

The complaint

Miss W has complained Bank of Scotland plc, trading as Halifax, won't refund her for disputed debit card transactions she didn't make.

What happened

In the early part of 2024, Miss W spent a few months overseas. When she got back to the UK, she noticed more than £9,000 worth of transactions on her debit card which she didn't make. She asked Halifax to refund her.

Halifax wouldn't do so. Their evidence indicated that Miss W's genuine card, along with her PIN, was used for all the disputed transactions. As Miss W remained in possession of her card, they couldn't see how a third party could have got to her card. They could also see that Miss W regularly logged into her Halifax banking app so would have been able to view these transactions as they were happening but hadn't raised them earlier.

Miss W explained she'd had to get her phone fixed whilst she was away and wondered whether that was how the compromise took place. As Halifax wouldn't refund her, she brought her complaint to the ombudsman service.

Our investigator felt the evidence showed Miss W had most likely authorised the disputed transactions.

Still unhappy, Miss W has asked an ombudsman to consider her complaint.

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 the same outcome as our investigator. I'll explain why.

Where there is a dispute about what happened, I have based my decision on the balance of probabilities. In other words, on what I consider is most likely to have happened in the light of the evidence.

It's worth stating that I can choose which weight to place on the different types of evidence I review, including technical evidence, provided by financial institutions along with complainants' persuasive testimony.

When considering what is fair and reasonable, I'm required to take into account: relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time.

The regulations which are relevant to Miss W's complaint are the Payment Services Regulations 2017 (PSRs). These primarily require banks and financial institutions to refund customers if they didn't make or authorise payments themselves. There are exceptions to this and that would include if the customer had acted with gross negligence or intent to allow

any security details – including the card and PIN – to be used by someone else.

To help me come to a decision, I've reviewed the evidence Halifax provided as well as what Miss W has told us. I specifically asked Miss W some questions about the nature of her time away and whether she'd been alone or with other people. Miss W's responses have been slightly vague.

I note Halifax has provided no evidence to suggest Miss W acted in a grossly negligent manner.

I believe S made or authorised the disputed debit card transactions. I say this because:

- It is feasible that a third party, close to Miss W, could have accessed her debit card. Being close to her it's also possible they'd have known her PIN as they'd have had an opportunity to see her use it whilst she was on holiday. Miss W made most of her genuine spend whilst she was away using her credit card. I note the PIN for this card is the same as her debit card.
- This use, if this was without Miss W's authorisation, would have involved her being without her debit card for stretches of time and a third party then always replacing her card so that Miss W didn't detect what was happening.
- I can't pinpoint exactly how a fraudster obtained Miss W's PIN but the PSRs don't require me to do so. I just need to be satisfied that there are scenarios which enable a third party to get hold of the PIN.
- Counter to that, I can see that throughout the period of the disputed transactions – which were mostly repeated withdrawals at cash machines – Miss W regularly logged onto her mobile banking app. She's told us she noticed the spend she'd not made but was unable to call Halifax. Whilst that may indeed be true, it would have been easy for Miss W to report fraud using her banking app. She says she was unaware she could do this, but I have to wonder why she wouldn't try to take immediate action as soon as noticing the considerable funds missing from her account.
- It's certainly true that the nature of the transactions – repeated cash withdrawals as well as four large-value purchases potentially at a jewellers – resemble fraudulent transactions.
- I'm aware Miss W has raised the issue of her phone being potentially compromised but I don't believe that this would have had any impact on what happened here which was potential use of her card and PIN by a third party.

I have a distinct feeling – based on Miss W's vague responses to my questions – that there is more going on here. Whether this is because Miss W suspects a third party of defrauding her or whether she allowed that person to make the transactions and now regrets that decision, I cannot tell for sure. But based on the evidence I've seen, I believe there's enough to show Miss W made, or allowed to be made, the disputed transactions.

I appreciate Miss W will be disappointed in this outcome and can see we're talking about substantial funds that she was disputing.

My final decision

For the reasons given, my final decision is not to uphold Miss W's complaint against Bank of Scotland plc, trading as Halifax.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss W to accept or reject my decision before 12 December 2024.

Sandra Quinn
Ombudsman