

The complaint

Mr B and Mrs B complain that Bank of Scotland plc trading as Halifax ("Halifax") failed to properly administer their account after falling victim to identity theft, leading to unnecessary stress and inconvenience.

What happened

As Mrs B was the principal account holder who dealt with this matter, I'll mainly refer to her throughout for ease of reading.

Both parties have a general understanding of what went on, which is that someone gained unauthorised access to Mrs B's email. During September 2023, Mrs B noticed a payment to a subscription service she hadn't signed up to and she notified Halifax. They refunded the payment, cancelled her card and issued a new one.

Mrs B then saw, in December 2023, three further payments using her old card. She again notified Halifax about them who provided a temporary refund. Halifax advised Mrs B that these transactions were made using her new card.

Halifax used the chargeback system to challenge the payments and Mrs B contacted the merchants herself. She later received a refund from one of them.

The two remaining merchants payment information showed it was the old card that had been used (despite Halifax cancelling it) and one of them told Mrs B they'd incurred a £10 charge as a result of her claim. Halifax wrote to Mrs B in November and told her that they were holding her liable for the remaining transactions because the chargeback(s) had been defended by the merchants. They told her to get in touch with the merchants to sort the matter out.

Mrs B received parcels from the two merchants and arranged with them to be returned. Eventually, Mrs B received refunds from the other two merchants which was paid into her account during December.

Mrs B was unhappy with Halifax's handling of her situation and complained. She explained that the whole affair had caused her and her partner great distress and inconvenience. As a result of finding their email account had been compromised, they'd had to change a number of arrangements at their home and Mrs B wasn't confident about using her payment card.

Halifax completed their investigation into Mrs B's complaint and issued two responses. The first confirmed that the transactions used the new card issued to Mrs B and that after issuing a temporary refund, they were taken back from her because one had already been refunded by the merchant and the other two because *"...they advised they would refund you once you returned the items. We sent you an email on the 3 November 2023 advising that because the company is willing to assist, we would be taking back our refunds."*

The second response letter, issued the following month (January 2024) said:

“But you asked me to clarify why the payments were taken from your old card number. When your card was cancelled and the companies took the payment from this card, Visa automatically updated them with the new card details.

We’re unsure how these companies got your card details to process these payments if you’ve never used them before. This could be linked to your email address being hacked but we can’t confirm this.”

Halifax acknowledged that the situation was worrying but that they’d tried to help by asking for a refund and as the merchants were willing to help, they took back the refunds.

Mrs B remained unhappy with Halifax and their treatment of her situation, so she brought her complaint to the Financial Ombudsman Service for an independent review. An investigator was assigned to the complaint and asked both parties for information. Mrs B was able to confirm her version of events and provided evidence of her discussions with some of the merchants and the lengths she’d had to go to find out what card had been used. Mrs B believed that Halifax had applied a charge against one of the merchants during the chargeback process.

Halifax provided copies of their correspondence and their investigation into the matter, including chargeback responses from the merchants. These showed that the original card had been used to make the purchases and that the orders had been made from a different location to where Mrs B lived.

The investigator concluded that Halifax had acted unfairly towards Mrs B, but also acknowledged that Halifax weren’t solely responsible for the issue. The investigator commented that it was unclear how the old card was still able to be used. It was recommended that Halifax make a payment of £100 to Mr B and Mrs B for the distress caused to them.

Halifax accepted the recommendations, but Mr B and Mrs B did not. They asked an Ombudsman to review the complaint as they felt that the level of compensation was too low given the way that Halifax acted.

As part of my own investigation, I asked Mr B and Mrs B to explain how Halifax’s handling of the situation had impacted them. In summary, they said:

- They accept the outcome and conclusions reached by the investigator, but not the level of recompense.
- It took them many hours to obtain the return of their own funds from Halifax and clear their name.
- They believed Halifax didn’t care about them as account holders by their actions to reclaim the refund.
- Mrs B believes she was “dismissed” by Halifax and told to take the issue up with the merchants.
- Halifax made them out to be liars by holding them liable for the transactions.
- It was very traumatic and an increased payment of at least £500 is more appropriate, along with a sincere apology.

I issued my provisional findings on the merits of Mr B and Mrs B’s complaint on 30 December 2024. In my provisional findings, I explained why I intended to uphold their complaint and offered both sides the opportunity to submit further evidence or arguments in response. An extract of that decision is set out below and forms part of this final decision:

“I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

There’s now broad agreement here that Mrs B wasn’t liable for the disputed transactions as she hadn’t given her consent to the payments - Payment Service Regulations 2017 (PSRs), (Regulation 67 refers).

