DRN-4566942

The complaint

Mr H complains that Bank of Scotland plc trading as Halifax ("Halifax") failed to refund a transaction he didn't recognise.

What happened

Mr H explained that he saw an unrecognised payment had been taken from his account from the previous year. When he contacted Halifax about it, they informed him that because the transaction had taken place some time ago, they were unable to dispute it due to relevant time limits (Chargeback procedures).

Mr H was also later told his claim couldn't be considered because he'd made it more than 13 months after the date of the transaction. He was told there was a rule preventing such refunds being made after this time.

Mr H advised that he'd been dealing with a family health issue which had prevented him from reviewing his accounts earlier. He said this particular account wasn't often used and he didn't receive paper statements, so had to rely on his mobile banking access to review the account activity.

Mr H confirmed to Halifax that he hadn't given anyone else permission to use his account or provided the login details for it. He also confirmed he used biometric security to protect his sensitive information.

Mr H lodged a complaint with Halifax after they declined to refund him. After reviewing the situation, Mr H was told they weren't going to refund him due to the late notification of the disputed payment, relying on the 13-month regulation contained in the Payment Service Regulations 2017 which also formed part of the terms and conditions of the account.

Mr H was left unhappy with how Halifax dealt with his issue and brought his complaint to the Financial Ombudsman Service for an independent review. An investigator was assigned who looked into the situation. Both parties were asked for information about the circumstances.

Mr H was able to confirm that:

- He'd been dealing with a family health issue for several months.
- It wasn't until he'd been preparing his accounts that he noticed the payment.
- Mr H contacted the merchant who advised they'd taken payment for a commercial vehicle bought by a company based outside the UK. I'll refer to that country as V.
- Mr H said he ran a business in the same country (V) as the purchaser.
- Mr H had made a purchase some months earlier for a commercial vehicle, but with another company for use in V.

- Mr H was very careful to protect his banking details and no one else knows them.

Halifax provided details of their records, which in summary said:

- The disputed transaction was made via a “faster payment” (bank transfer).
- It was made using Mr H’s registered mobile device.
- A Confirmation of Payee (CoP) was carried out successfully at the time of the transaction.
- The transaction had taken place more than 13 months before Halifax were notified about it. The terms and conditions of the account explained that Halifax were unable to refund such a claim after this time.
- There were no exceptional circumstances to prevent Mr H from reporting the transaction earlier.
- Halifax did look into what records they held about it and considered that Mr H himself had authorised it.
- Due to the time that had elapsed, not all banking records had been retained.
- Halifax were able to say that Mr H’s trusted device (mobile phone) was used to make the payment.
- No other devices were registered on Mr H’s account.
- Mr H was using his mobile banking app at the time the payment was set up to register the new payee who received the funds for the commercial vehicle.
- The merchant who received the payment is a legitimate vehicle supplier.
- Mr H had logged into his account on numerous occasions both before, during and after the payment was made. He would have been aware the payment had been made because he’d checked his balances on several occasions.
- The payment wasn’t indicative of fraudulent behaviour because the account held considerable funds in it which weren’t taken.
- The payment wasn’t considered unusual when looking at the other payments made from the account.

The investigation so far

After reviewing the evidence, the investigator didn’t uphold Mr H’s complaint and commented that:

- Halifax said that Mr H’s notification was made more than 13 months after the transaction and contravened the regulations, but they carried out their own enquiry into the circumstances.
- Mr H’s trusted device was used to make the disputed transaction.
- Security information (including biometrics) would have been needed to logon to the

device and the Halifax banking app.

- Mr H hadn't shared his personal identification number (PIN) with anyone.
- Halifax maintained that on the day of the disputed transaction, only Mr H's trusted device was used from a recognised IP address.
- There was no evidence that Mr H's account had been compromised.
- Mr H's account had been used before, during and after the disputed transaction.
- The payment didn't fit the pattern of fraudulent behaviour as many thousands of pounds were left in the account.
- There was no reason Halifax should have intervened.
- It was felt that Mr H himself was likely responsible for the transaction.

Mr H strongly disagreed with the investigators opinion and in response said:

- Mr H was being called a liar.
- A scammer would have taken everything, therefore someone inside the bank could have been responsible.
- It's not in Halifax's interest to investigate the matter further.
- Mr H denied being responsible for the payment.
- He accepted that he'd made the notification after 13 months.
- His health had worsened as a result of the loss from his account.

As no agreement could be reached, the complaint has ow 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.

Where the information I've got is incomplete, unclear or contradictory, as some of it is here, I have to base 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.

I was sorry to hear that Mr H has suffered health problems since this happened and recognise that he had other priorities when dealing with his family's health issues.

The relevant law surrounding authorisations are the Payment Service Regulations 2017. The basic position is that Halifax can hold Mr H liable for the disputed payments if the evidence suggests that it's more likely than not that he made them or authorised them.

Halifax can only refuse to refund unauthorised payments if it can prove Mr H authorised the transactions, but Halifax cannot say that the use of the mobile app for internet banking transfers conclusively proves that the payments were authorised.

Unless Halifax can show that consent has been given, it has no authority to make the

payment or to debit Mr H's account and any such transaction must be regarded as unauthorised. To start with, I've seen the bank's technical evidence for the disputed transactions. It shows that the transaction was authenticated using the payment tools issued to Mr H. I'll now need to consider the information provided by both parties to determine whether there's sufficient evidence to hold Mr H responsible for the disputed transaction or not.

