

complaint

Ms A has complained Bank of Scotland plc, trading as Halifax, won't refund a transaction she didn't authorise.

background

In 2014 and 2015 Ms A received a couple of lump sum payments into her Halifax account. At least one of these – in December 2014 – was a pension credit. Ms A had been suffering from ill health and was in and out of hospital. During one of her hospital visits she agreed to help out her son financially. She was going to give him £5,500 and allowed him to use her debit card.

In late 2016, after Ms A had started to feel better, she contacted Halifax. She was concerned about a number of transactions in and out of her account in March and April 2015. After this she accepted she'd made three transfers to her son and one to her son's ex-girlfriend. She agreed there were some gambling transactions which she knew about as her son had told her about these. She still believed Halifax should have done more to identify the disputed gambling transactions – especially as she'd not allowed her son to spend £11,500 on her debit card.

Ms A brought her complaint to the ombudsman service in 2018. Our investigator believed Ms A had given apparent authority to her son to use her debit card. This would cover the gambling transaction for £6,000 as well as the individual three payments which amounted to £5,500. He also wouldn't have expected Halifax to pick up on what was going on.

Ms A disagreed with this outcome. She thought the gambling transactions were unusual when looking at her account use. She felt Halifax had failed in their duty of care not referring the transactions to her. She's asked an ombudsman to make a decision on her complaint.

my findings

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

Having done so, I've reached the same conclusion as our investigator and for roughly similar reasons.

Where there is a dispute about what happened, I have based my decision on the balance of probabilities. In other words, on what I consider is most likely to have happened in the light of the evidence.

When considering what is fair and reasonable, I'm required to take into account: relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time.

The Payment Services Regulations (PSRs) are the relevant law here. These primarily require banks to refund customers if they didn't make or authorise payments themselves. Certain other circumstances do apply and where relevant I mention these aspects below. So when we look at whether a bank has acted fairly in rejecting someone's fraud complaint, one of the things we consider is whether the customer made the transactions themselves or

allowed them to be made. If they did, then we generally wouldn't ask the bank to refund them.

I'm not going to cover all the points raised in the view in detail. The view of 22 September 2020 explains the regulations which guide how we review these cases, as well as covering all the transactions involved in this complaint.

No discourtesy is intended by me not covering all issues. Instead, I've focussed on what I think are the key matters here and which impact the decision I'm making. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts.

The facts of this complaint aren't really in dispute. Ms A gave her debit card and PIN to her son. She's told us she was allowing him to use her account for transactions up to £5,500. She's also told us her son was in financial difficulties so believed he was going to pay off his debts. She was giving him money as she'd recently got a couple of lump sum payments and felt she could afford to help him out. Mr A chose to spend the money with a gambling company.

In broad terms a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. I have taken that into account when deciding what is fair and reasonable in this case.

There are circumstances, irrespective of the payment channel used, where a bank should, in my opinion, fairly and reasonably take additional steps, or make additional checks, before processing a payment, or in some cases decline to make a payment altogether, to help protect customers from the possibility of financial harm.

However it's worth considering the context of this complaint. The disputed transaction took place in April 2015. This pre-dates industry guidance on this aspect, which includes the British Standards Institute's October 2017 *'Protecting Customers from Financial harm as a result of fraud or financial abuse – Code of Practice'*.

I've looked at the transactions being made from Ms A's account at this time. And whether there were any reasons why Halifax should have picked up on what was happening. But overall I don't think there was.

Ms A has said the gambling use was unusual. I agree in general it was but I can see a £2,000 gambling transaction on 7 April 2015. Ms A hasn't complained about this transaction. But importantly although the merchant was a gambling organisation, Halifax would also be looking at whether there were any issues with the card use. So for example, were incorrect details submitted. But this didn't happen – partly I imagine as Ms A had given her debit card to her son authorising its use.

I've also looked at Ms A's own use of her account at this time. Following receipt of two large payments into her account, Ms A had made a number of payments which may not be her normal account use. She'd made a couple of transfers to her son in March and then sent him a substantial amount of money. Ms A went into her Halifax branch on 11 April 2015 to make a payment of £21,900 to her son. There's no question these transactions were authorised.

Overall I don't think Halifax has done anything wrong in not identifying the gambling transactions.

There's a concept of *apparent authority* which relates to the Payment Services Regulations. I can't say for sure that Ms A definitively authorised her son to spend a maximum of £5,500. But this matches what she's told us and I see no reason to dispute her evidence. But it's clear her son knew Ms A's card details and PIN.

Under the PSRs, we consider the issue of the relationship between the account-holder, Ms A, and the person making the transactions. In this case that's Ms A's son. I think, taking into account all the circumstances of this case, Ms A authorised him to use her debit card: to make some transactions from her account on his own behalf. I can also see, as highlighted above, Ms A had made other payments to her son.

I don't doubt there may have been an individual transaction which Ms A didn't authorise: the £6,000 transaction on 15 April. But looking at all the transactions around this time I believe she was giving her son *apparent authority* to carry out the transaction she subsequently disputed.

I know Ms A will be deeply disappointed but I won't be asking Halifax to do anything further as I believe Ms A authorised her son to use her card.

my final decision

For the reasons I've given, my final decision is not to uphold Ms A's complaint against Bank of Scotland plc, trading as Halifax.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms A to accept or reject my decision before 4 March 2021.

Sandra Quinn
ombudsman