

The complaint

Ms D complained because Bank of Scotland plc, trading as Halifax, refused to refund her for gambling transactions which she said she didn't authorise.

What happened

In July 2023, Ms D contacted Halifax. She said that she hadn't authorised any of the many gambling transactions on her account, going back to 2019. Ms D wanted a refund.

Halifax provided some temporary refunds while it investigated with the gambling companies and tried to get a refund for Ms D.

On 15 August, Halifax sent Ms D its final response to her complaint. It explained that the gambling companies had provided evidence showing that the payments hadn't been completed fraudulently. It said this meant that Ms D wasn't entitled to the temporary refunds it had provided. But Ms D had closed her Halifax account before the bank could re-debit the temporary credits.

Halifax said that as it couldn't re-debit Ms D's account, it wouldn't pursue her for the refunds to which she wasn't entitled. But it said that it wouldn't refund any of the other gambling transactions which Ms D had said she hadn't made. Halifax pointed out that Ms D accessed internet banking regularly, so she'd have seen these disputed payments then, but hadn't disputed them at the time. Halifax didn't accept that these transactions had been made by any unknown third party fraudster who'd obtained Ms D's debit card details.

Ms D wasn't satisfied and contacted this service. She said that someone had set up gambling accounts in her name and had taken money out of her Halifax account for that.

Our investigator didn't uphold Ms D's complaint. He said Halifax had done nothing wrong in allowing the payments to be processed, and he couldn't reasonably expect Halifax to refund Ms D.

Ms D didn't agree. She said it was someone else, not she, who had made the disputed transactions. She agreed that she'd logged onto her online banking, but said that had just been to check her balance, and not to check what was going in and out. She said she'd only found out when she wanted to order something from a shop, and her card had been declined, and she didn't know how much had been taken or when.

Ms D asked for an ombudsman's 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.

There are regulations which govern disputed transactions, and the relevant regulations here are the Payment Services Regulations 2017. In general terms, the bank is liable if the

customer didn't authorise the payments, and the customer is liable if they did authorise them. So I've considered whether it's more likely than not that Ms D authorised the gambling transactions herself.

I've seen the information provided to Halifax by the gambling companies. This information matches Ms D's personal details. Ms D said that someone else had set up the gambling accounts in her name and had taken money out of her Halifax account. But she hasn't explained how she thinks this can have happened. She hadn't reported her card lost or stolen, and I've seen nothing to indicate that she told Halifax, or this service, how her personal information might have been obtained by a third party.

And the transactions took place over a long period, with some of them four years before Ms D reported them. Under the Payment Services Regulations, a customer must tell the payment service provider (here, Halifax) about any dispute without undue delay, and in any event no later than 13 months after the debit date. So Halifax doesn't have to consider any of the transactions which Ms D reported more than 13 months after they took place.

But Ms D's delay in reporting the disputed transactions also makes her version less convincing. I've seen the record of her online banking log-ons. And I'm not persuaded by her argument that she only logged on to see her balance, and didn't notice any of the disputed transactions. Even if she'd initially logged on to see her balance, I think the number and amount of the transactions would have been immediately apparent. This is especially because the account balance was generally low, so the transactions would have been more obvious.

I've also seen that the IP address, a unique computer identifier, for transactions was the same as one which Ms D used most frequently for undisputed transactions.

Also, some gambling winnings were paid into Ms D's account by the gambling companies. I can't see why any third party fraudster would have arranged for winnings to have been paid into Ms D's account rather than their own.

Taking all these factors into account, I find that it's more likely than not that Ms D carried out the disputed transactions herself. So Halifax doesn't have to refund her.

Finally, Ms D said that when she spoke to the complaints manager at Halifax, he said that she didn't have to pay back the money which it refunded for some of the disputed transactions. She said that if Halifax thought she'd made the payments, why didn't it say she had to pay the money back.

But this argument doesn't persuade me that it was a fraudster and not Ms D who made the payments. Nor does it mean that Halifax believed they'd been made by a fraudster. Ms D had closed her account while there was still a temporary credit for some of the disputed payments, so it wasn't straightforward for Halifax to reclaim the money to which Ms D wasn't entitled. Halifax was entitled to take a business decision about whether or not to pursue Ms D for the money she owed it. Ms D was fortunate that Halifax decided not to pursue this money, but Halifax's decision doesn't alter the outcome of the complaint.

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 Ms D to accept or reject my decision before 30 October 2023.

Belinda Knight
Ombudsman