

Complaint

Mr L has complained that Bank of Scotland, trading as 'Halifax', won't refund unauthorised cash withdrawals from his account.

Background

Mr L moved in with his mum to help care for her. He sold his house in January 2018 and deposited £118,379 from the sale proceeds into his Halifax account.

In January 2018, he received a new debit card, as his existing card was about to expire. Halifax didn't issue a new pin.

In April 2019, at his mum's suggestion, Mr L checked his Halifax account and noticed multiple ATM cash withdrawals which he didn't recognise. He said he contacted the police, who told him his card had been cloned and he should speak to his bank. He called Halifax and told it he didn't recognise any ATM cash withdrawals which had been made since January 2018. The withdrawals totalled £80,000. He told Halifax that no-one had access to his card, and he believed his card had been cloned.

He also asked Halifax why it had allowed his balance to fall below £100,000. He said when he'd opened the account in 2015, he'd asked for a buffer so that his balance would never fall below £100,000.

Halifax advised him that his actual card and pin had been used to make the cash withdrawals, not a cloned card. It explained that the chip in a card can't be successfully cloned.

A few weeks later, Mr L called Halifax again and told it that the key box for his mum's carers had been smashed and the key was missing. He said his conversation with Halifax prompted him to check the box. He asked Halifax for a refund of the ATM cash withdrawals.

Halifax investigated his complaint but decided not to refund him. It said there was no evidence of fraudulent activity because:

- the ATM cash withdrawals were made with his actual card and pin
- Mr L said no-one had access to his card and he hadn't shared his pin with anyone else
- there were no known cases of a chip being successfully cloned
- even if the key box were broken into and the key stolen, there was no explanation for how the thief knew the pin.

Halifax also explained that it didn't offer a buffer on any of its accounts, it had no record of Mr L requesting such facility and that he had nowhere near £100,000 in his account when he opened it.

Mr L wasn't happy with Halifax's decision, so he asked this service to investigate.

Mr L told us that when he went to work, he left his card in his wallet at home on a counter. He said his workplace is a 'clean' space and staff are not allowed to take any possessions into the building.

He confirmed that he'd memorised his pin and hadn't shared it with anyone else. He said his mum had carers in and out all the time. In May 2019, he noticed that the key box had been broken into and the key was missing. He reported it to the police and the council, who repaired the box but kept the same lock.

He said he didn't check his account regularly because he seldom used it. He also said he didn't receive any statements between January 2018 and April 2019, which is why he didn't notice the cash withdrawals earlier.

An investigator looked into his complaint, but he didn't uphold it. In summary, he felt unable to conclude that the cash withdrawals had been made fraudulently and was persuaded they were most likely made and authorised by Mr L.

Mr L responded to say he now knows who stole his card. He said his friend gave him the name of a local homeless woman. He believes she stole his card and made the cash withdrawals. He maintains he didn't give her his card or pin. The woman has now passed away.

Mr L has asked for an ombudsman's 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.

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 investigator wrote a detailed view that sets out in full the facts, the transactions, the relevant regulations and the evidence. Both Mr L and Halifax have read the investigator's view, so I won't repeat every detail here, only those which form the basis of my decision. However, I can assure Mr L that I've read the file, including his comments and evidence.

Having reviewed the evidence, I'm afraid I've reached the same conclusion as the investigator and for broadly the same reasons. I realise this will be a huge disappointment for Mr L and I am sorry to give him bad news. I will set out my reasons and hope that he understands how I have reached my decision.

In short, Halifax is required to refund the amount of an unauthorised transaction. The relevant regulations, to this effect, are the Payment Services Regulations 2017 (the PSRs 2017). Mr L says he didn't make the ATM cash withdrawals and is seeking a refund. So, my primary concern is to come to a view about whether I think he authorised the withdrawals.

Having reviewed Mr L's transaction history, I'm satisfied the genuine card and pin were used in order for the disputed cash withdrawals to take place. And despite what Mr L has said, I don't believe the cash withdrawals were made with a cloned card. Whilst the magnetic strip might be cloned, the chip can't be. And this service hasn't seen any cases where the chip in a card was cloned successfully.

But the regulations relevant to this case say that the card and pin are not, on their own, enough to enable Halifax to hold him liable. So, I also need to think about whether the

evidence suggests that it's more likely than not that Mr L made the withdrawals or consented to them being made by someone else.

