment, it may also insist that the estate of Mr S pays to Halifax any redress it has already received from Mr S's bank in respect of the transfers above – up to the value of the primary loss (that is, up to but not exceeding the value Mr S's account should've had on the date the estate first contacted Halifax for the funds).

In both cases it will be for Halifax to arrange or draw up any necessary agreements and it must bear the cost of that.

My final decision

For the reasons I’ve given and in light of all I’ve said above, I uphold this complaint.

Halifax Share Dealing Limited should put things right by doing what I’ve said above.

Under the rules of the Financial Ombudsman Service, I’m required to ask the estate of Mr S to accept or reject my decision before 26 July 2025.

Richard Sheridan
Ombudsman