

complaint

Mr S complains that Bank of Scotland plc, trading as Halifax, won't refund four transactions taken from his account using his credit card, which he says he didn't make or authorise.

background

Mr S says that his details were used to sign up to a gaming site in September 2017. At that time, he was out of the country, with no internet access, so it couldn't possibly have been him. He told Halifax about this but it won't refund the transactions.

Halifax attempted a chargeback for the amounts Mr S disputed, but the merchant successfully defended it. So Halifax refused to refund the disputed amounts.

Our adjudicator thought, on balance, and in light of the evidence, it was most likely that Mr S had registered with the site and, in doing so, agreed to pay the monthly subscriptions.

Mr S didn't agree. In summary, he said that he didn't get any of the promotional offers or play any of the games, so he thinks the money was wrongfully taken from his account. He would like it to be refunded.

my findings

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

relevant considerations

The disputed transaction was made in October 2017. The regulations relevant to these are the Payment Service Regulations 2009. In short, the regulations say that Halifax can hold Mr S liable for the disputed transactions if the evidence suggests that he most likely made or authorised it himself or if they were made possible because he was sufficiently negligent in his care of his card or security details.

Mr S says he didn't sign up to this site and is seeking a refund. So my primary concern is to come to a view about whether or not I think Mr S authorised the transactions.

Initially, Mr S thought the account had been opened in September 2017 when he wasn't in the country and when he didn't have any internet access. But I'm satisfied that he was at home when the account, to which the disputed transactions were made, was opened in October 2017.

The merchant has confirmed that when the account was opened, Mr S's name, address, postcode and credit card details, including the last three security digits (CVV) on the reverse of the card, were entered. I'm satisfied that Mr S's address and the CVV were verified when the first £3 payment was taken.

So I've gone on to consider the possible explanations for how the disputed transactions were made. These are:

- Mr S signed up and made the payments himself
- Someone with Mr S's authority used the card details to register

- Someone known to Mr S accessed his card details and signed up to the account without Mr S's consent
- Someone unknown to Mr S was able to use his card details to fraudulently make the payments

I can't know for sure what happened in this case so I must make my decision based on the balance of the evidence.

the online account

The merchant also says that it sent out an email asking the account holder to click on the link provided to confirm various details. I'm satisfied that the email address it used was one that belonged to Mr S. So if Mr S didn't set this account up himself, I consider the person who did knew not only Mr S's personal information but also his credit card details. The terms of Mr S's account say that Mr S should keep the card safe.

Mr S hadn't reported the card as lost or stolen or compromised in any way. He said that no one had access to his card and he keeps it in his wallet. He used the card himself the day before the first disputed transaction and then again a few days later.

the transactions

Over the course of about three months, four payments, totalling £213, were taken from Mr S's account. Mr S says he didn't carry out these transactions.

I have looked very carefully at the promotion that this merchant was running. For signing up and paying £3 it offered the chance to win a smart phone. It also offered free portable speakers (a 'welcome bonus') and three days' access to the website. At the end of the three day trial period, the membership automatically continued into a recurring subscription of £70 per month.

Mr S says that he didn't sign up to this and didn't authorise anyone else to. From what he now understands he was supposed to receive the speakers but they didn't arrive. The merchant has said that there were a number of registration stages to go through before it would send out the speakers. In summary, these required the subscriber to click on a link in a welcome email and enter a password to login to the account to add the postal address. It then sent a letter by post with a PIN to be used to verify the postal address. It also required at least 10 games to be completed within the trial period.

I'm satisfied that the merchant sent the initial email to Mr S's genuine email address. I say this because the one that was registered is the same one that he has given to us. But I find no one logged into the account and the registration process was not completed.

I've considered whether someone known or unknown to Mr S could have used his card and personal details. Mr S has very clearly said that he keeps his card in his wallet and none of his family or friends could have carried out these transactions without his knowledge. And I'm not persuaded an unknown third party would have done this. There was no point of compromise to Mr S's card. The account was in Mr S's name, using his genuine email and home address. This would mean that if the registration had been fully completed the speakers would have been sent to Mr S. I also consider that an unknown party would have gone on to play the games but none were played. So there was no benefit. And if an

unknown third party had access to Mr S's card details I consider it highly likely that they would have gone on to use them for other purchases and payments.

Based on everything I've seen, and on balance, I think it's more likely than not that Mr S registered to enter into the promotional draw himself. I accept that he might not have realised that in doing so he was authorising to pay a monthly subscription but I can't safely hold Halifax responsible for these transactions. I realise Mr S will be disappointed but I think it was fair and reasonable for it to refuse a refund.

chargeback

When Mr S disputed the payments Halifax said that it tried to seek a refund by raising a chargeback claim with the merchant, under the VISA scheme. Chargeback isn't a guarantee of a customer getting their money back. When a bank raises a chargeback, the claim may be successfully defended.

The merchant defended the claim and provided evidence to show that the transactions were valid because the details it held for the account matched Mr S's details. So I don't think Halifax had any grounds to challenge this.

I appreciate that Mr S will be disappointed but I'm satisfied that Halifax has provided sufficient evidence to demonstrate that it may hold Mr S liable for these transactions.

my final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 15 February 2020.

Karen Wharton
ombudsman