

The complaint

Mr R complains that Bank of Scotland plc trading as Halifax debited £2,500 from one of his accounts when they shouldn't have.

Mr R has used a representative to help with his complaint. But for ease of reading, I'll mostly refer to just Mr R himself.

What happened

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here. In December 2022 Mr R pre-booked a £2,500 cash withdrawal from his Halifax current account.

Mr R says that on 8 December 2022 he attended a branch and completed the withdrawal. He says he was handed notes and given a receipt to evidence the £2,500 withdrawal. Further to this Mr R's letter of complaint says that he counted the money when he got home and found that it was £2,500.

On 9 December 2022 there was a phone call between Halifax and Mr R. Mr R says he was asked how much cash he had withdrawn, and he confirmed it was £2,500. After returning to the UK from a holiday Mr R says he noticed that his Halifax savings account had £2,500 less than he expected.

Halifax say they'd made an error and had actually handed over £5,000 when Mr R attended the branch. So, on 9 December 2022 they'd debited that amount from Mr R's savings account to avoid his current account going overdrawn. Mr R complained, he was adamant he had only received £2,500. Halifax said their only error was handing over too much money and to make up for this they paid £40 compensation to Mr R.

The matter was referred to our service. Whilst one of our Investigators was looking into it, Halifax made an offer to settle the complaint. They offered to refund the additional £2,500 along with 8% simple interest. Our Investigator shared this offer with Mr R who declined it as he wanted further compensation.

Our Investigator then issued his opinion on the complaint. In summary he agreed Halifax should refund the £2,500 plus 8% interest, but he thought that £500 compensation should also be paid. Both Halifax and Mr R disagreed. Mr R thought the compensation was insufficient and Halifax thought it was too much. As agreement couldn't be found, the complaint was passed to me to decide.

In June 2023 I issued a provisional decision in which I said:

"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'm intending to reach a different outcome to that of our Investigator. So, I'm

issuing this provisional decision to give everyone a further opportunity to comment before finalising my decision.

Our Investigator asked Halifax why they'd changed their stance and made the offer to pay £2,500 plus interest – they confirmed that this was a gesture of goodwill and not an admission that they'd only handed over £2,500 on the day in question. Mr R's submissions include that he believes he is due 'huge' compensation from Halifax. He also says he wants all the bank staff to be "put to trial" and that the impact of the situation on him is such that it "cannot be compensated in terms of money".

Firstly, our service can only investigate individual complaints and not crime. And so if Mr R believes a crime has taken place, this is something he should take up with the police. And before I can consider compensation, I must first establish whether there has been an error by Halifax which has caused all the impact Mr R has described.

Both sides agree Mr R attended a branch and made a withdrawal on 8 December 2022 (despite the disagreement over the amount handed over). It is also agreed that there was a phone call the following day between the branch and Mr R, although sadly there isn't a recording of that call available.

I obviously wasn't present when the cash withdrawal was made. And so I can't say with 100% certainty whether Mr R was handed £2,500 as he says, or £5,000 as Halifax claim. So in circumstances like this I have to make my findings on the balance of probability – that being what I think is most likely to have happened, considering all the available evidence.

Certain evidence (such as CCTV) isn't available and so can't be considered. Mr R has made much of this fact. But just because Halifax can't provide CCTV, this doesn't mean it would be fair for me to find against them solely on that basis. And in my experience of other complaints of this nature, CCTV is very rarely conclusive as it doesn't generally show exactly how much was passed between a cashier and a customer.

Halifax's contact notes of the call that took place on 9 December 2022 record that Mr R said he couldn't check the amount as he was at work. It also indicates that Mr R was told that Halifax intended to debit his account (which they did the same day).

When Mr R wrote to our service in January 2023 describing the events of 8 December 2022 he said: "The complainant came home, counted the cash £2,500 and kept it safe..." He goes on to describe his call with Halifax the following day and confirms that he told them he'd only received £2,500. Mr R also says that he only discovered the debit from his savings account when checking after returning from his holiday.

Halifax have explained that branch phone calls aren't always recorded – so the only evidence of what was said during that call is the call note and Mr R's testimony. I'm more persuaded by Halifax's evidence. This is because it was recorded at the time and if Mr R had confirmed he'd only received £2,500 (as he claims) there doesn't seem to be a logical explanation for why Halifax wouldn't have recorded that, rather than recording that he couldn't check as he was at work. I also think it's implausible that during the call Halifax wouldn't have mentioned their intention to debit Mr R's account to correct the situation.

