

complaint

Mr J complains that Bank of Scotland plc ("Halifax") refused to refund to his account the value of a number of transactions, made over a period of nearly four months, that he disputes authorising.

background

Mr J says that he was not spending on the account over the period of the disputed transactions although either he or his employer was paying Mr J's wages into it. Mr J said he did not find out about the transactions until he received a quarterly statement after the last successful disputed transaction.

Before the disputed transactions took place, Mr J's card was normally kept at home in a drawer in his room and the personal identification number ("PIN") was written down and also kept with the card in the drawer. The adjudicator understood that the drawer was unlocked and Mr J did not usually lock his room.

On the day of the first disputed transaction, Mr J attended a cash machine with a friend, of two to three months, from work who was also staying with Mr J. Mr J also lived with one other friend and would often have visitors. It is acknowledged by Mr J that his friend may have taken the card and PIN and carried out the transactions. However, Mr J did not report the matter, including his suspicions, to the police. This is despite Mr J saying that cash also went missing from his drawer. He noticed the missing cash as he said he frequently checked the drawer and realised before he moved home but did not question why the card was not there as he assumed it was in his trouser or jacket pocket.

Halifax's evidence is that the PIN was required to be entered in order to carry out the disputed cash withdrawals and some of the disputed withdrawals took place a minute after money had been paid into the account. CCTV footage was no longer held so it could not be examined. The bank noted Mr J had changed his address shortly after the disputed transactions started and during the period of the disputed transactions the incorrect PIN was entered 3 times; as a result the card was blocked but then unblocked - in branch - on the same day with security being passed on the account.

The adjudicator accepted someone could have obtained the card and PIN from the drawer in Mr J's room. But she had regard for all the evidence in the matter and particularly;

- the timing of cash withdrawals in relation to deposits being made;
- that a number of transactions took place at branch which was regularly used by Mr J;
- there is no evidence of Mr J's employer paying funds into Mr J's account yet Mr J never checked the account to confirm his wages had been paid into the account; and
- it seemed difficult to explain how an unauthorised third party would have been able to pass the security checks on the account to unlock the PIN.

Also, the adjudicator had regard for the circumstances in which the card and PIN were retained and who potentially had access to them.

On balance, the adjudicator was not adequately persuaded that that the transactions took place without Mr J's knowledge but, moreover, the circumstances in which the card and PIN were retained by Mr J amounted to gross negligence. She therefore did not recommend that the bank needed to refund the value of the transactions to Mr J.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Where evidence is incomplete, inconclusive, or contradictory, I have to reach a decision on the balance of probabilities – that is, what I consider is most likely to have happened, given the evidence that is available and the wider surrounding circumstances.

Mr J has presented little new documentary evidence or arguments in response to the opinion expressed by the adjudicator. But he has asked that his complaint be reviewed by an ombudsman. He has reiterated that he had no knowledge of the disputed transactions and now says that the drawer, in which the card and PIN was kept, was locked.

Having taken account of all the evidence available to me, I agree with the findings and conclusions of the adjudicator and for the same reasons. Put simply, the bank may hold Mr J liable for the disputed transactions if sufficient evidence is put forward to show either that he made (or was involved in) the transactions himself or that they were made possible by gross negligence on his part in the care of the card and PIN.

There now exists contradictory recollections from Mr J as to whether the drawer was locked. But given that the card and PIN was available for the disputed transactions to have been made, I consider that I can only safely conclude that either access to the locked drawer – and card and PIN – was allowed by Mr J or the drawer was not locked. In respect of the later circumstances, given what Mr J has said about the living arrangements at Mr J's home, I am inclined to agree that leaving the card and PIN, together, in an unlocked drawer, would amount to gross negligence.

On balance, it seems to me more likely than not that Mr J did make - or he otherwise authorised - the transactions; or he was grossly negligent. And on that basis, I do not consider that I can fairly and reasonably require the bank to refund the value of the disputed transactions to Mr J's account.

my final decision

My final decision is that I do not uphold this complaint.

Ray Neighbour
ombudsman