

complaint

Mr M complains that Bank of Scotland plc (trading as Halifax) will not refund payments he says he did not make from his bank account.

background

Mr M disputes a number of payments totalling £2,160 made to an online gambling website between 22 and 25 March 2018. He says that he last used his card on 22 March 2018 to withdraw money and he'd then lost his card. He says Halifax didn't do enough to protect him from this fraud.

Halifax said that it wouldn't be refunding the payments. These were made with the correct details from his card. It had previously dealt with fraud claims from Mr M and told him how to keep his details safe. This time one of the payments was made using the same 'IP address' that Mr M had used to log on to his online bank account. And it didn't think he'd reported what had happened soon enough.

Our investigator didn't recommend that the complaint be upheld. She said that:

- Mr M had told Halifax that must have lost his card on 24 March 2018. This would have been after the payments started and meant that someone would have needed to be able to access the card without him knowing. He'd now told this service that he hadn't had the card after the cash withdrawal on 22 March 2018. And he doesn't recognise an attempt to use his card on 23 March 2018 when the wrong PIN was entered.
- Mr M wasn't able to explain the match between the IP address he'd used to log onto online banking and the one he'd used for a payment online. Although his ex partner may have had access to his phone she didn't have his online banking details. Mr M said there were no other visitors to the address where he lived who could have accessed his details and phone.
- The online gambling account had been opened with the correct personal details about Mr M including his date of birth, address, correct email address and the contact number he'd given this service. A third party giving the correct contact details risked detection especially through any welcome email and confirmation of the account.
- She didn't see why an opportunistic fraudster would have used access to his card and details to gamble when any winnings would likely have been paid back to Mr M's bank account.
- Mr M had also logged onto his online account multiple times during this period and she didn't think it likely he wouldn't have noticed the difference in his available balance.

Mr M didn't agree that the outcome was fair and he wanted his complaint to be reviewed by an ombudsman. He said that he wasn't happy with the finding as he'd been held responsible for the payments even though it couldn't be proved these were definitely made by him. He said that we hadn't investigated attempted payments with his card for online shopping after he'd reported the betting payments.

my findings

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

I know Mr M wants me to say **exactly** what happened here but I won't be able to do so. We provide informal dispute resolution and on the basis of the evidence available decide what is **most likely** based on a balance of probabilities. I have noted that further attempts were made to use his card after it had been reported stolen.

I need to take into account the Payment Services Regulations 2017 in considering this complaint. These state that a payment can only be authorised if it was consented to. So it's not enough for it to be authenticated, say with a card and PIN. And if the payments weren't authorised Mr M wouldn't generally be responsible for them.

So I will be thinking about the following areas in looking at his complaint:

- What is the most likely explanation of how these payments were made?
- Did Mr M authorise the payments on the account?

I've seen the information from the online gambling company about Mr M's account. This confirms it had the correct information about him including his email address and mobile phone number. And Halifax has shown that the payments were made with his card number including the 'CVV' verification number from the back of the card. So I'm satisfied that the payments were authenticated.

I need to think about whether Mr M consented to them. Our investigator's already highlighted that Mr M used his phone to access his online bank account during the period of the disputed transactions. And I consider the fact that the IP address used for one of the payments corresponded exactly to the one he used to access his account on the same day important evidence. Even if say an unknown third party had found or taken his card that wouldn't account for this and also for that person knowing all his personal details.

The evidence I've seen shows that although Mr M reported the disputed payments on 25 March 2018 for some reason his card wasn't actually blocked by Halifax then. This didn't happen until he called to complain on 27 March 2018. The transactions after 25 March 2018 were all declined and included attempted ones for online shopping. I accept that this may suggest someone continuing to attempt to use the card knowing it hadn't been blocked. I weigh this though against the other evidence in the case.

To find that these payments were made by an unknown third party I'd need to consider that all of the following were most likely:

- An unknown third party was able to obtain Mr M's card by 23 March 2018 even though he initially said he remembered having it on 24 March 2018.
- That person was also able to discover personal information about Mr M sufficient to set up an online gambling account and pass that business' checks. And risked using his genuine email and phone number and didn't have any ability to withdraw any winnings.
- One of the payments was made by that person using exactly the same IP address as Mr M used to access his online bank account.
- Mr M didn't notice these 'pending' payments when he accessed his account using his phone or realised his card was missing any earlier. That's even though he'd reported a similar fraud in the past and been told how to keep his details safe.
- As I said above that third party not realising the fraud had been discovered continued to try to use the card.

These aren't **all** findings I'm able to make as most likely based on the available evidence. So on balance I think that Mr M either made the payments himself or allowed someone else to do so. In either case I find that these were authorised.

I'm afraid this means I don't have a basis to require Halifax to take any further action.

my final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 21 December 2019.

Michael Crewe
ombudsman