So, for the purposes of this complaint, they’re considered unauthorised. It’s also the case that Mr B and Mrs B are back in the (financial) position they would have been if these transactions hadn’t taken place. But I think that Halifax’s handling of this matter led to unnecessary and unfair treatment experienced by Mr B and Mrs B.

Regulation 72 (1) of the PSRs says:

A payment service user to whom a payment instrument has been issued must—

(b) notify the payment service provider in the agreed manner and without undue delay on becoming aware of the loss, theft, misappropriation or unauthorised use of the payment instrument.

Here, Mrs B complied with the above regulation when she notified Halifax about the fraudulent payment when she first noticed it in September 2023.

Regulation 73 goes on to say:

—(1) A payment service provider issuing a payment instrument must—

(f) prevent any use of the payment instrument once notification has been made under regulation 72(1)(b).

And :

76 —(1) Subject to regulations 74 and 75, where an executed payment transaction was not authorised in accordance with regulation 67 (consent and withdrawal of consent), the payment service provider must—

(a) refund the amount of the unauthorised payment transaction to the payer.

(2) The payment service provider must provide a refund under paragraph (1)(a) as soon as practicable, and in any event no later than the end of the business day following the day on which it becomes aware of the unauthorised transaction.

Halifax’s own agreement with Mr B and Mrs B also says that they’ll make a refund if the transactions were unauthorised.

When Mrs B first notified Halifax that her card had been used fraudulently, she was effectively insulating herself from further fraud if that same card was used again. Halifax had an obligation to prevent its further use and the regulations are clear when it comes to how they then treat any further use of that card – by making the appropriate refunds.

Here, Halifax chose to deal with the matter as a chargeback – which is a process operated by the card issuer (VISA) and allows certain payments to be challenged. Halifax were under the impression that the new card they issued was used to make the transactions when the evidence shows it was the original card. I was surprised that Halifax weren’t able to determine, at the time, that it was Mrs B’s original card that was used, and this led to Halifax

taking a position regarding the refund that was unhelpful.

I don't know how the card was still able to be used and for the purposes of this complaint, I don't think the reason is particularly relevant. What is important is that it could still be used as a payment instrument, even though Mrs B had already notified Halifax that it had been compromised.

I think here that Halifax should have provided an immediate refund rather than choose to use a chargeback. By using the chargeback, they overly complicated the issue leading to increased stress and anxiety for Mr B and Mrs B. Halifax then used some of the information received by the merchants through the chargeback to deny a refund to Mr B and Mrs B. They've said in their letters to them that because the merchants had agreed to a refund of those items if they were returned, this was given as the reason why they were taking the temporary refund back.

I think Halifax's interpretation of their letters sent on 3 November relating to this was somewhat generous. Those letters appear to be fairly standard chargeback refusals which state the account holder(s) are being held liable and the refunds are going to be taken back. They only refer to contacting the merchants to continue the dispute – not that they'd already agreed to refund if the goods were returned.

I'm not surprised that Mr B and Mrs B were upset by Halifax's treatment of them, the letters were not clear and could reasonably be expected to cause further distress. Halifax essentially washed their hands of making a refund when they sent those letters and took the refunds back.

I acknowledge that Halifax weren't responsible for the original card's details being compromised, but their handling of the fraudulent transactions left a lot to be desired and I think the recommendation of £100 is insufficient to recognise the unnecessary impact they caused to Mr B and Mrs B which went on for a number of months.

I've considered the latest submission by Mr B and Mrs B. Whilst I don't think the amount suggested by them is appropriate here, I'm currently intending to increase the amount I think Halifax should pay to £300."

I invited Mr B and Mrs B and Halifax to give me any more evidence and information they wanted me to consider before issuing my final decision. Halifax didn't have anything further to add and Mr B and Mrs B accepted my recommendations.

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, and as neither party had anything further to add, I see no reason to reach a different conclusion. So, this final decision confirms the findings set out in my provisional decision.

My final decision

My final decision is that I uphold this complaint against Bank of Scotland plc trading as Halifax and in order to settle it they're now required to:

- Pay £300 to Mr B and Mrs B for the distress caused by Halifax.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B and Mrs B to accept or reject my decision before 21 February 2025.

David Perry
Ombudsman