

## **The complaint**

Mr M and Mrs K complain Bank of Scotland plc trading as Halifax won't pay back money stolen from them.

## **What happened**

Mrs K says that she's been on medication for poor mental health since 2000 but that her situation has improved in recent years. She says that when her mental health was poor her sister convinced her to open an account saying she'd look after her. She says her benefits – including benefits for her children – were paid into the account her sister opened.

Mrs K says, now that her situation has improved, that she's discovered her sister and her sister's husband were using all of the money that was being paid into the account for their own benefit. She says she's had control of the account since April 2022. And that her husband was added to the account in October 2022 meaning it became a joint account.

Mrs K contacted Halifax in April 2023 to complain about fraud on her account saying that a member of its staff was involved. She says Halifax asked her to call and then closed her complaint without investigating.

In June 2023 Mr M and Mrs K complained to us saying that Mrs K's sister had been taking advantage of her since 2007 and had stolen more than £80,000 from her over a fifteen-year period. They wanted Halifax to pay back the stolen money, saying that Mrs K's sister was a Halifax employee, so Halifax should take responsibility.

Halifax says it looked into this complaint and ultimately didn't uphold it. Halifax did, however, apologise for a delay in its investigation for which it offered £60.

One of our investigators looked into Mr M and Mrs K's complaint and said that Mrs K reasonably ought to have been aware of the account no later than 2014 and should have asked questions about it. For that reason, our investigator said that we couldn't look at any transactions that had occurred before April 2017 as we can't – broadly speaking – look at complaints about events that happened more than six years ago or more than three years after the complainant was reasonably aware that they had cause to complain. Our investigator also said that they didn't think it would be fair to require Halifax to refund any transactions that occurred after April 2017 as the evidence didn't consistently show that the transactions weren't carried out or authorised by Mrs K.

Mr M and Mrs K disagreed with our investigator's recommendations, so this complaint was referred to an ombudsman for a decision. This complaint was, as a result, passed to me.

## **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.

Based on the evidence I've seen I'm satisfied that an account was opened in Mrs K's name

in 2007 and that her husband was added to that account in October 2022 meaning it's now a joint account. I'm also satisfied that Mrs K has had control of that account since April 2022 and complained to Halifax in April 2023 disputing every single outgoing transaction up to and including April 2022. In other words, disputed 15 years' worth of outgoing transactions.

We've been told that Mrs K's sister opened this account. I'm happy to accept this. What's less clear is whether or not this was done with Mrs K's consent. I say that because on the one hand we've been told Mrs K's sister offered to open the account for Mrs K – implying Mrs K knew about the account – and on the other hand we've been told that this account was opened fraudulently - implying that Mrs K knew nothing about it until recently. In this case, however, I'm satisfied that it probably isn't that important whether or not this account was originally opened with Mrs K's knowledge. I say that because both Mr M and Mrs K have told us that the family as a whole discussed this account in 2014 when there was an issue that needed resolving. In other words, it's clear that Mrs K knew about this account by 2014 at the latest. It's hard to see how she couldn't have known about the account earlier given that all of her income – and benefits she received for her children – was being paid into the account and for over 15 years. But in any event I agree that Mrs K could and should have asked more about the account in 2014. I can also see that from 2014 the address to which statements were sent was updated to an address at which Mrs K was living. That's another reason why I think she could and should have asked more about the account sooner. It seems that Mrs K didn't ask more about the account until 2020 and that's because both her and her husband were struggling financially given the pandemic. They've both said that they've had control of the account since April 2022.

I can see that Mrs K – with the help of her husband – started complaining to Halifax in May 2023. I can also see that Halifax wrote to Mrs K in May 2023 asking her to call the bank to discuss her complaint. I can understand why Halifax did this as the complaint involved one of its employees, so a slightly different process needed following. Halifax has, however, accepted that it could and should have done more. And has offered £60 in compensation for its failure to do so. More importantly, I can see that Halifax spoke to Mrs K – and her husband – about the account and what had happened in detail in October 2023. I've listened to two calls that Halifax had with Mrs K and her husband – each call is over an hour long. Having done so, I'm satisfied that Halifax asked Mrs K and her husband all of the questions I'd expect a business to ask when investigating disputed transactions. More importantly, I'm satisfied that it wasn't unfair of Halifax to say that it couldn't refund any of the transactions Mrs K and her husband were complaining about. They were, in effect, saying that all of the money that was paid into the account was Mrs K's money – or money for her children – but none of the outgoings were. Or to put it another way that Mrs K hadn't spent any money – or had any costs – for over 15 years.

In this decision I've dealt with the complaint that Mrs K and her husband has brought to us about the joint account they own. They've mentioned other accounts – for example, accounts set up in their children's names. Broadly speaking, they've said that they thought money was being paid into those accounts on a regular basis but that it looks like the only money that has been paid into those accounts is the original money when they were set up. This complaint isn't about any of those other accounts. So, I'm not going to say much more about those accounts, other than to observe that those complaints would have similar evidential challenges.

Because I don't think Halifax acted unfairly when it said it couldn't refund any of the transactions Mrs K and her husband were complaining about, this isn't a complaint that I can uphold.

**My final decision**

My final decision is that I'm not upholding this complaint as I can't say Bank of Scotland plc trading as Halifax has acted unfairly.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K and Mr M to accept or reject my decision before 31 July 2024.

Nicolas Atkinson  
**Ombudsman**