

The complaint

Mr D complains that Bank of Scotland plc, trading as Halifax, should pay him directly an amount it refunded to his credit card for interest, fees and charges that had been applied. He also complains about the support Halifax gave him while he was experiencing financial difficulties, and about the way a representative spoke to him in a phone call during this time.

What happened

Mr D had a balance on his credit card with Halifax which was discharged under his Debt Relief Order (DRO), the moratorium period of which ended in March 2017. The credit card debt was shown as 'satisfied' from that date.

But in March 2019, Halifax wrote to Mr D to say that it had conducted a review of its handling of accounts that had evidence of arrears. And it felt that, between December 2015 and May 2016, it hadn't always taken the appropriate course of action in dealing with Mr D's account.

So it apologised and said it would be adjusting the final balance on his account by £155.80 which represented the interest; fees and charges added to his account during that period. But Mr D said that, as the account had a nil balance, this amount should be paid directly to him. He also complained about the lack of help Halifax had given him and the tone of a conversation he had with a Halifax representative at the time, and that he'd had to make a payment to his account that he couldn't afford.

Halifax said this amount had been part of the original debt, and it was within its rights to use it to reduce the amount it had written off. It was unable to retrieve the recording of the call Mr D had talked about but apologised that he had felt the representative had been brash and had taken a bullish tone. It paid Mr D £75 in compensation for this.

Our investigator's opinion

One of our investigators looked into the complaint but didn't think it should be upheld. This was because he said the £155.80 wouldn't have been money Mr D would've actually received if the correct level of interest, fees and charges had been applied before Mr D's account was closed. He said that instead, it would've reduced the amount that Mr D owed, so it wouldn't have made a material difference to his current situation.

The investigator said that, although Halifax couldn't be sure of what was said to Mr D in the call in December 2015, it had accepted the possibility that it may have provided a poor level of customer service. Given the limited evidence, the investigator thought the £75 Halifax had paid to Mr D was a fair and reasonable approach to take.

Mr D didn't accept the investigator's findings and asked for his complaint to be reviewed. He felt the principal facts had been overlooked, as his credit card account had been deemed as settled with a nil balance owing. He said the refund would put his account in a credit balance. He said it had taken Halifax several years to address this issue, and it was now after the moratorium period of the DRO so it was not in a lawful position to recover these funds.

Mr D feels that Halifax was the primary contributing factor that led to his insolvency; and this has had a negative impact on both himself and his family. Mr D said Halifax had been difficult to deal with through his period of financial hardship. He said the compensation amount of £75 had been paid into his current account, which he had now been blocked from accessing too.

My provisional decision

I issued my provisional findings on this complaint in October 2020. In summary, I considered that Halifax's payment to Mr D of £75 was fair.

I addressed the two main points of the complaint as I saw them.

The fees; interest and charges on the credit card balance

I said that Mr D's credit card debt with Halifax was part of his DRO and his debt was discharged after one year in March 2017. So when Halifax's investigation found that fees; charges and interest had been wrongly applied to the debt whilst it was open; there was no longer a debt for any removal of these to be off-set against.

At the time of Mr D's DRO, he had no way of knowing that this amount had been wrongly applied. And Halifax didn't become aware of it until it conducted its investigation.

However, the addition of these fees, charges and interest meant that the amount of the debt with Halifax that was set out in Mr D's DRO was overstated. Had this been discovered earlier, then it would've reduced the amount of the debt Mr D owed, his liability for which was then discharged.

The amount was made up of interest; fees and charges applied to Mr D's credit card balance. I said this didn't mean that Mr D paid this money out or that he paid too much, as he still had a balance outstanding, and would have even if this particular amount of interest; fees and charges hadn't been applied. Instead, it meant that Mr D owed more to Halifax than he would have had the amount not been added to his credit card balance. But the amount that he did owe was discharged under the DRO.

Taking everything into account, I didn't think Halifax should be required to refund this amount to Mr D. Although I understood the point Mr D made that the adjusted amount was applied to a debt he no longer had a liability for, I didn't think this meant that it should be paid directly to him when it was an amount that had been incorrectly included in the stated total of the debt that was discharged.