From what I've seen, I don't think it's unreasonable for Halifax to conclude that Mr L made them himself. These are my reasons.

Mr L said only he knew the pin

Mr L said he kept the pin issued by the bank. He had memorised it and he hadn't shared it with anyone else. I'm afraid on his own admission, this leaves him as the only person who could've used the pin with the card.

I've considered his evidence that someone stole the key from the box. The disputed cash withdrawals started in February 2018. Yet, he only noticed the damaged key box in May 2019. I find it odd that neither he nor the carers noticed the missing key and damaged box earlier. However, even if a third party had taken the card after gaining access to his home, there's still no explanation for how they knew the pin. When this was put to Mr L, he responded by saying that the letter with the pin was still on the counter or table at home. However, as the pin was issued in 2015, I think this was highly unlikely.

Based on this evidence, I don't consider that his card and pin were stolen by a thief, carer or an unknown third party.

Genuine card payments

There were card payments to stores and online merchants in between the disputed ATM cash withdrawals and sometimes on the same day.

Mr L didn't dispute these transactions when he first complained to Halifax, not even when he went into the branch with his highlighted bank statements. These transactions proved he still had his card and was using it. So, if there were unauthorised transactions, then someone was taking his card and returning it, without him noticing. I don't believe this could've been an unknown third party.

When this was explained to him, Mr L changed his evidence and said any debit card payments made at the same time or on the same day as a cash withdrawal was also fraud. But he didn't provide a complete list of any disputed card payments.

However, there are transactions which were made on different days and many card payments were made to merchants he'd used before, between September 2017 and January 2018.

I consider it's more likely, therefore, that the card payments were genuine, and that Mr L had his card on him when the disputed cash withdrawals were made.

Mr L didn't report the disputed cash withdrawals earlier

It was over a year before Mr L reported the disputed cash withdrawals. He said he wasn't receiving statements and didn't check this account regularly because he seldom used it.

However, Halifax has provided evidence showing he requested paper statements, and these were sent to his home address on a monthly basis. The address is the same as the one we hold on file for him. Mr L hasn't mentioned any problems with his post, so I think it's more likely that he received his statements. It's also odd that he didn't complain to Halifax about not receiving statements.

However, as he said, he didn't pay much attention to this account so it's possible he didn't check his statements or just allowed the post to pile up. But he did visit the local branch on 31 March 2018, 3 September 2018 and 6 November 2018 to make bank transfers to third parties. That was an opportunity to check his balance.

Police report

The officer who investigated Mr L's complaint has contacted us. He said Mr L showed him the key box in 2019. He said it was damaged, but he told Mr L he couldn't say that it had been intentionally broken into. He said he had concerns about Mr L's version of events and asked him to provide a full list of disputed transactions within thirty days, as CCTV footage was held for that length of time. Mr L didn't provide the information in time, despite being chased. The matter was not progressed.

Mr L has changed his version of events

Lastly, Mr L has provided inconsistent statements throughout the investigation of his complaint by this service. I'm afraid this hasn't helped him.

I fully understand that it's normal for a person to forget some facts or information when they first describe an incident. Feeling distressed can cause us to forget or become confused. And often we don't realise the importance or relevance of information at the time we make a complaint.

However, Mr L's recollection of events changed whenever he received unwelcome news. None of his new evidence fits with a plausible, consistent version of events. For example, the damage to the key box and missing key. I don't believe this could've been overlooked since January 2018 by him or the carers. I would also have expected him to complain about the card payments earlier, if he hadn't made them. He also said he always kept his wallet with him, then said he left it at home when he went to work. And he said no-one visited the house then changed it to say carers were coming and going all the time. I'm afraid I found his testimony unconvincing and I think the variations are too substantial to put down to stress, upset or confusion.

I note Mr L mentioned he was part of a wider harassment campaign by a third party. Both Halifax and the investigator have asked Mr L if there is any relevant information which he is holding back – for example was there someone he knew who had access to his card. But he said he wasn't holding anything back.

Taking everything into account, I find, on balance, that Mr L authorised the disputed cash withdrawals. It follows, therefore, that Halifax is entitled to hold him liable for them.

I can see from the file that Mr L's personal circumstances are very difficult for him and his financial loss is great. I regret sending him such disappointing news. I hope he finds support to deal with this news.

My final decision

My final decision is that I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 21 September 2020.

Razia Karim
ombudsman