Mr R's testimony is that he counted the cash when he arrived home with it. So at the time of the call he would have presumably known exactly how much he'd received. I don't think it's likely he would have accidentally counted £5,000 as £2,500 given the significant difference between the amounts. I also don't think it's likely the first Mr R knew of the debit was when he returned from his holiday as he says. As on balance I'm more persuaded by the call note which suggests this would have been mentioned at the time.

Mr R's submissions to our service include that when making his withdrawal the cash was counted in front of him and handed to him loose in an envelope. Halifax say that despite Mr R's withdrawal being pre-arranged, they hadn't prepared it. And to facilitate this money was moved from the safe via a cash box to the till. They've explained that the money from the safe had been delivered in a pre-prepared bundle of £5,000 made up of £50 notes. They say this bundle was handed over in error and recorded as being £2,500. Again I'm more persuaded by the evidence from Halifax. They've evidenced that their policy isn't to count sealed bundles taken from the safe, and I'm aware this is common banking practice. So I think it's most likely the money was in a bundle, not loose as Mr R says and that it wasn't counted in front of him.

The impact of all the above is that it causes me to question the reliability of Mr R's testimony as credible evidence. And I've placed less weight on it for that reason. I'm satisfied by the evidence from Halifax that the branch's cash deposits were £2,500 short at the material time. And taking all the evidence into consideration, I think it's most likely that £5,000 in cash was handed to Mr R rather than £2,500.

The terms of Mr R's account with Halifax allow them to correct an error in circumstances like this. And I think this happening from Mr R's savings account to avoid putting his current account overdrawn was reasonable. Given my findings above, I'm intending to conclude that Halifax made an error and handed over too much money. As such I think the £40 compensation that they've already paid for the error is fair. And as, on balance, I'm not persuaded Mr R is at a financial loss as he claims, there isn't a reasonable basis upon which I can direct Halifax that they need to do more to resolve this complaint. This includes compensation for the service Mr R received throughout including when making his complaint to Halifax.

I'm obviously aware that Halifax offered £2,500 plus interest as a gesture of goodwill. It is a matter for Halifax as to whether they still wish to offer this amount to Mr R."

Halifax responded to say they had nothing further to add. Mr R responded with some comments which I'll address below.

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.

In his further submissions to our service, Mr R has repeatedly referred to our service as a 'court'. For the avoidance of doubt, I'd like to make clear that we are an informal dispute resolution service, separate and distinct from a court. And whilst I'll take account of the law (amongst other factors such as guidance, regulations and good industry practice) we don't automatically view a dispute in the same way that a court might. The outcome is based on what I believe to be fair and reasonable in all the circumstances.

Mr R says that he didn't have sufficient funds in his account at the time to withdraw £5,000. I accept that is the case, but the error here is not in how the withdrawal was entered into the system. Both sides agree Mr R requested £2,500 and that his account was initially debited with that amount. The error here is that, on balance, Halifax handed £5,000 to Mr R recording it as only £2,500. The subsequent further debit of his savings account was Halifax correcting the situation.

Mr R has also suggested it's implausible that a pre-arranged cash withdrawal packaged in an envelope with a payment slip would include the wrong amount of cash. But as I've previously mentioned, Halifax accept they'd not prepared the booked withdrawal before Mr R attended the branch. And in either case, human error is still a possibility.

Mr R has questioned my reliance on Halifax's call note. He says this is something that could be fabricated, and he added that the caller from the bank ended the call with him when he said he hadn't withdrawn £5,000. He also believes it should be taken into account that Halifax can't provide a call recording or CCTV evidence. I can assure Mr R I have considered all these factors. But as I explained in my provisional decision, where evidence is incomplete or unavailable, I have to base my decision on what I think is most likely to have happened. I don't think Halifax being unable to provide certain bits of evidence, automatically means I should find against them. And, with respect to Mr R, it is for me to decide how much weight to place on a particular piece of evidence. And whilst I can acknowledge that Mr R sees it differently, for the reasons I've explained above, I'm more persuaded by the evidence from Halifax.

Overall, having considered Mr R's further comments, I'm not persuaded to deviate from the outcome explained in my provisional decision.

My final decision

For the reasons outlined above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 3 August 2023.

Richard Annandale
Ombudsman