DRN-4307338

The complaint

The estate of the Late Mr M has complained that Bank of Scotland plc (trading as Halifax) won't refund unauthorised transactions on the Late Mr M's account.

What happened

Following Mr M's passing in April 2022, the estate of Mr M contacted Halifax to explain that Mr M had been in receipt of an inheritance from their father's estate in January 2021. The estate of Mr M advised Halifax that Mr M was disabled and that every ATM withdrawal since receipt of the inheritance was made fraudulently by Mr M's friends. The estate of Mr M believes Mr M was taken advantage of. The value of the disputed ATM withdrawals totals £130,565.

The estate of Mr M says the matter was reported to the police whilst Mr M was still alive which they say he wasn't happy about. Since Mr M's passing, the estate of Mr M says further matters have been reported to the police. The estate of Mr M complained to Halifax about this.

Halifax declined the estate of Mr M's claim. It reviewed Mr M's account spend and didn't find that the activity changed since the inheritance. It also noted that there was no evidence to show that Mr M was unable to manage his finances. It noted Mr M advised it that he was physically disabled but there was no evidence that he was taken advantage of or vulnerable. As the estate of Mr M wasn't happy with Halifax's decision, they asked this service to investigate.

One of our Investigators reviewed the complaint and decided not to uphold it. He was unable to conclude that the disputed transactions were made fraudulently and he was satisfied the transactions were authorised and Halifax was entitled to hold Mr M liable under apparent authority. He also thought the transactions were in keeping with the normal account activity. But he felt Halifax should refund the transactions that were made after Mr M's passing. Halifax accepted our investigator's findings but the estate of Mr M did not. They asked for an Ombudsman to consider the complaint.

The estate of Mr M provided further evidence that they attended Mr M's flat after his passing and found one of his former friend's squatting there. They contacted the police and provided the police's notes. The notes say in summary; officers attended the property and escorted the former friend back home. The former friend was also in possession of Mr M's bank card and this was handed to the police.

The complaint has therefore been passed to me for determination.

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.

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.
My task is firstly to determine whether the transactions were authorised (which I will go on to explain) and then whether there were any signs of financial abuse or fraud. My review of the evidence has led me to the same overall conclusions as those reached by our investigator for broadly the same reasons.

In broad terms, the starting position in law is that the bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations 2017 and the terms and conditions of the customer's account. And I have taken that into account when deciding what is fair and reasonable in this case.
The Payment Services Regulations also require banks to refund any payments which a customer didn't authorise. So, when we look at whether a bank has acted fairly in rejecting someone's fraud complaint, one of the things we consider is whether the customer made the transactions themselves or allowed them to be made. If they did, then we wouldn't generally ask a bank to refund them.

But the regulations aren't the only consideration.

Regulated firms like Halifax are also required to conduct their 'business with due skill, care and diligence' (FCA Principle for Businesses 2) and to 'pay due regard to the interests of its customers' (Principle 6).

And as a matter of good industry practice at the time, I consider firms should have also taken proactive steps to:

- Have been monitoring accounts—and any payments made or received—to counter various risks, including anti-money-laundering, countering the financing of terrorism, and preventing fraud and scams;
- Have had systems in place to look out for unusual transactions or other signs that might indicate its customers were at risk of fraud (amongst other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer; and
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

To help me decide what happened, I've looked at the evidence of the transactions, as well as what both Halifax and the estate of Mr M have told us. I've also looked at how Mr M used his account prior to his passing.

ATM cash withdrawals

In short, Halifax is required to refund the amount of an unauthorised transaction under the regulations. But the bank can hold the estate liable for any disputed transactions if the evidence suggests that it's more likely than not that Mr M made or authorised them himself. So, my primary concern is to decide whether or not I think Mr M authorised the ATM cash withdrawals.

The disputed cash withdrawals started in January 2021. There were multiple cash withdrawals on mostly a daily basis ranging from £100 to £300 at a time. But most of the time, the individual cash withdrawals were £250 at a time and these would often be on more than one occasion on any given day.

