

## **The complaint**

The estate of Mrs S complains that Bank of Scotland plc trading as Halifax ("Halifax") allowed unauthorised access to Mrs S account resulting in a loss of funds.

## **What happened**

Mrs S sadly passed away in late 2022 and held accounts with Halifax. Prior to her passing, Mrs S lived with her daughter who is not part of this complaint.

Arrangements were made at the time for Mrs S's daughter to be a signatory on the account to assist with Mrs S's finances. Records show that she was added to Mrs S's account in 2015 with further changes to the account in 2016 – Halifax have stated this is to become a joint account holder. Between 2015 and her passing, numerous payments left the account which have been questioned by the estate's executors.

In 2021 Mrs S was formally diagnosed with a condition that meant she could no longer make her own decisions. Halifax have no record of being advised of this until after Mrs S passed away.

The estate's executors believe that Mrs S's daughter wasn't a proper signatory and shouldn't have been allowed to use the account. They've calculated that approximately £100,000 is missing from Mrs S's account.

The estate of Mrs S approached Halifax to question what had happened and over several months. Various updates were given to the executors, some of which Halifax later confirmed were incorrect and misleading. Halifax offered the estate £350 for the misleading information given to them. Halifax maintained that the account holders were operating with the appropriate authority and declined to make any refund based on the claims by the estate.

The estate of Mrs S then brought their complaint to the Financial Ombudsman Service for an independent review. An investigator was assigned to look into the matter and requested information from all parties.

The estate of Mrs S provided copies of statements and other documentation. They believed that Mrs S's daughter shouldn't have been allowed to operate the account and as Mrs S had difficulty with English, they didn't think that Halifax had provided sufficient assistance to ensure that Mrs S understood what was happening with her account. Other matters concerning various updates given to them by Halifax were raised regarding record keeping and access to account paperwork.

Halifax provided account details including electronic records of changes to the account. Much of the paperwork had already been destroyed by Halifax based on their normal retention policies, so they were unable to provide all of the account paperwork.

Halifax provided a letter written by Mrs S's daughter explaining the circumstances of the arrangement she had with her mother. At the time of the letter, her daughter had become the sole account holder and was entitled to the remaining funds in the account. In her letter, she

gave authority for the remaining balance to be transferred to the estate of Mrs S for their administration based on Mrs S's wishes.

After considering the evidence provided by both parties, the investigator didn't recommend the complaint be upheld. He believed that Halifax hadn't made any errors with the operation of the account.

The estate of Mrs S disagreed and continued to believe that Halifax had incorrectly administered the account, leading to the loss of funds. The estate of Mrs S advised they'd been told by Halifax in a recent call that mandate paperwork had been found, but not provided. They also confirmed that the account was to be renamed, enabling the estate's executors to access the remaining funds.

As no agreement could be reached, the complaint has now been passed to me for a decision.

Because the estate stated they'd been told that mandate paperwork existed, I asked Halifax to provide all their available paperwork associated with account authorities/mandates. They recently replied that they no longer had any paperwork available.

### **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.

I was sorry to hear of the passing of Mrs S. Having to bring a complaint following the death of a close family member is no doubt additionally stressful, so I recognise the extra burden placed on the executors. The complaint made by the estate of Mrs S is that a family member who was using the account didn't have appropriate authority to do so. Essentially, this complaint revolves around whether Halifax had the appropriate authority to allow the named person to operate the account. If not, then all the transactions carried out by them would likely be unauthorised. On the other hand, if Mrs S had given authority for her family member to use the account, then it's likely that all the transactions were authorised.

I've not been able to view all the evidence from this complaint due to some of the documents having been destroyed following Halifax's normal retention policy. Also, not all of the parties are present in this complaint, so to a degree, I've not had all sides of the story apart from a response made to Halifax by the former account holder. Also, the original account holder, Mrs S, has sadly passed away, so I've had to rely on the evidence available to me.

Where there's a dispute about what happened, and the evidence is incomplete or contradictory, I must reach 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.

My focus regarding this complaint is on what I think the key issues are as our rules allow me to do this and it reflects the nature of our service as an informal alternative to the courts. So, if there's something I've not mentioned, it isn't because I've ignored it, it's because I'm satisfied that I don't need to comment on every individual argument to be able to reach what I think is the right outcome.

The former joint account holder has written to Halifax and in her response to various questions, explained that Mrs S was living with her and over the years became more dependent, including with the operation of the account. Under such circumstances, it's not surprising that a close family member would become more involved with the finances of an elderly relative, particularly one who was living with them.

Halifax's records do show the addition of Mrs S's daughter to the account in 2015, followed

by another entry in 2016 that indicates the account was “redesignated”. Halifax have stated that Mrs S and her daughter were joint account holders and the entries in the file can be interpreted that way. Once added to the account as a joint holder, Mrs S’s daughter would have the same rights to use it as Mrs S. From the evidence, I’m satisfied that Mrs S added her daughter to the account, giving her equal access to the funds and their use.

The estate has also raised questions regarding the ability of Mrs S to understand what was happening, due first to her lack of understanding of English and later in regard to her capacity to make decision due to her ill health. There’s no evidence to suggest Mrs S required additional help with her account from Halifax. Whilst I don’t doubt what the estate’s executors have said about Mrs S’s understanding of the English language, I think it’s reasonable to conclude that throughout the operation of the account, Mrs S had assistance from either her husband or other family members. Without specific evidence to the contrary, I can’t conclude Halifax failed to administer the account and provide the appropriate assistance to Mrs S.

Regarding the lack of capacity experienced by Mrs S towards the end of her life, I’m not aware that Halifax knew about this until after her passing. I can’t hold them responsible for something they weren’t told about or couldn’t have reasonably concluded themselves. It’s doubtful that Mrs S was doing any of her banking at that point, so I don’t think there was an opportunity for Halifax to find this out and as it was a joint account, there was no obvious reason to question its operation.

I understand that Halifax have accepted they provided inconsistent information to the estate of Mrs S, which confused the situation and no doubt added to the stress felt by the executors. Halifax offered £350 for this level of service, and I think this is a reasonable way for them to address the situation. I won’t be asking them to do anything further.

Overall, I’m afraid that I won’t be upholding this complaint because there’s no evidence to suggest that the additional account holder was added improperly. Mrs S changed the account’s management whilst she had capacity and from then on, its use as a joint account gave the second account holder authority to manage it. I’m satisfied the disputed transactions were appropriately authorised.

### **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 the estate of Mrs S to accept or reject my decision before 30 October 2023.

David Perry  
**Ombudsman**