Due to the time that had passed before the unrecognised payment was raised with Halifax, some of the records are no longer available. Halifax have provided details showing that Mr H's trusted device, which is the only one registered to use the account, was logged on at the time of the payment. A CoP was completed during this session and the banking audit logs show the faster payment was made from his account to the account of the merchant. All transactions were recorded against Mr H's banking identity code.

I haven't been able to see some of the data normally associated with internet transactions, including the detailed log showing each individual step during the internet session when the payment was made, but overall, I'm satisfied the payment was authenticated. That's because the data provided by Halifax shows the payment came from Mr H's own device and there's no specific argument that the payment didn't come from his account. It's accepted the transaction was made from Mr H's account and the argument here is that Mr H denies it was him.

13 month / Chargebacks

Halifax initially told Mr H they couldn't challenge the payment due to certain time limits. This was a reference to the Chargeback procedure and only applies to payments made using the card linked to Mr H's account which uses the VISA system. Because this payment was made from bank to bank using the faster payment system, Chargebacks weren't an applicable process that Halifax could have used, even if Mr H was within their time limits. It was unfortunate that Halifax told Mr H this because it wasn't applicable in his situation, but I don't think that it made a material difference here because Halifax then went on to rely on the 13-month rule.

When Halifax completed their own investigation, they told Mr H they weren't able to refund him due to the 13-month rule and there were no exceptional circumstances. Later, in correspondence with our service, Halifax provided details they'd looked at when Mr H told them about the transaction and believed that Mr H was responsible himself for the payment.

So, in effect the 13-month rule has been bypassed by Halifax's own investigation. I'm able to take into account the broader circumstances of the payment and how the 13-month rule impacts the complaint. So here, because there's sufficient information to determine what likely happened and Mr H has an argument that he was dealing with a family emergency, I'm not relying on the 13-month regulation as part of my decision.

Did Mr H consent to the payment?

Mr H denied making the payment to the commercial vehicle provider and confirmed that his phone and banking application were protected by security information and biometrics. So, in order to access the Halifax banking app, the user would need to know the PIN for the phone and the login details for the banking app. As it was biometrically protected, there's little likelihood that someone could replicate these. I can't rule out that someone unknown to Mr H was able to obtain some of these (non-biometric) details, although there's no evidence to support that in this case.

At the time of the disputed transaction, the banking app was used to check the account,

including a successful CoP process that required a check between his bank and the receiving bank to ensure the account details of the merchant name was correct. On several other occasions, the app was used to check the account before other (non-disputed) payments were arranged, in much the same way as what happened when the disputed transaction was made. The repeated pattern of checking the account and arranging payment are indicative of the same user who made both the undisputed and disputed transactions.

There were a number of other logins to the account that followed the disputed transaction. The app was opened, and the account checked on about 12 different occasions in the same month that the disputed transaction took place. I think it's likely here that the disputed transaction would have been apparent to Mr H around the time it was made as it was a relatively large payment. Although I understand he was dealing with a family health issue, the continued use of his account shows he was active on it and I think should probably have noticed the payment earlier.

I've also thought about the payment itself and the circumstances surrounding it. The disputed transaction was to a commercial vehicle supplier (in the UK) for a vehicle purchased by a foreign company. Mr H confirmed he ran a business in V, which is the same country as the company who were buying the vehicle were from. Mr H had also made an earlier purchase for a commercial vehicle in support of his foreign business. He's denied having anything to do with this payment, but I found it somewhat of a coincidence that another company made a purchase for a vehicle in the same country where Mr H operates a business that also requires a commercial vehicle.

At the time, Mr H's account had a healthy balance and the only transaction he's challenged is the purchase of the vehicle. It's unusual for funds to be left in an account if a thief has access to it. Generally, the reason for obtaining someone else's account details is to maximise the available money, which wasn't the case here. It's difficult to see why a thief would pass up the opportunity to take the remaining funds which amounted to many thousands of pounds at the time. I understand Mr H thinks that the single payment is indicative of a Halifax employee being involved but there's no evidence to support that and I don't think it's the explanation here.

I've also thought about Halifax's actions here when the payment was set up. There are circumstances where I'd expect them to make further checks before sending the payment. Here, the payment was for an amount that wasn't particularly unusual when looking at other payments made from the account. I don't think there were sufficient indicators for Halifax to have recognised that this payment was in some way unusual and carry out further checks with Mr H.

I appreciate Mr H thinks he's been called a liar, but that's not the case here. I don't doubt the strength of Mr H's feelings concerning this complaint and I've considered all his submissions. My decision concerns whether it was correct for Halifax to act on the instructions they received via the banking app and whether or not Mr H consented to the transaction.

While I'm sure Mr H will disagree with me, the evidence that I've considered leads me to the conclusion that, on the balance of probabilities, it was more likely than not that Mr H authorised or allowed his banking app to be used to make the payments. So, taking everything into account, I think it is fair and reasonable for Halifax to hold Mr H responsible for both transactions.

I realise that'll be a difficult message for Mr H – but it's what the evidence leads me to conclude when looking at all the circumstances objectively here.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 25 April 2024.

David Perry
Ombudsman