

The complaint

Mr N is unhappy that Bank of Scotland trading as Halifax (“Halifax”) won’t refund the money he sent to a third party.

What happened

The details of this complaint are well known to both parties, so I won’t repeat them again here. The facts are not in dispute, so I’ll focus on giving the reasons for my 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.

Having done so, I can see no basis on which I can fairly require Halifax to refund the money Mr N paid. I can appreciate this is not the outcome Mr N was hoping for, so I will explain why.

For the reasons the investigator explained, the CRM Code does not apply in this case. It is also the case that the payments were made under coercion or duress by blackmail. So, whilst Mr N was tricked into sharing sensitive images of himself – he was not tricked or deceived into making the payments themselves. Because Mr N made the payments under duress and not under *deception* – is a further reason meaning he would be ineligible for the protection the CRM Code can provide.

I’m satisfied these disputed payments were all authorised by Mr N. Indeed, he says he knowingly made the payments because of a threat of blackmail against him.

In broad terms, the starting position at law is that a firm is expected to process payments and withdrawals that a customer authorises using their payment tools, in accordance with the Payment Services Regulations and the terms and conditions of the customer’s account. This means that Mr N is presumed responsible for the card payments in the first instance.

This means that unless there was a breach or failing by Halifax that ought to shift liability, Mr N cannot claim that the bank ought to reimburse his loss.

However, based on relevant regulations and various principles of good practice, there are certain circumstances where I would expect a bank, such as Halifax, to intervene with a consumer’s payment instruction(s). Should the situation warrant it, Halifax could be held accountable for Mr N’s loss if it failed to identify and act upon transactions that were unusual or uncharacteristic enough compared to the account’s typical account activity.

In this case, I need to decide whether Halifax acted fairly and reasonably in its dealings with Mr N when it processed the card payments or whether it should have done more than it did. Mr N says Halifax should have had a closer look at the circumstances surrounding the payments – especially as they were mainly funded by a loan he also took out with Halifax.

It's only fair for Halifax to cover the loss incurred if it can reasonably be concluded that such an intervention would have resulted in Mr N cancelling the payments. So, I've first thought about whether the payments Mr N made were out of character and unusual enough so that Halifax ought to have challenged them, and, if it had done so, whether it would have made a difference to what happened.

I am not entirely convinced that the succession of payments Mr N complains about exhibited particularly concerning or irregular account behaviour – certainly to start with. There is a delicate balance to be struck. There are many millions of card payments made each day and it would not be possible or reasonable to expect a bank to check each one. Mr N's bank statements in the months leading up to the disputed payment confirm that making card payments to a money remittance service wasn't something he typically did. But the largest payment he made was £2,701 and the payments were spread out. It's not uncommon for someone to make a large payment for a specific purpose and on the face of it, there's nothing unusual about these payment amounts in and of themselves, even though I appreciate the amount was more than Mr N usually spends and I recognise it's not an insignificant amount of money to Mr N.

Mr N had funds available each time and I consider the individual transactions were unremarkable in and amongst Mr N's spending. It's possible towards the end of the succession of payments the account does appear to become drained – so Halifax might reasonably have been expected to step in. So, I have gone to think about whether intervention could reasonably have made a difference here.

I'm required to make this decision based on the balance of probabilities; that is, what I find more likely than not to have happened. I've carefully considered all of the available evidence, paying particular attention to what we know about Mr N's state of affairs when making the payments, together with the behaviour he demonstrated both before and after these transactions left his Halifax account.

It is difficult to say that intervention would have made a difference. Mr N knew he was being blackmailed and it was quite some time before he was able to disclose the matter to his father. Mr N had applied for a loan with Halifax to fund these payments – but when asked about the purpose of the loan he said it was to pay debts. So, there is enough doubt in my mind that Mr N would not have been open and honest with Halifax about the true purpose for the payments – especially as he was in fear of the images being forwarded to family and work colleagues.

Finally, Mr N has submitted that Halifax should've paid greater attention to his account movements in light of his mental health. However, as I understand it, Halifax was not aware of Mr N's condition, nor his mental wellbeing at the material time. To that end, I cannot fairly factor this into the bank's decision making.

Mr N has my sympathies. But overall, I'm not satisfied that there has been a bank error in this case. This is not to say that Mr N hasn't been a victim of this awful crime - just simply that I don't think I can hold the bank accountable in this case. I am sorry to have to deliver this news to Mr N. I do understand why he feels so strongly about this complaint. He was cruelly deceived by someone into sharing sensitive images of himself. But my role as an Ombudsman is limited to determining whether Halifax bears any responsibility for Mr N's financial loss.

Everything considered, I cannot fairly and reasonably hold Halifax liable in these circumstances. It follows that I will not be asking it to take any further action.

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 Mr N to accept or reject my decision before 14 December 2023.

Kathryn Milne
Ombudsman