

complaint

Mr S has complained Bank of Scotland plc, trading as Halifax, won't refund him for over 550 transactions he didn't make.

background

Mr S made four complaints in 2019 about transactions on his Halifax account which he says he didn't make. All of these transactions were gambling transactions and involved more than 10 different companies. These transactions were made from January to August 2019.

Mr S told Halifax a number of stories:

- He'd lost his phone when he'd been in court and then it had been located;
- His sister had used his phone and made the transactions, or her partner;
- His sister had a history of this type of fraud;
- None of the gambling sites would provide Mr S with any information about the transactions;
- Mr S would never gamble himself as his beliefs didn't support this; and
- He'd been in hospital for a lengthy period in March-April 2019. His mother had made some of the transactions at this time under his instruction (none of these were those he disputed).

Halifax found Mr S's story inconsistent. Their own evidence – including records of Mr S's phone using his Halifax bank app – showed these transactions were most likely to have been made by him. They rejected his claim. They also gave him notice of their intention to close his account.

Mr S brought his complaint to the ombudsman service. Our investigator reviewed the evidence. This included copies of many telephone conversations between Mr S and Halifax, as well as records of Mr S's mobile phone banking app use. He'd also contacted one of the gambling companies. They were able to share how the account was set up by Mr S with a photograph of himself holding his driving licence.

Our investigator told Mr S he thought it was more than likely he'd made or authorised all of these transactions. He wasn't going to ask Halifax to refund Mr S.

Mr S didn't agree with this outcome. He's asked an ombudsman to consider his complaint. He also told us of his difficult financial situation as well as the mental health issues that caused him problems. There's also evidence to show Mr S was attending court. He says he was attempting to get custody of his daughter.

my findings

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've reached the same conclusion as our investigator and for roughly similar reasons. I'll explain why.

The Payment Services Regulations primarily require banks to refund customers if they didn't make or authorise payments themselves. Certain other circumstances do apply but nothing that's had a marked impact on the decision I'm making here. So when we look at whether a bank has acted fairly in rejecting someone's fraud complaint, one of the things we consider

is whether the customer made the transactions themselves or allowed them to be made. If they did, then we generally wouldn't ask the bank to refund them.

So to help me decide what happened, I've looked at the evidence of the transactions, as well as what both Halifax and Mr S have told us. I've also got copies of Mr S's calls with Halifax, his bank statements and detail of his logons onto his mobile banking app.

Firstly I can see the timeline of events, how the 558 transactions were made and some of the supporting evidence were comprehensively covered in our investigator's view of 24 December 2019. I don't intend to repeat everything that was said there. Except to say I'm satisfied I've reviewed the complaint thoroughly.

The facts I think that are pertinent to this complaint include:

- It's worth recognising upfront that Mr S has had difficulties with his mental health over the last year. He's had to spend a period of time in hospital.
- He's said at different times that he owns an iPhone and at other times has said he doesn't.
- Halifax's evidence shows an iPhone was set up to access Mr S's mobile phone banking app. This was from 2018 onwards and certainly throughout the period of these disputed transactions.
- Mr S has set up his fingerprint as an ID for his banking app.
- Mr S has told us different stories about a payment of £2,000 that was made into his account from a car dealer than he told Halifax. Whether he sold a car or whether this was an overpayment the dealer had made doesn't really stack up. No car dealer in my experience would overpay someone and not immediately take this money back.
- Mr S has repeatedly said he needed the money in his account to pay his barrister. This was one of the many reasons – including his personal belief system – why he'd not have gambled this money away. He's also said that his barrister only took payment in cash. I find this unlikely.
- Halifax's phone banking records confirm Mr S's fingerprint was used to access his mobile banking app at the same time Mr S has told us his phone was missing and used for gambling transactions.
- The IP address used for some of the gambling transactions is the same as Mr S often uses. Mr S says this is because the transactions were made by his sister. But he then told us he saw his phone at his sister's (which seems to have been at a different place).
- All of the gambling accounts appear to use Mr S's name and personal details. These do, however, have a different email address to the one Mr S shared with us. But the email address uses the same format as the one he's given us.
- The fraud that happened in March was after Mr S told Halifax his card must have been cloned at a cash machine.
- According to Mr S's story at least five frauds took place within a short period and were done by at least three different people either using his card details or actual phone, all setting up gambling accounts in his name. None of this is credible.
- Even if the fraud was only committed by Mr S's sister, this would require me to believe she'd been able to obtain his debit card on five different occasions (as Halifax kept sending Mr S new cards with new numbers). Again I don't believe this is the case.
- The evidence provided to us by one of the gambling companies and Halifax directly contradicts what Mr S has told us.

I'm sorry to tell Mr S that, like our investigator, I think he made these transactions himself. I absolutely appreciate Mr S more than likely regretted this as soon as he'd made them and had spent money he'd hoped to use for other reasons. But I have no reasons to ask Halifax to refund Mr S.

my final decision

For the reasons I've given, my final decision is not to uphold Mr S's complaint against Bank of Scotland plc, trading as Halifax.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 1 March 2020.

Sandra Quinn
ombudsman