From listening to a call between Mr M and Halifax on 31 August 2021, I understand he gave his card to his friend to withdraw cash for him. I've also noted a subsequent intervention on 2 September 2021 where Mr M had attempted to withdraw £1,900 at a branch and Halifax stopped the payment for extra checks. Halifax's notes indicate that the branch colleagues questioned Mr M around what the funds were needed for. He initially stated it was for food, however when pressed further by the branch colleague, he admitted the true purpose of the payments, which I'm sure unsurprisingly to the estate of Mr M was for drugs. He also confirmed this was the reason he was withdrawing cash every day.

Under the regulations, if Mr M allowed his friend to use his card then he is treated as having given authority or 'apparent authority' to him to make transactions with it. And I'm persuaded that Mr M either made the transactions himself, or authorised his friend to make them on his behalf. I can appreciate the estate of Mr M's concerns about Mr M's hospitalisation shortly before his passing where they said transactions were carried out that couldn't have been Mr M. However, Halifax can hold him (the estate) liable for the transactions, even if he didn't ask his friend to make the cash withdrawals or didn't know about them.

Halifax is entitled, therefore, to refuse to a refund of the disputed cash withdrawals on the basis that they were authorised by Mr M.

Should Halifax have done more to protect Mr M?

If there were obvious signs of financial abuse or fraud which Halifax failed to act on, then I may consider whether it's fair and reasonable for it to refund some or all of the disputed transactions.

I've seen Halifax's records dated 31 August 2021 that it was aware of Mr M's physical disability. Whilst Halifax was aware of Mr M's physical disability part way through the period of disputed transactions, I don't see that there are any records indicating Mr M was incapable of managing his finances. I also don't think it would have been fair or reasonable for Halifax to assume Mr M was vulnerable for the sole reason of his physical disability. So I don't think it should have automatically blocked Mr M's transactions after being notified of Mr M's disability.

Having reviewed Mr M's account activity prior to the period of disputed transactions (from November 2019), I've noted that when he received credits into his account, he'd withdraw cash from an ATM on almost a daily basis and often, multiple times a day. So when he received his inheritance in January 2021, I'm satisfied the pattern of transactions matched his prior activity, just on a larger scale as he had more funds available for withdrawal. I therefore don't think that Halifax should have been concerned that Mr M was at risk of financial harm nor do I think it should have been concerned of potential fraud.

But nevertheless, I've noted that Halifax questioned Mr M's cash withdrawals further in branch on 2 September 2021. Here, Mr M disclosed to Halifax the reason for his branch withdrawal request and daily cash withdrawals.

Even though the reasons for the cash withdrawals was concerning for Mr M's wellbeing, I think the evidence shows that Mr M was aware of the cash withdrawals along with the purpose of them.

There's also no evidence Mr M didn't benefit from the cash withdrawals, even if I accept the purpose of them were of concern for his wellbeing. And whilst I've noted the estate of Mr M contacted the police to remove the friend from Mr M's property after his passing, I also can't rule out the possibility that he also wanted to give some money to his friend.

I’m pleased Halifax has agreed to refund the disputed payments debited from Mr M’s account after his passing, this amounts to £4,135. Halifax will also apply 8% interest to this amount. I think this is fair in the circumstances. So, I won’t be asking Halifax to do anything further.

I recognise this will be disappointing news for the estate of Mr M. I’ve no doubt this has been a painful and distressing experience.

My final decision

Bank of Scotland plc (trading as Halifax) has already made an offer to pay £4,135 plus 8% interest to settle the complaint and I think this offer is fair in all the circumstances of this complaint.

So, my decision is Bank of Scotland plc (trading as Halifax) should pay the estate of Mr M £4,135 plus 8% simple interest, per year, from the dates of the respective transactions to the date of settlement.

Under the rules of the Financial Ombudsman Service, I’m required to ask the estate of Mr M to accept or reject my decision before 15 January 2024.

Dolores Njemanze
Ombudsman