

## **complaint**

Mr Y complains that Bank of Scotland plc (BoS) also trading in this case under its Halifax brand, are holding him liable for transactions made on credit card accounts which he says were opened in his name without his knowledge or consent.

## **background**

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of some key events here.

Mr Y says he has been a victim of impersonation fraud. He says in August 2018; a loan and five credit cards were fraudulently taken out in his name. The loan provider and two other credit card providers have accepted his claim but he's being held liable for balances totalling just under £41,000 on the remaining three credit cards.

These credit cards were taken with three different banks within the same banking group. Mr Y is concerned the banking group is holding him liable for all the credit card balances rather than catching and holding the fraudsters accountable.

This complaint only relates to the credit cards taken with BoS and Halifax. Whilst Mr Y's concerns are directed at the banking group and arise from the same set of facts, because the banks operate under separate banking licences, it was necessary for Mr Y to bring a separate complaint about the other bank, which is being considered under a different complaint reference.

Nevertheless, reference where appropriate may be made to all three credit cards, as businesses within the same group share information, particularly in this case where Mr Y's fraud claim in relation to all three credit cards was closely linked and considered together.

Mr Y's impersonation fraud claim was declined. He was told that he is being held liable for the balances on all three credit cards because;

- all the cards, PINs and welcome letters were sent to his correct home address;
- before the cards were approved, further verification checks were satisfactorily carried out;
- Mr Y's driving licence and passport details had been provided over the phone; and
- his genuine mobile number was used to register for online banking.

As Mr Y remained unhappy, he referred his complaint to this service.

An investigator looked into his complaint – but didn't uphold it. In summary she said that she couldn't conclude that the credit cards were taken out by an unauthorised third party and she thought it's most likely that the transactions in question were consented to by Mr Y. She didn't think BoS had acted unfairly in holding Mr Y liable for all the disputed transactions carried out on both the BoS and Halifax credit cards.

Mr Y didn't agree. He didn't think a fair outcome had been reached by the investigator. He maintained that he's been the victim of impersonation fraud. He asked for an ombudsman to review his complaint.

I issued my provisional decision on 31 March 2021. I said:

*"I know my intended decision will be very disappointing for Mr Y. Having spoken to him it's clear he feels strongly that a fair outcome has not been reached by our investigator. He maintains his innocence and that he has been the victim of impersonation fraud. But having considered the evidence and arguments in this case, I'm not currently persuaded that it would be fair and reasonable to say BoS should refund the transactions and clear the outstanding debt on both credit cards. I'll explain why.*

*Firstly, I would like to assure Mr Y I've read and considered everything he has told me, but the purpose of my decision is to set out my conclusions and reasons for reaching them - this simply reflects the informal nature of our service. So, my findings focus on what I consider to be the central issues. If I don't mention any specific point, it's not because I've failed to take it on board and think about it, but because I don't think I need to comment on it to reach what I think is the right outcome.*

*Mr Y says other credit providers have accepted his impersonation claim and are not holding him liable. He considers this to be relevant and can't understand why BoS won't do the same. He thinks this is unfair. Whilst I can see why Mr Y might feel this way, I'm afraid each claim is decided on its own facts. So, even if other credit providers have accepted Mr Y's claim and have provided him with a refund, it doesn't automatically entitle him to a refund from BoS nor does this alone change the outcome I'm intending to reach in this complaint.*

*I appreciate Mr Y doesn't accept that he can be held accountable on the assumption it 'was more than likely' him. But when I spoke to him, I explained that it's not for me to determine exactly what has happened, but to decide whether BoS can reasonably hold him liable for these credit card accounts and the transactions or not. I described generally, with cases like this I couldn't know for certain what has happened as I wasn't present when the disputed events occurred. So, where the evidence is incomplete, inconclusive or contradictory, as it is here. I need to weigh up the information that is available and make a decision on the balance of probabilities. And determine what I think is more likely than not to have happened in the circumstances of this complaint.*

*I note and accept Mr Y's point that it is not his responsibility to investigate where fraud may be occurring. But I think it's important for me to clarify that it is also not this services remit to forensically investigate the alleged fraud nor do we have the power to carry out a criminal investigation – those are matters for the police and possibly better dealt with by a court. Mr Y has asked me on several occasions if there is anything else, he can provide to prove his innocence. I must remind him that we are an impartial, informal dispute resolution service. It is for both parties to provide me with the evidence they'd like me to consider. My role is to then independently decide what I believe is fair and reasonable in all the circumstances of the complaint.*

