

Complaint

Mrs F and Mr Y says that Bank of Scotland plc (trading as “Halifax”) unfairly added overdraft charges to his overdraft when they were in financial difficulty after experiencing a drop in their joint income.

Background

One of our adjudicators looked into Mrs F and Mr Y’s concerns and eventually concluded that Halifax hadn’t done anything wrong or treated Mrs F and Mr Y unfairly. So she didn’t recommend the complaint be upheld. Mrs F and Mr Y disagreed and so the complaint was passed to an ombudsman for a final decision.

My findings

I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

Having carefully considered everything provided, I’m not upholding Mrs F and Mr Y’s complaint. I’ll explain why in a little more detail.

Before I go any further, I want to be clear in saying that I haven’t considered whether the various amounts Halifax charged Mrs F and Mr Y over the years were fair and reasonable, or proportionate in comparison to the costs of the service provided. Ultimately how much a bank charges for services is a commercial decision. And it isn’t something for me to get involved with.

That said, while I’m not looking at Halifax’s charging structure per se, it won’t have acted fairly and reasonably towards Mrs F and Mr Y if it applied these interest, fees and charges to their account in circumstances where it was aware, or it ought fairly and reasonably to have been aware Mrs F and Mr Y were experiencing financial difficulty. So I’ve considered whether there were instances where Halifax didn’t treat Mrs F and Mr Y fairly and reasonably.

It isn’t in dispute that Mrs F and Mr Y didn’t get in touch with Halifax to explain their change in circumstances until July 2019. So I’m satisfied that Halifax wasn’t actually aware of these matters until this point. And when it was made aware, it refunded £100 in charges and suspended any further fees for a month. This provided Mrs F and Mr Y with some breathing space and they eventually managed to clear their overdraft a few months later. So I’m satisfied Halifax did provide appropriate assistance once it was notified of Mrs F and Mr Y’s change in circumstances.

Nonetheless, this isn’t the end of the matter as it doesn’t automatically mean that Halifax treated Mrs F and Mr Y fairly and reasonably. After all bearing in mind Halifax’s responsibility to monitor Mrs F and Mr Y’s account and its renewal of the overdraft in September 2018, it may still be the case that Halifax ought to have realised Mrs F and Mr Y were in difficulty before being told this. So I’ve also thought about whether Halifax ought to have realised Mrs F and Mr Y were struggling and acted sooner.

I've looked through Mrs F and Mr Y's statements throughout the period concerned. However, I can't see that Halifax ought reasonably to have been aware Mrs F and Mr Y were struggling and taken corrective measures in relation to their overdraft. Mrs F and Mr Y may argue the regular use of their overdraft was in itself an indication that they were struggling. But the account was in receipt of regular funds and it was in credit for reasonable periods in the period leading up to the facility being renewed in September 2018.

So I think that it wasn't unreasonable for Halifax to conclude there was a reasonable prospect of the overdraft sustainably being repaid, within a reasonable period of time rather than all in one go, at this stage. Equally, while I'm not seeking to make retrospective value judgements over Mrs F and Mr Y expenditure, nonetheless there are significant amounts of non-committed, non-contractual and discretionary transactions being made from the account too.

I accept that all of these things in themselves (or even taken together) don't mean that Mrs F and Mr Y wasn't experiencing financial difficulty. However, the question I have to consider here isn't whether Mrs F and Mr Y were in financial difficulty. Rather what I need to think about is whether Halifax ought to have realised this before July 2019 and stepped in to take corrective action on the overdraft facility. And I don't think that's the case here as, in my view, there isn't anything in Mrs F and Mr Y's account transactions in themselves which ought to have prompted Halifax to have realised this, in the absence of them asking for help.

So, in these circumstances, I don't think that it was unreasonable for Halifax to proceed with the interest, fees and charges it added. And I also don't think that Halifax unfairly charged Mrs F and Mr Y in circumstances where it ought to have realised that they may have been experiencing financial difficulty.

Having considered everything, I have not been persuaded to uphold Mrs F and Mr Y's complaint. I realise that this will be very disappointing for Mrs F and Mr Y – especially as it's taken some time for their case to reach this stage. But I hope that they'll understand the reasons for my decision and at least feel that their concerns have been listened to

My final decision

For the reasons I've explained, I'm not upholding Mrs F and Mr Y's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs F and Mr Y to accept or reject my decision before 28 October 2021.

Jeshen Narayanan
Ombudsman