

complaint

Mr A complains that Bank of Scotland plc (trading as Halifax) is holding him responsible for payments he says he didn't make from his account which led to an overdraft. He also complains that it has recorded adverse information about him to CIFAS, the UK's fraud alert service.

background

Mr A opened an account with Halifax in June 2017 when he was a minor. He received a card and PIN and used his account. On Friday 28 July 2017 he says he went to a friend's house. He realised he didn't have his card when he got there. He says he tried to call Halifax about this twice but on the second attempt ran out of credit on his phone. Halifax says he didn't report his card lost until 31 July 2017 at a branch.

Before he reported his card lost there'd been a number on transactions made on 28 November 2017. There were two credits for £296.16 - one at 20:57 and the other at 23:37. At 23:39 a balance enquiry was made and then a cash withdrawal for £500 taken. Further cash withdrawals of £70 and £10 were made in the early hours of the next morning. And two 'pay at pump' purchases made which weren't debited to his account until 2 August 2017 and resulted in an overdraft of £110. The credits had been reported as being made as part of a scam and his account was blocked on 29 July 2017.

Halifax said that it was a very short time between the account being opened and the reported fraud. There was no clear way in which someone had found out Mr A's PIN. It had no record of any attempts by Mr A to call it on 28 July 2017. It concluded that Mr A had authorised the withdrawal of the fraudulently obtained credits into his account. He was responsible for the overdraft and it had grounds to report what had happened to CIFAS.

Our investigator didn't recommend that the complaint be upheld. She'd spoken with Mr A and his representative in this complaint. She said that:

- She wasn't persuaded Mr A had tried to call Halifax on 28 July 2017. Mr A had said that the first call to Halifax was about 14:30 on 28 July 2017. He had used his friend's landline but was on hold and ended the call as he was concerned at the cost. The second call was about 17:00 using his mobile which he says ran out of credit. Mr A says he'd spoken to someone but hadn't been put through to the fraud department. Halifax had no record of the calls and Mr A had no evidence of them either.
- She thought Mr A would have seen the credits on his account when he logged onto online banking. Mr A had told her he had checked his account over the weekend before he reported his card lost. He'd first received an error message but when he was able to log on hadn't noticed anything unusual. His representative had later said that Mr A's online account had been blocked and he couldn't log on at all. Halifax was unable to provide evidence of any log ins now but could say that his online access was never blocked.
- Mr A had given inconsistent information to this service about his PIN. He had said repeatedly there was no way someone could've discovered this. It was only when she'd told him that this would mean that the CIFAS marker would stay that he had changed his account of what happened. He had then said through his representative that his PIN advice slip was in a wallet. And that this must have dropped out with his bank card when he took out a travel card on the bus. She thought that if this had happened someone would have noticed and told him.

- The disputed transactions were in an area within 10 to 15 minutes drive from Mr A's house and close to where he'd said the friend he visited lived. She didn't think a fraudster would have stayed in the same area. There was no attempt to use his card for about nine hours after Mr A said he'd lost it or to withdraw the first credit for about two and a half hours. These weren't the actions of someone concerned that the loss of the card might be discovered and reported.
- She concluded either that Mr A had made these transactions himself or had authorised someone else to do this.
- She'd seen evidence of the scam reported to Halifax and the investigation it carried out. She was satisfied that the CIFAS marker had been reported appropriately.
- Halifax was right to hold Mr A responsible for the overdraft and it'd acted within the terms and conditions in closing his account.

Mr A didn't agree. His representative made a number of points on his behalf and said that this service hadn't for a moment considered him to be innocent and hadn't taken an unbiased view. The representative said that given his age at the time he might have been bullied into doing this. He reported what happened to police. And he was sure how he'd lost his card and PIN. Mr A didn't have any more evidence now but his representative said he was sure that his mobile phone network had confirmed the call to Halifax on 28 July 2017. Mr A hadn't been able to log onto online banking and Halifax should have called him about these suspicious credits to his account. The use of his card and PIN didn't mean he'd carried out a fraud. Mr A didn't drive and it would take him up to 30 minutes by bus to get to the location of the withdrawals. His representative said he can vouch for Mr A being at home that night.

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 need to take account of the Payment Services Regulations 2009. And to think about whether Mr A authorised the payments from his account. That's more than the payments being authenticated but would require him to consent to them. If he didn't authorise them then generally Halifax wouldn't be able to hold him responsible for them. Two of the payments resulted in an overdraft. And so where credit is involved, the Consumer Credit Act 1974 applies and it states that a consumer wouldn't be liable for an unauthorised payment *unless* they consented to someone else having possession of that card.