*The crux of the dispute here and what I need to decide is whether or not BoS has acted unfairly in holding Mr Y liable for the transactions on both credit cards. The regulation that is relevant when considering this matter is the Payment Services Regulations 2017 (PSRs). In short, BoS is generally required to refund any unauthorised transactions. There are some exceptions in the regulations, but none I've needed to consider or that have had an impact on the decision I'm making here.*

*Where credit is involved, as is the case in Mr Y's circumstances the PSRs make provision for the Consumer Credit Act 1974 (CCA) to apply in place of certain sections of the PSRs, including those provisions which govern the apportionment of liability in unauthorised transactions. The relevant sections of the CCA here involve a credit facility.*

*The relevant provision is section 83(1) of the CCA. This says a customer wouldn't be responsible for any loss arising from the use of a credit facility by another person not acting, or to be treated as acting, as their agent. But section 83(1) can't be read in isolation. Because as an exception to that, section 84(2) says that a customer who gives someone a credit token (such as a credit card) is liable for any use of it by that person.*

*Mr Y says the credit cards have been fraudulently taken out in his name, using his details, without his knowledge or consent. So, my primary concern now is to come to a view about whether or not I think the credit card applications and transactions were made with Mr Y's knowledge and consent, and whether I think BoS' conclusion that they were was reasonable. If I'm satisfied, on balance, that it's more likely that Mr Y had knowledge of the cards and either carried out the transactions himself or consented to someone else having possession of the cards, then I couldn't fairly ask BoS to refund him.*

*So, having carefully weighed everything up, and for the following reasons, I have currently concluded that BoS has not been unfair in holding Mr Y liable for the transactions on both credit cards;*

- *It is not disputed that the genuine cards and PINs were used to authenticate the transactions – so I don't need to comment on this further.*
- *Mr Y denies any involvement with the credit card applications or usage of the cards. He says he didn't make or give consent to someone else to use the credit cards. In fact, he says he was completely unaware of their existence until he received a monthly statement for one of the cards. Whilst I accept generally it isn't entirely impossible for someone to find out sufficient information to make the applications falsely and this alone is not sufficient to hold Mr Y liable, the other circumstances of this complaint taken as a whole make this a relevant consideration.*
- *The online card applications used Mr Y's genuine details – other than a different email address for the BoS application and a different mobile phone number for both applications. I realise that it could be argued that this is suspicious and supports the notion that Mr Y has been the victim of impersonation fraud. But it's also not uncommon for a person to have multiple email accounts and access to another mobile phone nor does this prove that Mr Y didn't have knowledge of the applications.*

- *I can see the applications flagged on the banks systems for a review, prompting enhanced security checks to be completed before approval – which included verifying the application data with a reliable source, asking the account holder for specific information which likely would only be known to them and obtaining passport and driving licence details – all of which it did. Mr Y has explained due to the nature of his job, images of his identification are stored on his mobile phone, as he is from time to time required to send these through different forms of communications including SMS, Whatsapp and email – he believes this make him vulnerable to fraud. Whilst I understand the point Mr Y is trying to make, I don't believe that is what has happened here. Looking at the amount of detail provided, I think only Mr Y, or someone close to him, would've had access to and known this level of information. And I think if this were someone else, using Mr Y's genuine email address for one of the applications was a risky step for them to take, as there was every opportunity of being caught. So overall, I think it's more likely Mr Y had knowledge of the applications.*
- *This is further supported by the fact that Mr Y's correct address was used. BoS says each application generated three separate items (welcome pack, card and PIN). So including the other banks application, a total of nine individual pieces of post were sent to Mr Y's home address. Mr Y says he didn't receive any of these. He has made several suggestions to try and explain what may have happened, such as, unknown third-party interception, a postal service error, and whilst he was reluctant to say this, the possibility of the post being taken by friends or family members. He has explained his letter box is secure, but I note he does live with several other family members who would've possibly had access to his post. Mr Y says his job requires him to leave home early in the morning (before the post arrives) and he returns late in the afternoon. His father collects all the post every morning and leaves it in a pile, which he checks after he returns home. I've thought about everything Mr Y has said and thinking about what's most likely to have happened, I find it highly unlikely that an unknown third party was able to identify and intercept all nine pieces of post before they arrived or that these were all mistakenly sent to an incorrect address or lost by the postal service.*
- *I've also thought about whether a friend or family member who had access to Mr Y's home could've intercepted the post, but I also don't think this is what most likely happened here. I say this because Mr Y has spoken to his friends and family regarding this and they have told him that they were not involved; Mr Y himself has been reluctant to accept a member of family would've done this; and on balance whilst I think someone could've potentially identified envelopes containing a card easily and intercepted these, I think it's unlikely they would've been able to do so successfully for all nine pieces of post, especially given there was no specific dates or times for when these items would arrive. So, my finding is that Mr Y most likely did receive the mail and so was aware of both the BoS and Halifax credit card accounts.*
- *BoS has also provided evidence to show that Mr Y's genuine mobile number was used to register for online banking services. An automated call was answered and a four-digit code input and accepted. At the time of reporting the fraud Mr Y informed the bank he'd not had issues with his phone and confirmed he always had his phone with him. Mr Y has since told this service he has had issues with his phone and does allow others access to his phone. He denies knowledge and any involvement in inputting a code. The change in testimony means I can't rely on what Mr Y has said. I also can't see the benefit to an unknown fraudster of going to all the effort of getting*