I said I appreciated that Mr D feels that as a separate business, which was also one of his creditors under the DRO, refunded an amount to him from a complaint about Personal Protection Insurance (PPI), then Halifax should also pay him the refund. However, PPI is an additional insurance on a credit product which the customer pays for separately to the cost of having that credit. So this is very different to the interest and fees applied to a credit card balance.

The lack of support and service issues

I said I could see from Halifax's contact notes for Mr D's account that he spoke with a representative in December 2015. Mr D told us he felt the representative was aggressive and that this conversation left him feeling pressured into making a payment towards his credit card that he couldn't afford. He said he found Halifax difficult to deal with when it was told about the financial hardship he was experiencing.

Unfortunately, Halifax said that although it was able to find the call Mr D had referred to, the call recording is inaccessible to listen to. So I reviewed the notes of this call which suggested that Mr D was over his credit limit at the time. A repayment plan was discussed, but Mr D had no income. He was unable to make the minimum payment but could pay the over limit amount. The notes suggested that Mr D still wanted to be able to use the card and was told that it was important to get his account in order to avoid a default.

So although I recognised how Mr D was left feeling through this period, and that it would understandably have been a difficult and stressful time for him, because of the passage of time, there was limited information still available about the arrangements or communications between him and Halifax.

So I felt it was difficult for me to say with any certainty that it could have provided him with more help or responded more positively or sympathetically. However, in refunding a proportion of interest, fees and charges, Halifax acknowledged that it hadn't always taken the appropriate action when Mr D was experiencing financial difficulties such as by suspending or freezing these. So although I didn't consider that Mr D should receive a refund of the adjusted amount directly for the reasons I set out, the adjustment would put Mr D's account back into the position that he would've been in had those fees, charges and interest not been applied.

Halifax acknowledged that Mr D may have received a poor level of customer service, and it paid £75 into his current account to recognise this. In the circumstances, I thought that represented a fair resolution along with its apology for how Mr D was left feeling.

Halifax confirmed that Mr D's current account wasn't showing as closed and that he should be able to access the money he has in it. However, Mr D told us that his access to this account was blocked, and so he wasn't able to withdraw the compensation payment paid into it. I asked that Halifax look into this matter to make sure that Mr D has access to this money.

The responses

Halifax didn't respond to my provisional decision.

Mr D responded and said that he was willing to accept my findings in response of the issue of the withheld funds in his current account, although he didn't feel that Halifax not producing the evidence of the phone call formed any part of the resolution of that point.

However, Mr D said that I had overlooked a straightforward decision based on law in relation to sections s251g (2) and s51i of the Insolvency Act 1986. He said that decisions based on the law should logically override individual opinions. He questioned whether I found it acceptable for an institution to reclaim a settled debt two years post moratorium.

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.

And in doing so, I have regard to the relevant laws, codes and good practice. My decision is based upon the facts and evidence that have been presented, and I have fully reviewed these for Mr D's complaint, and this includes his submission about Halifax's actions in relation to the provisions of the Insolvency Act 1986.

And I do appreciate the point Mr D has made. However, in the particular circumstances here, I think that rather than trying to recover or reclaim a settled debt, Halifax has found that the amount of the debt it claimed as a creditor was overstated. Essentially, Mr D's DRO recorded that he owed more to Halifax than he actually did, because of interest; fees and charges that had been added to the capital balance.

The actions it has taken are to correct that latterly discovered error by reducing the debt amount. Had this error been discovered at the time, then it would have reduced the amount of debt Mr D owed Halifax - it wouldn't have been money directly paid out to Mr D. As I said in my provisional decision, this wasn't money that Mr D had paid incorrectly and so would've been refunded to him – it was more that interest; fees and charges had been incorrectly added to his balance, increasing the amount he owed. He still would have had an outstanding balance had they not been included. And that balance has been discharged under the DRO.

It's because of this that my findings remain that I don't consider Halifax should be required to pay Mr D the £155.80 his debt to Halifax was overstated by.

My final decision

My decision is that Bank of Scotland plc, trading as Halifax, has already paid Mr D £75 to recognise that it may have provided a poor level of customer service and I think this offer is fair in all the circumstances. Halifax should ensure that Mr D can access this payment which was made into his current account.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 4 January 2021.

Cathy Bovan
Ombudsman