

The complaint

Mr V complains that Bank of Scotland plc trading as Halifax (“Halifax”) is holding him liable for transactions made from his Halifax account he says he didn’t authorise.

What happened

The background to this complaint is well known to both parties, so I won’t repeat everything here. In brief summary, in November 2020 three debit card payments totalling £2,000 were made from Mr V’s Halifax account which Mr V says he didn’t authorise. The first two payments (for £500 each) and £403.63 of the third payment were made utilising existing funds already loaded to Mr V’s account. The remaining £596.37 of the third payment was made using a credit facility.

Mr V and Halifax couldn’t reach agreement about things, so Mr V referred his complaint about Halifax to us. As our Investigator couldn’t resolve the matter informally, the case has been passed to me for a 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.

Having done so, I’ve reached materially the same conclusions as our Investigator and for the same reasons. That is, I’ve decided to uphold this complaint in part. I’ll explain why.

I understand it to be accepted by the parties that these payments were unauthorised. The starting position under the applicable law and regulations is that Halifax is generally liable for unauthorised payments made from Mr V’s account. However, that’s not the end of the story.

Different laws and regulations apply to payments made utilising existing funds already loaded to the account, compared to those made using a credit facility. So I’ll address them separately, dealing first with the first two payments and £403.63 of the third payment, which were made utilising existing funds already loaded to the account. Under the relevant regulations, Mr V can fairly be held liable for these payments, even if they were unauthorised, if he failed with intent or gross negligence to keep account credentials safe which allowed the unauthorised payments to be made. In this case, there’s no dispute that Mr V gave his card details to the third party over the phone that enabled them to make the payments. I’m satisfied, essentially for the same reasons as explained by our Investigator, that Mr V reasonably ought to have been aware of the risks of doing so, such that I don’t think it’s unfair to say he was careless to the level where he was grossly negligent, which led to the unauthorised payments being made. Given what I’ve said, in these circumstances, I’m not persuaded it would be fair for me to tell Halifax that it should refund Mr V these payments.

With regards to the £596.37 of the third payment, which was made using a credit facility, under the Consumer Credit Act 1974 (sections 83 and 84 in particular), Mr V can only be held liable for this unauthorised amount if his card was in someone else’s possession with

his permission. But this wasn't the case here. So I'm satisfied, given what I've said about unauthorised transactions generally and above, that Halifax should refund Mr V this £596.37. Bearing in mind this amount (£596.37) took Mr V into a credit facility, I'm also satisfied Halifax should refund any interest and charges caused by the use of the overdraft, and restore Mr V's credit file for any impact from being overdrawn at that time.

Despite what I've said above, like our Investigator I've also considered whether Halifax reasonably ought to have done more to prevent Mr V's loss. I understand, in this regard, that Mr V has said he received a text message from Halifax about the transactions asking him to confirm whether he'd authorised them, and he says he told Halifax he hadn't. However, the evidence I've seen from Halifax persuades me that these text messages would most likely have been in relation to earlier payments (which were then declined). There is consequently an argument that Halifax should also have done the same for the three disputed transactions this complaint is about. This is because, as a matter of good industry practice, Halifax should have taken proactive steps to identify and help prevent transactions – particularly sufficiently unusual or uncharacteristic transactions – that could involve fraud or be the result of a scam. However, there are many payments made by customers each day and it's not realistic or reasonable to expect Halifax to stop and check every payment instruction.

I've thought about this carefully. But there's a balance to be struck by Halifax between identifying payments that could potentially be fraudulent, and minimising disruption to legitimate payments (allowing customers ready access to their funds). And in this case, I'm not persuaded I can fairly hold Halifax responsible further than I've already done above, when the payments weren't, in my view, sufficiently unusual or uncharacteristic for Mr V's account. I'm also mindful of how I've said Mr V was grossly negligent. And because these were debit card payments, and taking into account the circumstances in this case, I'm satisfied that most likely by the time Mr V spoke to Halifax about them, there wasn't anything Halifax could reasonably have done to prevent or recover them.

I appreciate this means Mr V is out of pocket. But for the reasons explained, I'm satisfied in this case that I can fairly uphold this complaint only in part.

My final decision

For the reasons explained, I uphold this complaint in part and I direct Bank of Scotland plc trading as Halifax to:

- pay Mr V £596.37; plus
- refund any interest and charges caused by the use of the overdraft, and restore Mr V's credit file for any impact from being overdrawn at this time.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr V to accept or reject my decision before 21 March 2024.

Neil Bridge
Ombudsman