

The complaint

Mrs P complains that Bank of Scotland plc trading as Halifax ('Halifax') won't refund money she says wasn't dispensed by the ATM.

What happened

On 9 October 2022, Mrs P gave her debit card to her husband so that he could withdraw funds from her account. Mrs P says her husband went to two ATM's, but they wouldn't allow cash withdrawals. He went to a third machine and using her card attempted to withdraw £500. Mrs P's husband says there was a message on the screen to contact the bank, and no money was dispensed.

Mrs P saw the money had come out of her account and contacted Halifax to raise a complaint. Halifax credited Mrs P's account with £500 while they looked into her complaint.

The bank who owned the ATM (which I'll refer to as B) provided a response to Halifax which suggested that the money had been dispensed by the machine, so Halifax wrote to Mrs P letting her know they would be taking the £500 back out of her account in a few days.

Mrs P wasn't happy with the action taken by Halifax, so she brought a complaint to our service.

An investigator looked into her complaint and didn't recommend that Halifax refund Mrs P. The investigator explained that the evidence provided by B confirmed that the money had been dispensed by the machine. As part of the evidence, B confirmed there were no other reports of problems with cash withdrawals on the 9 October 2022, the ATM had balanced, and there had been successful cash withdrawals immediately before and after the one made by Mrs P's husband.

Mrs P wasn't happy with the investigator's opinion, so she asked for an ombudsman to review her case. Mrs P emphasised that if the CCTV footage was obtained, it would support her claim that the money wasn't dispensed by the machine. Mrs P also said that if Halifax had told her earlier that the CCTV footage wasn't available, she would've raised a complaint with the police and asked them to obtain the footage for her.

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.

Generally, Halifax can hold Mrs P liable for the disputed withdrawal if the evidence suggests that it's more likely than not she made or authorised it herself. In this case, it's not in dispute that the transaction was authorised and consented to by Mrs P, who gave her husband her card and PIN in order for him to make the cash withdrawal.

So, I need to decide whether Halifax has acted fairly in not refunding Mrs P for the £500 cash withdrawal.

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

Having carefully considered the evidence, I've reached the same outcome as the investigator and won't be asking Halifax to refund Mrs P, for the following reasons:

- The evidence from B shows that two cash withdrawals were made shortly after Mrs P's cash withdrawal was attempted. Mrs P's withdrawal was made at 12:42, the next withdrawal was made at 12:50 for £30, followed by another withdrawal at 12:55 for £100. Both of these withdrawals appear to have been completed successfully, which would suggest that the ATM was able to dispense cash.
- B says there were no other reported problems on the date of Mrs P's cash withdrawal – which includes for the two other withdrawals made shortly after hers.
- The journal roll for the ATM shows the balance of the ATM prior to Mrs P's cash withdrawal and after it, as well the balance after the next two withdrawals. The balance suggests that all three withdrawals were made successfully. It also shows the notes that were dispensed as part of Mrs P's withdrawal – 23 x £20 notes and 4 x £10 notes.
- There is no evidence on the journal roll of the machine experiencing an error or a fault, which would usually be recorded on the journal roll.
- ATM's have a purge bin which may retain money if there is an error with a withdrawal, however B have confirmed there was no money in the purge bin and that the ATM balanced.

It's very difficult in these cases, where a customer is saying that an ATM hasn't given out the money withdrawn from an account as it's difficult for the customer to provide evidence to support their testimony. But, I only have to reach a conclusion based on what I think is most likely to have happened, taking into account the evidence and testimony we have from all parties involved in the case.

I appreciate that Mrs P is going to be very disappointed, but based on the evidence, I'm satisfied that it's more likely than not the ATM did dispense the £500. So, I can't fairly ask Halifax to refund Mrs P.

I appreciate that Mrs P feels the CCTV footage would prove that the funds weren't dispensed by the machine, however the footage isn't available. Also, it's not clear whether the CCTV footage would've been available if requested, what the footage would've shown based on camera angles and whether that would've changed the outcome of Mrs P's case. Also, Mrs P may not have been entitled to a copy of the CCTV footage even if she had requested it and it had been available.

I understand that Mrs P is upset that Halifax took the £500 back out of her account, after initially crediting her when she first complained to them. But I'm satisfied that Halifax acted fairly by refunding Mrs P while they investigated her claim. And I can't say they acted unfairly in taking the funds back out of Mrs P's account based on the outcome of their investigation. Also, I note that Halifax wrote to Mrs P on 21 October 2022 to let her know the outcome of their investigation and to tell her they would be taking the money out of her account on 31 October 2022 – so she was aware of what was happening.

I'm sorry to disappoint Mrs P, but I can't fairly ask Halifax to refund her.

My final decision

My final decision is that I don't uphold this complaint against Bank of Scotland plc trading as Halifax.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 15 May 2024.

Lisa Lowe
Ombudsman