

complaint

Mrs W complains that she is held liable for transactions on her account that she disputes authorising.

background

Mrs W opened an account with Bank of Scotland plc ("Bank of Scotland") in January 2012 and by April 2012 over £15,000 had been deposited. She says this was savings she had held in cash at home or distributed around several family members.

She discussed telephone banking when she was in branch and it was discussed again on the telephone during March 2012. She was told that to set up arrangements to make payments over the phone she needed to have a Personal Security Number ("PSN") and this would be posted out. This was expected to be received before the end of March 2012.

On 5 April 2012, Halifax received a call which it believed was from Mrs W asking to transfer £10,000 to another account, not held by Mrs W. Given the Easter holidays the payment left the account on 10 April 2012. On 9 April 2012, at 17:28, the bank received another call, again believed to be from Mrs W asking to transfer £5,000 to another account, that was neither Mrs W's nor the recipient account for the first transfer. The latter amount transferred left Mrs W's account on 10 April 2012 but was returned on 18 April 2012. The bank received another call on 18 April 2012 asking to send £4,900 instead which went through.

In early May 2012 Mrs W called the bank to say there had been fraud on the account and her life savings have been withdrawn. She also went into the branch the same day. The bank contacted the other banks that received the payments but the funds had all been withdrawn. Mrs W is seeking a refund of the money to the account as she says that she did not make these calls and she had not given her details to anyone else.

Our adjudicator did not recommend that the complaint should be upheld.

Halifax had said that before a caller can set up a bill payment via telephone banking they must input two random digits of the six digit security number. The PSN had been sent to Mrs W's home address in an anonymous envelope. And there was no broader evidence of post not being delivered that suggested that this letter might also have not been received.

No plausible explanation had been presented to suggest how an unacquainted third party could have known that Mrs W was to receive a personal security number in the post, when she would receive it and then be able to identify and intercept that envelope. That person would also have had to have known how much Mrs W had in the account as they arranged to withdraw nearly all of it.

As the random digits of the security number were correctly used to set up the bill payments, the adjudicator did not consider she could safely conclude that the payments were not authorised by Mrs W or by someone else with her authority. Because of this, she did not recommend that Mrs W's complaint should be upheld.

Mrs W has asked that her complaint be reviewed by an ombudsman.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

Mrs W maintains that she did not authorise the transactions herself. In response to the opinion of the adjudicator, she says that she cannot be certain that post has not gone missing previously – although she is not aware of any going missing – and the PSN notification might have been intercepted.

But 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. And against what Mrs W has said about the PSN notification, I must weigh the valid considerations of the adjudicator in respect of how likely it is that the PSN was intercepted and made use of by someone other than Mrs W. I do accept, however, Mrs W's point that if the PSN was intercepted and the bill payments made that way, the third party fraudster would also have had the PSN details to make a balance enquiry.

Concern is expressed about the police not being able to conduct an investigation of their own into the alleged fraud but that is a matter for the police ultimately. I cannot intervene between the police and the bank and dictate to either party how they should respond to each other.

Mrs W says that the bank ought to have contacted her when the payments were made, as they were not representative of the account's normal usage. However, I can see no basis on which I might say that the bank were obliged to have either stopped the payments or reported them to Mrs W. Banks have fraud prevention measures and while it would not be appropriate for me to be aware of Bank of Scotland's, specifically, I would not expect it to operate on the basis that an authorised payment should not be made simply on the basis that it had not been made before.

And it is said that the speed with which the funds were removed from the accounts that the disputed payments were made to suggests that fraudsters have withdrawn the money. However, it is equally possible that if the payments were genuine, that the beneficiary of the payments needed to withdraw the money speedily.

Mrs W has submitted telephone records to evidence that she did not make the telephone calls. However, that documentation does not show that the phone calls were not made from another phone number. And Mrs W says that it has not been proven that she authorised the transaction – and she has submitted statements from her employer and an acquaintance to evidence that she did not authorise the payments.

But, taking into account all the evidence in this matter, including all that she has submitted in response to the adjudicator's opinion, as I have said, I have to decide what is more likely than not to have happened. And, on balance, I agree with the adjudicator in that I do not consider that I can safely say that Mrs W did not authorise the transactions herself or allow someone else to make the transactions with her authority.

In light of that, I do not consider that I may make an award against, or direction to, the bank in respect of this complaint. I therefore do not require the bank to refund the value of the transactions to Mrs W's account.

my final decision

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

Ray Neighbour
ombudsman