

## **complaint**

Ms T complains Bank of Scotland plc (trading as Halifax) won't refund spending on her account. She says she didn't make the payments – or allow anybody else to make them with her agreement.

## **background**

Ms T had accounts with Halifax and two other banks. Between December 2013 and May 2014, all three were used to make payments to gambling websites.

Ms T says she didn't realise what had happened until she went to use her Halifax debit card in May 2014 and it was declined. She then checked her statements and found other spending she hadn't made or agreed to. The other two banks refunded some of the payments – but Halifax didn't.

Halifax said the payments didn't look like fraud. They were made in a few 'blocks' at different times. And they were made using Ms T's debit card details. Ms T told the bank her ex-boyfriend made the payments without her knowing – and without her agreement. But Halifax still wouldn't refund the money as it couldn't be certain Ms T hadn't known about the transactions. They were made to gambling websites for accounts in her name.

Ms T was unhappy with Halifax's response. So she contacted us and one of our adjudicators looked into things for her. The adjudicator got information from the other banks and one of the gambling companies involved. After looking at this, she couldn't be sure Ms T might not have either made the payments herself – or at least known what was going on.

The adjudicator found payments (winnings) had been made from the accounts with the gambling companies to Ms T's Halifax account. There didn't seem any obvious benefit to Ms T's ex-boyfriend as he wouldn't have been able to get the money out of her Halifax account. And the accounts with the gambling companies had quite a lot of information that tied in with that of Ms T – one account had the same email address as Ms T was using now.

Ms T had explained her ex-boyfriend must have been able to get her account information from a folder she kept her bank papers in. He'd later broken into her property and this showed the sort of person he was.

The adjudicator accepted this may be the case, but still couldn't be certain Ms T hadn't (at least) in some way allowed the fraud to happen. So she didn't feel she could ask Halifax to refund the money.

Ms T wasn't happy with what the adjudicator said. So her complaint has been passed to an ombudsman to review and give a 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.

I can see Ms T is very upset by what's happened. That's clear from what she's said to our adjudicator (and Halifax and the other banks). And I can see why. After all, the amount of money involved is very large – and the problems have had a big impact on Ms T and her family. So her concerns are understandable.

But I'm afraid I have to tell Ms T that I think the adjudicator has got the right answer here. My reasons for not upholding her complaint may be slightly different to those of the adjudicator – but the answer's the same.

The adjudicator's right to say – based on the evidence available – its possible Ms T may have made the payments herself. A lot of the information for the gambling accounts in her name is correct. I accept it isn't all right – but a large part is. And the credits (winnings) were paid to her Halifax account. So she benefitted from those. Indeed there's no obvious benefit to anybody other than Ms T.

I've no reason to doubt what Ms T says about her ex-boyfriend. It's possible he created the gambling accounts and used her bank details without her knowing. Indeed, I've seen a text message from him to Miss T in which he says he made – at least some of – the payments.

But he'd only be able to do so if he had access to Ms T's debit card – at some point. He'd need the full card details and the security information from the back of the card – and possibly other security information that should have been known only to Ms T.

Halifax (along with banks in general) can hold customers responsible for payments if somebody else was able to make them because the customer didn't keep their card and/or security information safe. That's quite likely here. So, even if I accept Ms T's ex-boyfriend did make the payments, it's doubtful I'd be able to ask Halifax to refund the money because of this reason.

I'm aware Ms T says the other two banks have refunded some of the money she says her ex-boyfriend spent. But I'm aware one didn't refund spending allegedly carried out using Ms T's debit card itself. This supports my view Ms T's ex-boyfriend had access to her debit card – and probably on more than one occasion.

When I combine the above, I don't think I can fairly tell Halifax to refund the money. I know this will disappoint Ms T. I'm sorry about that.

It does seem Ms T is having real problems with her money as a result of these payments. So it's right I remind Halifax it should respond positively and sympathetically to her situation.

That doesn't mean Halifax has to reduce the amount Ms T owes or stop charging any fees or interest that may apply. But it should work with her – and any debt agency she may want to work with – to help her work through her problems. The adjudicator will be happy to give Ms T details of free debt management agencies/charities if she wants them.

### **my final decision**

For the reasons I've given, my decision is Bank of Scotland plc (trading as Halifax) doesn't have to refund Ms T the payments she says she didn't make.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms T to accept or reject my decision before 28 September 2015.

Andrew Davies  
**ombudsman**