*access to Mr Y's mobile phone to register for online banking, particularly since at the point at which the registration occurred the BoS credit card had already been utilised to its limit. So, since there is no evidence to support an issue with the phone, I'm persuaded by the technical evidence that Mr Y's genuine phone was used to register for online banking, and I can't reasonably reach a conclusion other than Mr Y had knowledge of the applications.*

- *Mr Y says the banking group has been irresponsible in allowing someone to open three credit card accounts, in his name, over such a short period of time and has allowed them to transact on these accounts building up a balance of over £40,000. He thinks it should've identified this as suspicious and potentially fraudulent. BoS have said the applications were completed online and automatically approved by the system with the credit limit decided. It does allow customers to have more than one card with the same group, therefore, this wouldn't have flagged as unusual. Having said that it did apply blocks to the accounts and did carry out checks before providing the credit facilities. I'm satisfied the person spoken to, to verify the applications, knew a lot of personal information about Mr Y and were in possession of both his genuine driving licence and passport details. In those circumstances, there wasn't any reason for the bank to suspect that it was speaking to someone other than Mr Y. Having listened to the calls, whilst I'm persuaded it wasn't Mr Y who the bank spoke to during the application process, I think it's fair to say this is not something it would've reasonably known at the time. And it doesn't automatically follow that Mr Y had no knowledge of the applications. This is because the person may have been acting with Mr Y's permission. And I think this is what likely happened here. BoS has also evidenced that it did stop transactions for security checks, however, each time the account holder was able to pass high level security in order to authorise them. So based on this I don't think its presumption at the time that it was dealing with Mr Y was an unreasonable one. Nor was its conclusion later upon investigation that it's unlikely someone without Mr Y's knowledge would've been able to provide his identification and correctly answer and pass its security checks, unreasonable.*
  
- *And finally, whilst I know these matters have been settled separately, I think they are relevant to building a picture and need to be taken into consideration as part of the wider circumstances of this complaint. Around the same time the credit card applications were made, a loan was also applied for and drawn down in Mr Y's name – which was paid into his genuine bank account with another bank, who I'll refer to as 'H'. Following the paying in of the loan, a number of transactions were carried out using his debit card and PIN for the account with H. These disputed transactions were largely ATM withdrawals and payments made to retailers some distance from Mr Y's home address. But these interestingly took place in the same vicinity as the transactions made on the credit cards taken with BoS, Halifax and the other bank within the same group. Suggesting this was also and most likely the same person or persons. So not only did the person who made the BoS and Halifax credit card applications, know detailed information about Mr Y, his financial affairs, have access to all of Mr Y's post, identification documents, and his mobile phone, they would've also been able to get access to his bank card with H and its corresponding PIN.*

- *Mr Y says the card for his account with H was kept at home in his bedroom, he did not have his PIN written down and had not shared it with anyone other than his wife, who used the card infrequently to withdraw cash for shopping. He didn't use the card regularly, which is the reason he'd not noticed it missing sooner. Mr Y has provided this service with statements which do collaborate what he has said about the general usage of this account, but he's not been able to convincingly explain how his PIN had been compromised, and how someone other than him or his wife were able to obtain it. Nonetheless even if he could, I still think, on balance, all of the above things could not have happened without Mr Y's knowledge or consent.*

