

The complaint

Miss F complains that Bank of Scotland plc, trading as Halifax, won't refund a number of transactions on her account which she says she didn't make.

What happened

In December 2022, three cash withdrawals were made from Miss F's Halifax account – but Miss F says it wasn't her who made them. She says she realised she didn't have her card anymore the morning after the withdrawals were made. She then checked her account, saw the withdrawals and called Halifax to report them as fraud and ask it to refund the money she had lost.

Halifax investigated but, as Miss F had said she hadn't written down or told anyone else her PIN, it said there was no way for anyone else to have made the withdrawals without her authority. It thought the withdrawals were likely done by someone Miss F knew and had given authority to, so it didn't agree to refund them. Miss F wasn't satisfied with Halifax's response, so referred a complaint to our service.

One of our investigators looked at the complaint. They couldn't see how an unknown fraudster would have known Miss F's PIN, and they didn't think the pattern of withdrawals matched what we'd expect from fraud. So they didn't think Halifax should have to refund the withdrawals. Miss F disagreed with our investigator, so the complaint has been passed to me.

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.

Generally, a business can hold a customer liable for disputed transactions on their account if the evidence suggests it's more likely than not that the customer made the payments themselves, or told someone else they could make them.

Halifax has sent us technical evidence which shows that the withdrawals were made using Miss F's genuine card and correct PIN. But this on its own isn't enough to allow Halifax to hold Miss F responsible for them. So I also need to think about whether the evidence suggests it's more likely than not that Miss F consented to the withdrawals.

I've thought very carefully about this and I think it's a finely balanced matter in this case. But where the evidence available is unclear or inconclusive, I must make my decision on what I think is likely to have happened, based on the evidence I do have.

I appreciate that Miss F says she was at home when all the withdrawals were made, and that she has seen CCTV footage which shows her returning home before the withdrawals were made and two of the withdrawals being made by people who don't fit her physical description. But it is still possible for her to have consented to the withdrawals, even if she didn't physically make them herself – for example, by allowing someone else to make them.

Halifax's evidence shows that the withdrawals were all made using Miss F's correct PIN, entered correctly at the first attempt. And Miss F says she's never told anyone else her PIN or written it down anywhere. But if this is the case, I can't see how anyone other than Miss F would have been able to make the payments. In order for someone else to have made the payments, they would have needed to correctly guess her PIN, at the first attempt – which I think is unlikely.

Miss F has suggested the fraudster could have seen her enter her PIN to unlock her mobile phone, or seen her enter her PIN when she withdrew cash from a different account earlier that evening, as these PINs are similar to the PIN for her Halifax card. But even if this was the case, I'd expect there to have been at least one incorrect PIN attempt as the fraudster worked out the difference between the other PINs and the Halifax PIN. But Halifax's evidence shows the PIN was entered correctly at the first attempt. So the fraudster would have had to see Miss F enter one of the other PINs, and correctly guess exactly how the Halifax PIN was different from it first time – which I also think is unlikely.

The nature of these payments is also not the sort of thing I'd typically expect an opportunistic thief to do after gaining access to someone's account. Generally, the way fraudsters operate is to get as much money as quickly as possible in order to avoid the source of the money being cut-off or them being detected. But here, three withdrawals are made a number of hours apart, Miss F's full available balance isn't used up and no further withdrawals are attempted afterwards. So I don't think it's likely these withdrawals were done by an opportunistic thief.

I appreciate how Miss F Feels about this case, but I'm afraid the evidence isn't in her favour. I don't think the evidence suggests the withdrawals were made by an unknown third-party. And, based on the evidence I have and in the absence of any other likely explanation, I think it's likely she either made the payments herself or allowed someone else to do so. So I don't think Halifax needs to refund the withdrawals to her.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss F to accept or reject my decision before 12 October 2023.

Alan Millward

Ombudsman