

The complaint

Mr K complained because Bank of Scotland plc, trading as Halifax, refused to refund him for transactions he said he didn't make.

What happened

On 22 June 2023, Mr K contacted Halifax. He said he'd been abroad, taking with him multiple cards, from Halifax and other financial organisations. He said he'd lost his cards on 13 April and there had been transactions on all his cards which he said he didn't make. On the call, Mr K told Halifax that he loses his cards two or three times a year, as they just fall out of his pocket. He said he'd only noticed after returning to the UK, because he didn't use those cards abroad, and since then he'd been too busy to call. He wanted a refund.

Halifax refused to refund Mr K for the disputed debit card transactions. In its final response to Mr K's complaint, it said that Mr K had made previous fraud claims in 2022 when he'd reported his debit card as lost. Halifax pointed out that it had refunded him on those occasions – and each time, it had provided advice about minimising the risk or similar claims in future.

Halifax explained that from the information Mr K had provided, and what it could see on its systems, the transactions which Mr K had reported on 22 June had been made possible because he hadn't adequately protected his personal security details. So it wouldn't refund Mr K. It advised him that he could report the matter to the police.

Mr K told Halifax that the police had told him to contact Action Fraud, which told him to raise this online. He said he hadn't done so because he didn't feel it was his duty to do so. Mr K wasn't satisfied with Halifax's refusal to refund him, and contacted this service.

Our investigator didn't uphold Mr K's complaint. He was satisfied that Halifax had carried out a full investigation, and that its conclusion had been reasonable. He said that Halifax hadn't disputed that the transactions had been made without Mr K's consent. But the terms and conditions of the account, and the relevant regulations, had set out when the bank could fairly decline Mr K's complaint based on his previous activity.

The investigator considered that Mr K was certainly aware, from his previous claims, that losing his debit card again, with further fraudulent transactions, might mean that Halifax wouldn't refund him. The investigator asked Mr K what steps he'd taken to make his cards more secure, based on Halifax's previous advice. Mr K had said he now kept some in a wallet or inside pocket. But as Mr K had again lost all his cards, the investigator thought Mr K hadn't taken any steps to prevent a recurrence of the issue. The investigator considered that Halifax's conclusion - that Mr K had been grossly negligent in failing to keep his cards secure – was fair and reasonable.

Mr K wasn't satisfied. He sent long and detailed reasons why he believed he should be refunded.

In summary, he said he didn't believe he'd been grossly negligent. He said:

- He'd only had two previous claims not four;
- He hadn't refused to accept a non-contactless card as Halifax had said, but he wanted a contactless card to use on public transport;
- He'd offered to close the account if Halifax was saying it wouldn't cover him for any future claims. He said Halifax had replied that he didn't have to close the account – which Mr K believed meant Halifax would cover future claims;
- Mr K said the April 2023 theft had probably happened at airport security or on the plane. He said he didn't think keeping his cards in a card holder, in the side pocket of a jacket which was closed by a zip, counted as gross negligence;
- He suggested that gross negligence would be leaving a card in public sight eg on a sunbed at a beach and going away from there;
- Mr K also said that the other banking institutions had refunded him;
- He said that having lost cards in the past shouldn't be part of the decision whether or not to refund him;
- He said that the terms and conditions didn't say fraud would only be covered once a year, and it was the same as an insurance policy. He wrote at length about health and car insurance;
- He said he wanted a refund for all the transactions on the Halifax card which he hadn't lost before, plus a refund of all the rest except for £35 which he said was a gesture of goodwill towards Halifax.

Mr K asked for an ombudsman's decision.

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.

As I've set out above, Mr K has raised multiple points in his submissions to this service. I've understood all of those and have considered all he's said and sent us, but in reaching my decision here I've focused on what I think is vital to my conclusions. I'd also point out that this service is a quick and informal alternative to the legal process in terms of disputes with financial businesses, and we can decide what information is enough to carry out an investigation.