*Overall, taking all the above into consideration, I think that Mr Y probably knows very much more about the credit card applications and the use of these cards than he has told this service or BoS. And on balance I think it's most likely that Mr Y was involved in the way in which these transactions came about by enabling the accounts to be opened, and then giving the cards (with consent) to a third party. So under the relevant regulation this would make Mr Y liable to any extent for the loss to BoS from use of the credit cards by a person who had them with his consent. So I don't think BoS has acted unfairly in holding him liable for these transactions, and these credit card accounts.*

*Mr Y has made several submissions listing reasons for why he thinks BoS should've done more and has failed in its duty to protect him. However, as I've concluded that I think it's more likely the transactions were made with Mr Y's knowledge and consent, I don't think I need to make a finding in relation to this matter. I say this because even if I were to say BoS should've intervened (which to be clear is not what I'm saying should've happened), for the reasons above I don't think it makes a difference to the outcome of this complaint.*

*Mr Y has also made a slightly unusual argument - on one hand he says he has not taken out the credit card but on another he wants me to consider a complaint about BoS lending to him irresponsibly. I think what Mr Y intends and would like, is to not be held liable for the debt and for the full amount owed to be written off. So I think it would be helpful for me to explain that even if I were to conclude that BoS did unfairly provide Mr Y with credit cards (which to be clear I haven't seen any evidence of). When looking at putting things right, we generally consider it fair that the borrower (having had benefit of the money) pays the principal amount back. But to ensure they haven't lost out as a result of the banks actions, we may ask a bank to refund any interest, fees and charges that have been paid.*

*In any event, I note initially while the complaint was waiting to be considered by this service BoS agreed to place the accounts on hold (no interest and charges were being applied) and the debt has since been passed to recovery – which also means no interest or charges are being applied. I think under the circumstances the actions taken by BoS with respect to the interest, fees and charges has been fair and reasonable, so it follows that I won't be asking it to do anything more.*

*Mr Y has also expressed his concerns about BoS failing to appropriately block the credit cards when he reported he'd been the victim of impersonation fraud. He believes this highlights further negligence on BoS' part as it allowed further unauthorised transactions to take place – which he says he shouldn't be held liable for. I've reviewed the statements for both the Halifax and BoS credit cards. The last transactions on both cards were made over a week prior to Mr Y reporting the matter as fraud. So whilst I acknowledge Mr Y's concerns I don't think this impacts the outcome of this complaint.*

*I've taken on board what Mr Y has said, that he has never had to spend beyond his means, he is an honest man, worked hard all his life, is not responsible for these criminal activities, has reported this to the police and has gone to great lengths to prove his innocence. He also says he wouldn't have gone to the trouble of pursuing a complaint with our service or appealing to an ombudsman if he genuinely wasn't the victim of impersonation fraud.*

*Again, I've thought about this, but looking at all the evidence and facts of this case, I find it difficult to accept that all of the above things could've happened without Mr Y being aware of and/or involved in what was going on. Or that these applications and transactions were carried out by a third party, unknown to Mr Y as he has suggested. The fact that a complaint has been made and pursued, doesn't change my mind on this.*

*For the reasons I've outlined above I still think, on balance, it's more likely than not that both card applications and all disputed transactions were carried out with Mr Y's consent. And it follows BoS can hold Mr Y liable for them."*

BoS accepted my findings. Mr Y disagreed and maintained that he neither received or used the cards, nor did he give anyone permission to do so on his behalf.

As both parties have now responded to my provisional decision I can go ahead with my final decision.

### **my findings**

I've considered all the available evidence and arguments, including the further comments Mr Y has shared in response to my provisional decision, to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I've not been persuaded to alter my provisional findings.

Much of Mr Y's response to my provisional decision is a reiteration of arguments made in his previous submissions. Whilst I recognise his strength of feeling and appreciate he considers these points to be valid, for reasons I've already explained in my provisional findings I disagree that these should entitle Mr Y to a refund of all the disputed transactions. As such for the reasons, set out in my provisional decision dated 31 March 2021, I am not upholding Mr Y's complaint.

### **my final decision**

For the reasons outlined above, 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 Y to accept or reject my decision before 6 June 2021.

Sonal Matharu  
**ombudsman**