

The complaint

Miss F complains that Bank of Scotland plc trading as Halifax (“Halifax”) is unfairly holding her liable for transactions made from her account.

What happened

The background to this complaint is well known to both parties, so I won’t repeat everything here. In brief summary, Miss F has explained that between 2017 and 2019 she was in a relationship where she was domestically and financially abused and her now ex-partner used her Halifax account without her consent.

Halifax and Miss F were unable to reach complete agreement about things, so Miss F referred her complaint about Halifax to us. An Investigator here wasn’t able to resolve things informally, so the case has been passed to me for a decision.

I sent Miss F and Halifax my provisional decision last month. Both parties have had fair opportunity to respond (and have done so), and I’m now ready to explain my final 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 in my provisional decision and for the same reasons. The responses to my provisional decision haven’t changed my mind. I’ve explained my reasons again below.

It’s my understanding the disputed transactions comprise of bank transfers to Miss F’s ex-partner, debit card transactions, and cash withdrawals. Halifax already agreed, before Miss F referred her complaint to our service, to refund to Miss F the bank transfers to her ex-partner, including any overdraft interest and fees incurred as a result. But Halifax didn’t agree to refund to Miss F the disputed card transactions or cash withdrawals.

This is a difficult case to decide because generally, under The Payment Services Regulations (“the PSRs”), unless Miss F authorised a transaction, Halifax had no authority to debit her account. A payment out of Miss F’s account can only be authorised if she consented to it. So, it’s not enough for Halifax to show how the transactions were *authenticated*. To decide Miss F authorised the transactions, I’d also need to be persuaded that Miss F most likely *consented* to them.

But with regards to *consent*, it’s important to highlight here that under the PSRs this doesn’t depend on the account holder having been fully aware of the details of each payment. If a third party made the payments within the bounds of any *actual* authority that the account holder gave them, the account holder would be bound by their acts. But the account holder can also be bound by the acts of a third party which *appear* to have been made with the account holder’s authority. This is called *apparent authority*, such that if the account holder permitted a third party to *appear* as if they had their authority to make payments, those

payments could be deemed as authorised (and consented to), even where the account holder didn't know about or ask the third party to make them. Furthermore, if an account holder has been coerced into allowing a payment, or deceived about the purpose or amount of a payment, this also doesn't usually make the payment unauthorised. Where an account holder gives what is called *apparent authority*, this also can continue, depending on what subsequently happened.

This all makes this a difficult decision to make. Miss F has said she was in a violent relationship where her partner took full control of her money and bank account, and from the information I've seen I don't doubt Miss F was domestically and financially abused and she has my heartfelt sympathy. But by Miss F's own previous comments, she couldn't recall exactly which of the disputed card and cash transactions were and weren't carried out by her ex-partner. There isn't anything obvious about the characteristics of these transactions (apart from the bank transfers to Miss F's ex-partner which Halifax has already refunded) that, in my view, sheds sufficient further light on this either. And bearing in mind what I've said above (about coercion not automatically meaning a payment should be regarded as unauthorised, and everything else), including that Halifax *did* refund the bank transfers, I'm not persuaded I can say the way Halifax dealt with Miss F's complaint, in terms of deciding which transactions to refund and which ones not to, was unreasonable.

I'm also mindful, in this regard, that under the PSRs an account holder is entitled to redress only if they notified their bank as soon as practically possible, and in any event no later than 13 months after the debit date, on becoming aware of any unauthorised transaction. Whereas in this case Miss F didn't notify Halifax of the disputed transactions until 2023, which was well outside 13 months of their debit date. Halifax sought not to rely on this to exclude Miss F's claim. And certainly, in circumstances where an account holder was being domestically and financially abused, I'd agree this to be appropriate. But here I note that Miss F left the relationship with her ex-partner in 2019; and that Miss F's ex-partner appears to have been criminally charged in early 2020. And even though Miss F has said in her response to my provisional decision that the trial then went on until mid-2021 – and whilst I am totally sympathetic to Miss F's circumstances even though I don't agree with everything she's said about Halifax – given the amount of time outside the 13-month time limit Miss F then notified Halifax of the disputed transactions, and given everything else I've said above, I don't think it would be fair for me to tell Halifax it should reasonably have refunded more than it did. I've also not seen anything that makes me think Halifax unreasonably failed to intervene in any of the transactions before they were made or, if it had, this likely would have changed things.

With regards to distress and inconvenience, I think the root cause of things here was the way Miss F's ex-partner behaved. In terms of how Halifax has dealt with things, I understand Miss F feels Halifax disbelieved her initially, and didn't deal with things well, causing her unnecessary distress and inconvenience. However, I've listened to some recordings of telephone calls between Miss F and Halifax. And whilst it appears there were likely other calls, from the calls I've been able to listen to I'm satisfied Halifax was appropriately sympathetic and fair with Miss F. And even if Halifax might have challenged and questioned Miss F more robustly at other stages, that doesn't mean it should have to pay compensation – it was entitled to investigate Miss F's claims, and it wasn't Halifax's fault this happened. So, I'm not persuaded Halifax needs to pay Miss F compensation for distress and inconvenience.

Finally, there's the matter of the overdraft, which Miss F mentioned in her calls with Halifax. I understand Halifax has already refunded to Miss F any interest and fees incurred on the overdraft as a result of the bank transfers to Miss F's ex-partner. But Miss F has always maintained that the overdraft facility was applied for by her ex-partner without her consent. I accept more likely than not it was. So, whilst it appears Miss F has had use of some of that

overdraft nonetheless, and I wouldn't ask Halifax to compensate her for that, I do think it would be appropriate for Halifax to remove any impact the bank transfers to her ex-partner had on Miss F's credit file.

My final decision

For the reasons I've explained, I've decided that what Bank of Scotland plc trading as Halifax has already offered to do is fair and reasonable, apart from that it should also remove any impact the bank transfers to Miss F's ex-partner had on her credit file (if there was any).

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss F to accept or reject my decision before 10 April 2024.

Neil Bridge
Ombudsman