What the regulations, and Halifax terms and conditions, say

I've considered the relevant regulations, and the terms and conditions of Mr K's account with Halifax.

The relevant regulations are the Payment Services Regulations 2017. Section 72 says:

“72.—(1) A payment service user to whom a payment instrument has been issued must—
 (a) use the payment instrument in accordance with the terms and conditions governing its issue and use; and
 (b) notify the payment service provider in the agreed manner and without undue delay on becoming aware of the loss, theft, misappropriation or unauthorised use of the payment instrument.

...

(3) The payment service user must take all reasonable steps to keep safe personalised security credentials relating to a payment instrument or an account information service. ”

And section 77 says:

“77. (3) The payer is liable for all losses incurred in respect of an unauthorised payment transaction where the payer—
(a) has acted fraudulently; or
(b) has with intent or gross negligence failed to comply with regulation 72 (obligations of the payment service user in relation to payment instruments and personalised security credentials).”

Looking at Halifax’s terms and conditions, these state that the bank wouldn’t provide a refund

“if you have:

- Been grossly negligent with your card, device or security details;
- Deliberately failed to keep them secure.”

Applying these to Mr K’s complaint

I’ve considered these regulations and terms and conditions in relation to Mr K’s complaint, in order to decide whether it was fair and reasonable for Halifax to reach the conclusion it did about Mr K’s claim.

I’ve seen Halifax’s records which show that Mr K made four previous claims for disputed transactions on lost cards during 2022. Halifax refunded Mr K for all of these. I’ve looked at Halifax’s records for these, and I can see that Halifax provided guidance and suggestions. These included offering a contactless card, which Mr K refused saying he wanted a contactless card for ease of public transport. Halifax also told him about its card freeze facility.

I can see that Mr K also asked Halifax to go to the police, telling Halifax it needed to act quickly. Halifax explained that it was up to Mr K to report it to the police. On the late November occasion, Mr K said that he thought his card had fallen out of his pocket when he took his phone out. Halifax’s adviser said he should start keeping his card in his wallet, but he replied that he couldn’t find a wallet big enough to keep all his cards in. The advisor said that as this had happened more than once before, it would be unlikely he’d get a refund if it happened again.

In his latest submission to this service, Mr K said that he didn’t consider that keeping cards in a card holder, in a side pocket of a jacket, closed with a zip, would be gross negligence. But when he reported the latest issue to Halifax, he said he loses cards two or three times a year because they just fall out of his pocket. And he’d said the same to Halifax on previous occasions - that he’d kept cards loose in a pocket, despite Halifax’s warnings and advice. So I think it’s more likely than not that Mr K had still kept his card in his open pocket. And in any case, Mr K hasn’t provided any suggestions about how his card might have been stolen if he had indeed kept it in a zipped-up pocket.

I don’t consider it’s necessary for me to go into a lot of legal detail about gross negligence here, because this service is a quick and informal alternative to the courts. But taking the legal framework into account, I can see why Halifax considered Mr K had been grossly negligent with his debit card in the circumstances of this case. I find that it was fair and reasonable for Halifax to reach this conclusion.

I also note that the disputed transactions for the claim I’m considering here took place in April 2023, but Mr K didn’t report them to Halifax until June. I can see that he said he didn’t initially realise the card was missing because he didn’t use it abroad, and then that he was too busy. But I think it would be fair and reasonable to expect Mr K to have reported the transactions sooner than he did, especially when he had already been warned about keeping his card secure, and that he might not be refunded if it happened again.

What happened to Mr K's claims about cards with other banks isn't relevant to the outcome here. Nor are his comparisons with insurance, because the Payment Services Regulations aren't about an insurance scheme.

Having considered all the evidence, for the reasons above, I find that Halifax acted fairly and reasonably when it refused to refund Mr K for his claim.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 16 February 2024.

Belinda Knight
Ombudsman