

## **complaint**

Mr M has complained Bank of Scotland plc, trading as Halifax, won't refund transactions he didn't make.

## **background**

Mr M had got in touch with Halifax as he believed he'd been a victim of ID fraud. This was after he'd been notified he had a limited balance on his Halifax account. Firstly there'd been lots of payments made to a gambling company. He'd complained about these but didn't want his card cancelled. He'd been in touch with the gambling company who'd agreed to repay him and he noted two large credits into his account. Halifax felt there was nothing left for them to do.

Later in 2018 Mr M complained again about other transactions to a different gambling company made from 6 to 16 September 2018. Halifax's record showed the transactions took place from the same IP address as Mr M often used but they were made using a different device to his. A new card was sent to Mr M and transactions were refunded to his account.

Mr M then noticed there were two loans taken out in his name for £4,000 and £5,000 on 1 August 2018. He hadn't originally picked these up when first complaining to Halifax in 2018 as he'd been expecting to be repaid by the gambling company. It turned out this had never happened. Mr M was concerned about what had happened.

Halifax felt overall it was unlikely someone wouldn't notice such large payments as these two loans or mistake them for refunds from a gambling company. They'd repaid Mr M £3,940 on 17 September. They weren't going to do anything further to assist

Mr M brought his complaint to the ombudsman service.

Our investigator discussed this case with Mr M. He told her he'd got a call from the first gambling company (who I'll call J) saying they'd refund him in two amounts. He received two payments inwards. He'd not noticed these were from two different companies, or that he was paying off those loans by direct debits on his account. One of the loans was with a company, H, who he already held a loan with so wasn't surprised to see a payment being made to them.

The original calls we got from Halifax showed Mr M knew that his partner had formerly had an account with J. But he was convinced he'd been scammed – both the card transactions to J and the subsequent phone call which he'd been led to believe was from J. In fact the evidence showed that it was Mr M's partner who'd told him she'd spoken to J when the refunds were promised.

Our investigator got evidence from J to show Mr M's partner, Ms G, held an account with them. It appeared in July 2018 she may have used Mr M's debit card details to make the disputed transactions.

Overall our investigator felt it was more than likely Mr M knew about these transactions as evidence showed he was using his mobile banking service during the period of these transactions. She wasn't going to ask Halifax to refund Mr M.

Mr M disagreed with this outcome and asked an ombudsman to review his complaint.

I completed a provisional decision on 12 May 2020. I came to the same conclusion as our investigator but my arguments why this was the case differed from hers. It was fair to complete a provisional decision.

Halifax accepted the outcome. Mr M didn't respond within the timescale.

I now have all I need to complete the final decision.

### **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 outcome as in my provisional decision. I'll explain why.

I was in touch with both Halifax and Mr M before I completed the provisional decision to give them some early indications of my thinking on this case. I repeat some of that below.

When considering what is fair and reasonable, I'm required to take into account: relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time.

The Payment Services Regulations are the relevant law here. These 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 Halifax, Mr M and J have shared with us.

Firstly I can see the timeline of events, each party's testimony and how the transactions were made were comprehensively covered in our investigator's view of 19 December 2019. I don't intend to repeat everything that was said there. I will, of course, refer to those aspects which form the basis of my decision. I can reassure Mr M and Halifax I've read the file thoroughly.

The following summarises what I've considered:

- The account with J where transactions on Mr M's card credited was definitely held in the name of Ms G. This account was opened in June 2018 and set up with Mr M's card details. It doesn't really matter that Mr M retained his card at all times as Ms G had already used the details that were needed.
- £5,680 was spent with J from 14 to 31 July 2018. More than £16,000 of transactions attempted on 30 and 31 July were declined. I suspect there were not sufficient funds in Mr M's account.
- Mr M has told us he was away at the time of these transactions. I agree this was the case based on the evidence I've seen. It is possible he may not have known what Ms G was doing.

- However, like our investigator, I find the story around the refund that was going to be made – which turned out to be loans taken out in Mr M's name – inconsistent with the facts.
- I can see from the evidence Mr M checked his balance and admitted early on with Halifax that Ms G held an account with J. When he was discussing his complaint with our investigator, he told us this isn't what he'd meant. He was prepared to believe what Ms G was telling him about the refunds and didn't notice the amount credited to his account on 1 August was £9,000 so greatly exceeded the amount spent with J.
- It does look as if the £5,000 loan money from H was firstly transferred to his joint account with Ms G and then to her sole account. Halifax has said itself that a different device was used for the transactions (probably including this transfer) on 1 August. This suggests that Ms G also knew Mr M's logon details to transfer this money. Mr M hasn't been able to explain why she'd know those.
- I've noted that Mr M believes he'd been scammed previously so this may have been a further instance done by the same person. There's no evidence this is the case. I can't see how an unknown third party would know Mr M's account logon details or why they'd transfer £5,000 to Ms G's account. Nor what they'd gain from opening a gambling account in Ms G's name with her correct email and other contact details.
- Ms G is also pushing him to try and get the money back as she feels she's being accused here too.

Considering all the evidence, I don't believe Mr M made the transactions in dispute.

But that's not the full story here. Two loans credited this account which fully reimbursed the account. Mr M said he knew nothing of these. This suggests he was paying limited attention to his account.

There's nothing here that suggests an unknown third party accessed Mr M's card details or used his account to make the transfer to Mr M's joint account with Ms G.

He's told me he's very trusting of his partner as they've been together a long time. I absolutely understand why he'd say that. I've apologised that by completing a decision on his case and clarifying what I believe happened, he'd be faced with what may be uncomfortable facts.

There's a concept of *apparent authority* which relates to the Payment Services Regulations. I can't say for sure that Mr M definitively authorised Ms G to make the transactions to J. But it's clear Ms G knew Mr M's card details – and his account logon information. This does suggest Mr M may have allowed Ms G to use his account on occasion.

Under the Payment Services Regulations, we consider the issue of the relationship between the account-holder, formally Mr M, and the person making the transactions. In this case that's Ms G. I think, taking into account all the circumstances of this case, Mr M authorised Miss B to act as his agent: to make transactions on his behalf. He may not have thought about it in this way of course.

He wouldn't necessarily differentiate between those transactions he allowed her to make and those that she made without his specific authority. I don't doubt there were individual transactions which Mr M didn't authorise. But because of the nature of their relationship, he was giving her *apparent authority* to carry out those transactions he subsequently disputed.

On this basis I don't believe it would be fair and reasonable to ask Halifax to refund Mr M for the disputed transactions to J.

**my final decision**

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 16 July 2020.

Sandra Quinn  
**ombudsman**