

The complaint

Mr F is unhappy that Bank of Scotland plc, trading as Halifax, closed his account and loaded a fraud marker against his name.

What happened

As both parties are familiar with the circumstances of this complaint, I've summarised them briefly below.

Mr F held an account with Halifax. In April 2023, Halifax received two reports from differing sources that Mr F's account was the beneficiary of fraudulent funds.

Halifax decided to close Mr F's account and load an adverse fraud marker against him on the Cifas database.

Mr F complained about Halifax's decision to close his account and load the marker. He told Halifax that prior to the transactions entering his account, he'd lost his bank card and had failed, unintentionally, to report this to Halifax.

Halifax didn't agree it had made an error. It found that it had closed Mr F's account fairly and was satisfied it met the burden of proof set out by Cifas to load the marker.

Mr F, unhappy with this response, referred his complaint to our service for an independent review. An Adjudicator considered the evidence and testimony provided by both parties but didn't find Halifax had made an error. In summary, they agreed that the account was closed fairly and that the Cifas marker had met the relevant burden of proof.

Mr F disagreed with the Adjudicator's assessment and findings. He maintained that he'd lost his card and felt that a third-party could have obtained the relevant details to access his account.

As Mr F disagreed with the Adjudicator's assessment, the matter has now been passed to me for a final 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.

Account closure

Halifax has the right to terminate a relationship with a customer as long as it doesn't breach law or regulations, its decision to do so is in line with the account's terms and conditions, and is done so in a fair and reasonable way.

Halifax had received two unlinked reports from two reliable sources that Mr F's account was being used to receive fraudulent funds. This, on its own, is enough to close an account. A customer that has received illegitimate funds into their account, wittingly or not, presents a

significant risk to the bank in potentially allowing it to continue operating fraudulently.

I've also referred to the terms and conditions of the account, and the relevant section (M) on closure sets out:

'We can end this agreement (or account, benefit or benefits package or service) without telling you in advance if we reasonably think that:

- *there is or may be illegal or fraudulent activity connected to the account;'*

Having looked at Halifax's system notes, I can see that it provided Mr F with 60 days' notice of closure despite it being within its right to close it with immediate effect. This gave Mr F advanced notice to allow him to find alternative banking facilities with minimal disruption. Therefore, I don't find Halifax acted unreasonably here when closing Mr F's account.

Cifas loading

One of the relevant considerations here are set out by Cifas: the fraud marker database controller. In its Handbook—which members must adhere to when loading markers—it sets out the burden of proof the member must meet. The relevant standards applicable to this complaint are:

- That there are reasonable grounds to believe that a fraud or financial crime has been committed or attempted.
- That the evidence must be clear, relevant and rigorous.

These standards mean that Halifax must have more than mere suspicion when loading a marker against a person's name. It must have strong evidence to support that a financial crime has been committed or attempted and that the person to whom they are loading the marker against is more than likely to have had witting involvement.

I'm satisfied that the first standard has been met here. While I'm unable to share the specifics of any fraud report our service has seen, it is clear that two independent reports were received by Halifax demonstrating that multiple payments had been made to Mr F's account which were paid as a result of fraud. Therefore, I'm satisfied that Halifax had reasonable grounds to believe a fraud or financial crime had been committed.

Turning to the second standard, Mr F has said throughout that he was unaware of the funds that entered his account and wasn't responsible for their withdrawal. He's surmised that a third-party likely stole his bank card and used it without his knowledge or consent. But having considered the evidence carefully, I don't find this to be a likely scenario.

Mr F has been certain in testimony that no one knew the PIN to his bank card. Yet, a likely opportunistic thief managed to successfully use the genuine PIN on his card without any failed attempts. There is no persuasive evidence to explain how this third-party would have obtained Mr F's PIN, and the probability of a person guessing a four-digit PIN on a first attempt is extremely low.

Even if I were to accept the possibility of Mr F being observed entering his PIN, or that the thief managed to guess his PIN, there are other factors in this complaint that persuade me Mr F was at the very least aware of the transactions that had been made.

All of the fraudulent transactions that entered Mr F's account occurred on 3 April 2023. Halifax has provided online banking logs for this day which clearly show multiple logins—over 20—between 11:58 and 20:40. While a third-party may have had access to Mr F's bank

card, there is no logical explanation as to how they would have accessed Mr F's online banking considering the amount of security protocols they would have to bypass.

As it's likely these logins can be attributed to Mr F, it's likely he would have seen the fraudulent transactions entering the account and being withdrawn via ATMs and card payments. Yet he didn't report either his card being lost or the transactions he says he didn't carry out until Halifax decided to close his account several weeks after Mr F says the loss occurred.

Finally, Halifax has pointed out that prior to the fraudulent transactions entering Mr F's account, he cleared it to a zero balance. Mr F has told our service that he'd done this due to being accused by Halifax in 2020 of committing fraud, and he subsequently lost trust in the bank. But if this were the case, I fail to understand why Mr F had waited until circa three years later to remove his money from the account. And I find it unlikely to be coincidental that he happened to decide to do this prior to the receipt of funds that derived from fraud.

All of the above factors I've considered would indicate a high probability that Mr F was aware of the fraudulent funds entering his account and being spent.

I'd like to assure Mr F that I am by no means accusing him of being involved in the fraudulent activity associated with his account. My assessment is based upon whether Halifax had sufficient information and evidence to support the loading it placed on the Cifas database, taking into consideration the relevant burdens of proof. And for all the reasons I've given above, I find that it did.

My final decision

For the reasons I've provided above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 14 August 2023.

Stephen Westlake
Ombudsman