

The complaint

Mr S and Mrs S, on behalf of the estate of Mr E, complain that Bank of Scotland plc trading as Halifax acted negligently in allowing several payments to be made from Mr E's savings account.

What happened

The details of this complaint are well known to both parties, so I won't repeat them all again here. Instead, I'll summarise the key points, and focus on giving reasons for my decision:

Mr E held a savings account with Halifax. In early 2021, he was hospitalised following a fall. I understand he required support from his family when he was discharged. To that end, his niece – Mrs S – got power of attorney for Mr E in late 2021.

On reviewing Mr E's finances, Mrs S discovered a number of withdrawals had been made from his savings account in the months following his hospitalisation. I understand Mr E had been visiting his Halifax branch, accompanied by a family member (D), to make these payments – as detailed below:

Date	Amount	Details
02/03/2021	£50	Payment to D's daughter
02/03/2021	£80	Payment to D
11/03/2021	£800	Payment to D
11/03/2021	£100	Payment to D's daughter
15/03/2021	£800	Payment to D
15/03/2021	£100	Payment to D's daughter
22/04/2021	£100	Cash withdrawal
22/04/2021	£500	Payment to D
22/04/2021	£100	Payment to D's daughter
13/05/2021	£100	Cash withdrawal
13/05/2021	£2,400	Payment to D
13/05/2021	£1,000	Payment to D's daughter
03/06/2021	£100	Cash withdrawal
03/06/2021	£400	Payment to D
03/06/2021	£100	Payment to D's daughter
Total loss	£6,730	

Mrs S complained to Halifax on Mr E's behalf, who I understand she thinks was coerced by D, that it should have done more to protect him. She said he'd never visited the branch with anyone before, and the amounts withdrawn were unusual for him. Mr E was suffering with his health, including mobility and cognitive issues, and Halifax failed to safeguard him.

Halifax said the payments hadn't appeared suspicious. And it wasn't uncommon for elderly customers to attend branch with a family member – noting this had occurred when Mr E was recovering from a fall. So it didn't agree it had cause for concern.

Unhappy with this response, Mrs S referred the matter to our service. Sadly, Mr E died a few months later. The executor of his estate (Mr S) has provided his consent for us to consider his complaint, with Mrs S acting as a representative.

Our investigator didn't uphold the complaint. She said it was agreed that Mr E made the payments, and she wasn't sure the circumstances amounted to fraud by the family member. Even if it did, she wasn't persuaded Halifax ought to have realised Mr E was at risk at the time. So she didn't think Halifax was liable for the loss.

The estate has appealed the investigator's outcome. Mr S says he is of the opinion that Mr E didn't understand that funds were leaving his account. And the family member would have known Mr E wouldn't remember why he was in the branch. He also said they'd been told Mr E's signature appeared shaky on the payment slips.

The investigator wasn't able to view Mr E's signature on these slips, although there are records that Halifax checked this when Mrs S first complained. Nor could she get evidence of Mr E's 'usual' signature for comparison. She explained to the estate why the points raised didn't affect her conclusions. As no agreement was reached, the case has been passed to me to decide.

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'm mindful this is an emotive complaint, involving someone who was clearly vulnerable and who Mrs S was seeking to protect. I'm really sorry to hear what's happened, and I appreciate how difficult this will have been for the parties involved.

My role here is to look at whether Halifax made any errors which caused Mr E to lose out. Where information is contradictory or incomplete, I must decide what's more likely to have happened on the balance of probabilities.

Having carefully considered this complaint, I do ultimately agree with the conclusions reached by the investigator. I'm not persuaded Halifax should fairly be held liable for these transactions. I'll explain why.

I agree it's clear that Mr E authorised the payments. I appreciate Mr S's concerns about whether Mr E understood what he was doing – as I'll come on to address below. But in line with the Payment Services Regulations 2017 (PSRs), authorisation depends on whether the payment transactions were authenticated correctly – and whether the account holder consented to them.

The PSRs state how consent must be given. It occurs when the account holder, or someone acting on their behalf, completes the agreed steps to make a payment. There is no consideration of 'informed consent' under the regulations.

In this case, it doesn't seem to be in dispute that Mr E used his payment details to make the payments in branch. Such as by signing the forms to consent to the payments. And by using his card and PIN to complete the withdrawals. So, to that end, the payments were authorised.

The PSRs also make clear that banks have a duty to execute authorised payment instructions without undue delay. So the starting position is that it was correct for Halifax to complete these payments in line with Mr E's authorised requests.

There are some situations where we might expect a bank to question the account holder about the circumstances of the payment before processing it. That generally comes into effect when the account holder is at risk of financial harm from fraud – and that risk is, or should be, apparent to the bank. Such as when a requested payment is significantly out of keeping with the usual account activity, or otherwise indicative of fraud.

I agree with our investigator that it's not particularly clear whether this situation amounts to fraud. I don't have enough to show D deceived Mr E into making these payments; I understand D had a different explanation. While I appreciate the estate's concern and scepticism about this, it's difficult to now establish what may have been understood and agreed between D and Mr E at the time.

Mr S and Mrs S think it should have been apparent to Halifax that Mr E was vulnerable and at risk. I can't know for sure how he presented in branch. I have to decide what's more likely.

I'd also point out that I wouldn't consider it reasonable for a bank to decline payments outright simply because they thought a customer was vulnerable. But if they had concerns the customer was at risk from harm because of their vulnerability, in relation to the specific payments being made, it might be appropriate for them to look into the circumstances further.

Halifax has explained it isn't uncommon for elderly customers to visit branch with a family member, as Mr E did. I consider that reasonable. Particularly considering that, as the estate has told us, he was struggling with his mobility at the time. So I don't agree that Halifax ought to have been concerned that Mr E was at risk or being coerced by the family member due to them coming into branch with him.

Nor do I think the pattern of the payments was so concerning that Halifax should have suspected fraud. I appreciate they came to a significant amount, but I don't think the individual payments looked particularly suspicious. They were spread out and didn't drain the account. Although there were sometimes multiple payments on the same day, that in itself won't reasonably have caused concern – particularly as the payments were going to different payees.

As Mr E was requesting the payments in branch, the bank wouldn't have had concerns over who was authorising them. The estate has also told us that the family member accompanying Mr E stood back when he went to the counter. I agree with the investigator that this likely made it appear to Halifax that Mr E was in control. It presented an opportunity for him to give a reason for the payments directly without input from D. He may well have been asked, and told Halifax, the reason for the payments. If he said he was transferring money to his family – as he was – I don't think that would have seemed particularly concerning, bearing in mind the bank's duty to act on payment instructions.

On the available evidence, I don't think there is enough to support that Halifax should have been aware, based on the payments made and how Mr E presented in branch, that he was unaware or being coerced. Unfortunately, due to Mr E's passing and his deteriorating health by the time Mrs S found out about the payments, we can't establish what exactly was understood or agreed to at the time. Furthermore, Halifax hadn't been notified by then that Mr E had any vulnerabilities for which he required additional support.

In the circumstances, while I empathise with Mr S and Mrs S's clear concern over what happened to Mr E, I'm not persuaded there is enough here to show Halifax likely made an error in processing the payments. It acted on Mr E's instructions. And I've not seen enough to persuade me it ought to have had further concerns about what he was doing. I therefore don't consider it fair to direct Halifax to refund the estate for these payments.

My final decision

For the reasons given above, 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 Mr E to accept or reject my decision before 14 September 2023.

Rachel Loughlin
Ombudsman