

The complaint

Mr and Mrs M complain that Bank of Scotland trading as Halifax won't refund a transaction, and the associated fee, they didn't make or otherwise authorise.

What happened

In April 2023, Mr and Mrs M went on an overseas holiday with other family members. On reviewing their joint account statement, Mrs M noticed a debit transaction of £202.47 along with a £1.50 foreign cash fee. The transaction happened on 4 April and was posted on their account the following day.

As she didn't recognise the transaction, Mrs M phoned Halifax to get more information about it. She was informed that it was a transaction made using Mr M's debit card and authenticated via Chip and PIN. As Mr M hadn't disclosed his PIN to anyone and his card remained in his possession throughout relevant time, Halifax considered the transaction as authorised and declined to provide a refund. Unfortunately, the bank did provide conflicting information about the nature and location of the transaction on more than one occasion.

In response to Mr and Mrs M's complaint, Halifax accepted that the incorrect information about the merchant had caused them inconvenience. To recognise this, it paid £50 compensation. It clarified that the transaction in question was a cash withdrawal, with the £1.50 charge being the associated fee. However, Halifax maintained that the decision to decline their claim for a refund was correct given a point of compromise of Mr M's card and associated PIN could not be identified.

Our investigator thought it was fair for Halifax to treat the transaction as authorised. They acknowledged the additional information Mr and Mrs M had provided – namely invoices and receipts from and around the day in question as well as an explanation for why it's unlikely Mr M could have used his card. But the investigator didn't think the information supplied explained how a third party could have made the cash withdrawal.

Mrs M didn't agree with the investigator's findings. She requested more time to provide additional evidence, such as photographs taken on her and her family members' phones with a timestamp, to demonstrate that Mr M couldn't have made the disputed transaction. An extension was granted, but we didn't hear back from Mr and Mrs M during that time or since then.

What I've decided – and why

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

Firstly, I'd like to thank Mr and Mrs M and Halifax for their patience while the complaint has been awaiting an ombudsman's review. I'm sorry to hear that Mr M's health has been further affected by this incident.

I'd like to reassure both parties that although I've only given an overview of what happened, I've read and considered everything we've been provided in its entirety.

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

Where there's a dispute about what happened, and the evidence is incomplete or contradictory, I must make my decision on the balance of probabilities – in other words, what I consider most likely to have happened in light of the available evidence.

Generally, Halifax can hold Mr M liable for the disputed transaction if the evidence suggests it's more likely than not that he made or authorised the transactions himself or gave consent to someone else to do so.

In this case, the technical data Halifax has provided shows that Mr M's debit card along with its PIN was used to complete the transaction on 4 April. The technical data also provides some additional information about the transaction. According to the merchant category code, which provides further information about the retailer involved, the transaction is coded as a cash withdrawal.

Halifax has explained that cash withdrawals made overseas can appear differently on the bank statement when compared to withdrawals made in the UK. The bank says that while the transaction may have appeared with a different statement narrative, it was a cash withdrawal nonetheless – that is why a foreign cash fee of £1.50 was charged.

Given Mr M's personalised card details were used, I'm satisfied that the transaction was authenticated correctly. But the regulations relevant to this case say that authentication isn't, on its own, enough for Halifax to hold Mr M liable. I also need to think about whether the evidence suggests that he, or someone acting with his authority, consented to the transaction being made.

To decide whether Mr M – or someone acting with his authority – made the transaction, I've carefully considered what he and Mrs M have told us about what happened. And I've considered that in conjunction with a review of the available evidence.

Mr and Mrs M have told Halifax and our service that Mr M didn't disclose his PIN to anyone else. And that although he did have it noted down in his wallet, the wallet and debit card were in his possession throughout the relevant period. Also, Mrs M submits that the family were together for the most part, and Mr M wouldn't have needed cash in the local currency. He did exchange pounds sterling into local currency once but didn't withdraw cash using his debit card. Mrs M has also provided some invoices and payment receipts to demonstrate they were in a different location at the relevant time.

I acknowledge Mrs M's comments and the strength of her feelings on the matter. But I have to consider all the information before me, including the technical evidence which Halifax has provided. For the transaction to be completed, Mr M's physical card as well as its associated PIN were needed. We've been told that neither left his possession at the material time. And while I've carefully reviewed the documentation Mrs M has provided, it doesn't show Mr M's card being used somewhere else at the relevant time. I understand the point Mrs M is trying to make about the family being together at the time, but none of the receipts match the time of the disputed cash withdrawal. Therefore, I find the technical data provided by Halifax to be more persuasive.

I appreciate that Mr and Mrs M don't recognise the transaction. From what I can see, they like to retain receipts for all transactions made. But they haven't got one for the cash withdrawal in question. Also, it didn't help matters when Halifax initially provided conflicting information about the merchant when they queried the transaction. While the precise location of the cash withdrawal isn't known to Halifax – something I would have expected the bank to know had it been one of its own ATMs – the information received during the authorisation process does place the location in the same city that Mr and Mrs M had been visiting.

I know it's frustrating that more specific information isn't available to help them trace their steps. I'm only speculating here, but the merchant name that appears on the statement shares its name with a poet from that country, and that poet has a street named after them in that city. Perhaps an ATM located on that street was used? Regardless of the precise location, as Mr M says he didn't disclose his card's PIN, and as his card was in his possession during that time, I can't see how the transaction could have been made without some form of involvement on his part.

Overall, I can't say for sure what happened. But I only have to reach a decision based on the balance of probabilities, i.e., what I think is more likely than not to have happened. I've weighed up everything and given a lack of plausible explanation for how the transaction could have been made without Mr M's involvement, I don't consider it fair to tell Halifax to reimburse the transaction in dispute.

I recognise that Mr and Mrs M will likely be extremely disappointed with this outcome. But based on the available evidence, I can't safely conclude that Halifax has been unreasonable in holding him liable. Because of this, I won't be asking it to do anything further.

My final decision

For the reasons given, 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 M and Mrs M to accept or reject my decision before 19 June 2024.

Gagandeep Singh
Ombudsman