I also need to consider whether the report to CIFAS was made fairly. On this point, Halifax needs to have more than a suspicion or concern. It has to show it had reasonable grounds to believe that a fraud or financial crime had been committed or attempted and that the evidence would support this being reported to the authorities.

I'm satisfied on the evidence provided by Halifax that these withdrawals were authenticated when the chip on the genuine card was read and the correct PIN entered. But I need to think about whether Mr A consented to them to decide if they were authorised.

what is most likely?

Where there is a dispute about what happened we consider what the most likely explanation is. Mr A doesn't think his explanation that he is innocent of any involvement in this fraud has been fairly considered. So I'm going to start by addressing those concerns.

I have to say to him that the inconsistencies in what he's said to this service about what happened do undermine his credibility. So I'm not persuaded I can put much weight on the explanation about the impact of his age and maturity at the time this happened and of him being 'scared' of the consequences as his representative's told us. Another view could be that he's come to realise that his initial explanations haven't helped to rule out his involvement and he's changed them. The examples include whether or not he'd been able to log onto online banking. He initially said to this service that he was able to and now says that he couldn't. Frankly I can't resolve that either way as Halifax no longer has any evidence about this. The issue though with his PIN is a key one for me. He'd said that no one could have found this out repeatedly. But he now seems to have a very clear recollection not only that he was carrying it – for reasons that aren't clear – but also that there was a specific time when his card and PIN must have fallen out of his wallet on the bus. Again that's not impossible but it's been very late in the course of his complaint to significantly change what he's said.

His representative has said that he might have been bullied in some way to letting someone else use his account. That's not impossible and I might have understood Mr A's reluctance to disclose this. But the difficulty is that up to now he still hasn't done so. And that would undermine what he's told us. I also don't know whether this would mean what he's reported to police about this fraud would be inconsistent too. So I can't reasonably put any weight on that explanation here without any evidence – only speculation about what could have happened.

I'm going to assess the complaint based on Mr A's broad current explanation of what happened as set out by our investigator. To find that these transactions weren't authorised by him I'd need to think all of the following were most likely:

- Mr A lost both his card and PIN on the bus as he says and didn't realise at the time.
- Mr A on his account knowing that it was important to report the loss did do all he could to report this including phoning Halifax.
- The unknown third party that found his card and PIN happened to be a sophisticated fraudster who rather than trying to take money out straightway decided to use the account to receive money from a scam.
- That third party seemed to have no concerns about the card potentially being reported lost and not having access to the money paid into the account. And as our investigator says that person made no attempt to use the card for a number of hours and waited for the second credit to come into the account before attempting to withdraw any money.

I'm afraid that these aren't all findings I'm able to make as most likely based on the available evidence and my assessment above of Mr A's credibility. So I find that these transactions were made either by Mr A or by someone he'd freely allowed to have and use his card and PIN. I consider that he consented to the transactions and that he is responsible for them. Given this finding I've no basis to criticise Halifax for not alerting Mr A to the credits to his account. Or for it allowing payments that resulted in an overdraft - the way in which payments for petrol are recorded and processed at an automated 'pay at pump' machine seems to have been exploited here. I find he is fairly responsible for this borrowing.

My findings means that Mr A has sought to conceal his knowledge of what happened. I don't find it credible to think he had no knowledge of the way in which his account was being used. Or that he didn't know the funds that were paid in weren't legitimate ones. As I say he's not provided an explanation to support this that I find most likely.

CIFAS marker

Halifax says that it applied the CIFAS marker because Mr A received fraudulent funds into his account. So I've looked at whether Halifax was fair to apply the marker, based on the evidence it had, and the investigation it carried out. CIFAS guidance says the business must have carried out checks of sufficient depth to meet the standard of proof set by CIFAS. This essentially means that Halifax needs to have enough information to make a formal report to the police. And that any filing should be for cases where there are reasonable grounds to believe fraud or financial crime has been committed, rather than mere suspicion.

Having reviewed Mr A's account of events and the evidence Halifax has provided, I'm satisfied that Halifax had sufficient evidence for the CIFAS marker to be recorded. In coming to this view, I've taken into account the following reasons:

- Mr A received fraudulent funds into his account and didn't report this to Halifax at the time.
- He authorised the withdrawal of the funds and so was in control of who had the benefit of this money.
- Halifax had grounds to believe that Mr A had used fraudulently obtained funds based on the evidence it had.

I appreciate that this will be a great disappointment to Mr A as the marker is having a detrimental effect on him. But given what I've said above, I don't think Halifax has treated him unfairly in respect of the disputed transactions and recording the CIFAS marker. So I won't be asking it to do anymore.

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 A to accept or reject my decision before 15 November 2019.

Michael Crewe
ombudsman