

complaint

Mr M has complained that Bank of Scotland Plc (trading as Halifax) won't refund transactions he says he didn't make or otherwise authorise.

what happened

In June 2018, Mr M opened an account with Halifax, but didn't use it.

In January 2019, Mr M received batches of cash payments into his account. Within a day of each batch, they were used to fund online gambling payments, totalling £3,000.

A few hours after the last gambling transaction, Mr M reported them to Halifax, saying they were unauthorised. He said he'd just checked his balance to see if his cash payments had come in, and had noticed the pending online payments.

Mr M explained that he kept his card on him, or in a secure cupboard at home. He lived with his partner and small children, and neither he nor his partner ever gamble. He'd never lost the card, had never made a payment with it, and no one else had access to it or the security details. He'd never entered the card details into anything other than his PayPal account. He'd not signed up for any online services or trials that might've used his details, nor had he received any calls, texts, or emails asking him for them. No one else knew he would be receiving the cash payments other than the payer, who made them using his account details and didn't have any of the card details. At different points, Mr M said the cash he received was either from his business selling children's toys, or a friend who'd borrowed money from him, or a job lot of mobile phone accessories.

Halifax held Mr M liable for the payments in dispute. They couldn't see a likely way that someone got Mr M's card details without his permission. And they felt it was very unlikely that someone happened to gain access to his account on the first day he paid into it. They said Mr M checked his online banking after the first gambling payment, but didn't report that anything was wrong until after the last one.

Mr M came to our service. Our investigator looked into things independently and didn't uphold the complaint. She said there didn't seem to be a plausible way someone learned Mr M's card details without his consent, nor a likely way that an unknown thief would've known the money was coming in. She noted that Mr M's testimony about the cash he got was contradictory. And she pointed out that the person using the account did not spend as much as they could have, nor as quickly as they could have. So she thought it was most likely that the payments were authorised.

Mr M didn't agree. He said he'd never used that merchant before. He felt Halifax's security systems should've warned him about the payments. The complaint's been passed to me to decide.

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 that, I've come to the same conclusions as our investigator, and for much the same reasons.

Broadly, Halifax can hold Mr M liable for the payments in dispute if he authorised them or gave someone else permission to make them.

I'm satisfied from Halifax's technical evidence that the payments in dispute used Mr M's genuine card details. This is not enough, on its own, for Halifax to hold Mr M liable. So I also need to think about whether the evidence suggests that it's most likely Mr M consented to the transactions, or not.

Having carefully considered everything that both sides have said and provided, I don't think it's unreasonable to conclude that Mr M consented to the payments – I'll explain why.

First, I've considered whether an unknown party might have made the disputed payments.

Mr M had never used this card before. So there was no opportunity for anyone to have observed him using it or to have taken his details from another payment. He kept it securely, never lost it, and still had the card when he reported the payments, so it's unlikely anyone took it from him. He hadn't given anyone else access to the card or the details, nor had he entered them anywhere other than to link the card with his PayPal account. So there's no likely way that someone learned the card details without Mr M's permission.

Mr M opened this account about seven months before he first paid anything into it. He said no one knew he was going to receive the money apart from himself and the person paying him. Yet the gambling payments were relatively large and used up the vast majority of the cash deposits. And they were made in the evening after each set of cash deposits. So it looks like the person who made the disputed transactions knew exactly how much Mr M would be receiving and when. And it seems very unlikely that Mr M's account happened to be defrauded on the very first day he put money into it.

So I don't see a likely or plausible way that an unknown party did this.

I've also thought about whether someone known to Mr M may have made the transactions without his permission. But I don't think that's likely either.

The only other person who knew Mr M was receiving the money was the payer. But the payer only had Mr M's account details in order to deposit the cash. Mr M confirmed that he didn't give them any card details. And as I explained above, I don't see a likely way that someone could've learned those card details without Mr M's permission.

It's possible that someone Mr M lived with could've accessed the cupboard where he sometimes kept the card. But his children were only small, and understandably Mr M has also ruled out his partner – not least as they don't gamble.

So there doesn't seem to be a likely person who Mr M knew who could've made the payments without his consent.

Mr M confirmed that it was him who logged into his online banking after the first disputed payment. So if that payment was unauthorised, it seems strange that Mr M didn't report it at the time – though I accept it's possible that he simply didn't notice it then.

I've gone through Mr M's correspondence and the records of his calls. At different points, he's said the cash he received was for rather different things. This makes it difficult for me to accept any one of the reasons he's given as being the most likely one. And I certainly can't rule out that the cash was deposited in order to make the now-disputed payments. It does otherwise seem unlikely that Mr M would happen to get defrauded on the very first day he paid anything into this account.

Lastly, I've not seen any evidence that makes it seem implausible or unlikely that Mr M could've authorised these payments or given someone else permission to make them.

In summary, based on the evidence, there isn't a likely way an unknown person did this, or that someone known to Mr M did this without his permission. That leaves only one likely possibility – that Mr M made the disputed transactions or gave someone else permission to make them. This is a difficult message for me to give, and I know it's a difficult message for Mr M to receive. But given the evidence I have, and the balance of probabilities, I'm unable to reasonably reach any other conclusion.

Lastly, Mr M questioned why Halifax didn't flag these payments as suspicious. But since I've found it's most likely that Mr M made these payments himself or gave someone else permission to make them, I don't think this is relevant.

So based on everything I've seen, I think it's fair for Halifax to refuse a refund in this case.

my final decision

For the reasons I've explained, I don't uphold Mr M's complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr M to accept or reject my decision before 20 May 2020.

Adam Charles
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