

## The complaint

Mr J complains that Bank of Scotland plc trading as Halifax failed to contact him as it ought to have done when his account was operating in an unplanned overdraft. He says its failure to do so meant his late partner's gambling addiction went undetected, which has led to significant financial loss to him.

## What happened

The circumstances of this case are well known to both parties and so I'll summarise the background:

- Mr J's partner (who I'll refer to as Ms T) looked after the household finances and did so for many years, managing all aspects and accounts.
- Mr J, because of this arrangement, didn't feel the need to monitor the accounts or spending himself.
- Ms T sadly passed away in December 2017 having long suffered with various health conditions. Her passing meant Mr J had to take charge of the household finances.
- On doing so, Mr J discovered debt he hadn't known about, credit cards in his name that he hadn't applied for, and that shares he had held had been sold with the proceeds (of over £60,000) spent. He found that all of this activity had been carried out by Ms T, with large sums of money having been spent on gambling over several years. One of the affected accounts was a Halifax current account held jointly with Ms T and that is the subject of this complaint. It became clear to Mr J that Ms T had been hiding correspondence from him so that her gambling addiction and linked activities went undiscovered.
- Halifax wrote to Mr J in March 2020 to let him know it was refunding £58.62 of unplanned overdraft charges. That was because the bank hadn't always notified him and Ms T about the charges, as it was supposed to. The letter didn't specify when exactly correspondence wasn't set but explained it would have been on occasion between January 2016 and November 2017.
- Mr J complained to Halifax as a result of this letter. He said that had the bank written to him when it was supposed to he would have been alerted to the status of the account. Mr J says he would have questioned why the account was in an unplanned overdraft and that his investigations would have led to him discovering Ms T's gambling addiction. And he believes he could then have prevented her from spending the sums that she did and stopped his shares from being sold.
- Halifax responded but said it wouldn't be refunding anything further. It said the refund it had already made put right its error with the missing correspondence. It said it had regularly produced statements and alerts for Mr J through his online banking. It also

said that Mr J had the ability to check his balance and activity in branch and at a cash machine.

- Mr J was unhappy with the bank's response and so brought his complaint to this service. He thought the bank should be able to evidence exactly when it didn't send him the correspondence it ought to have done. And he said that the bank's failure to notify him meant that it should bear responsibility for some of his loss, particularly the shares that had been sold.
- I've already discussed the outcome of this complaint with Mr J at some length and I've explained my reasons for not upholding it. But because Mr J hasn't accepted my findings, I'm formalising them in a final 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.

As Mr J is already aware of my reasons for not upholding the complaint, I won't reiterate all of the detail here.

Mr J's main reason for believing the bank ought to repay his losses is that he feels, had the bank sent all of the correspondence it ought to have done, there was a chance he would have received one of the items and, if he did, it would have made all the difference.

I can't say for certain what might have happened if Halifax had sent all the correspondence it was supposed to. I have to make my findings based on what I believe is more likely than not to have happened. And I don't find the most likely scenario is that the missing correspondence would have made a difference. The important considerations are as follows:

- Mr J had been sent at least seven notifications of unplanned overdraft charges that he hadn't seen/received and hadn't revealed the problems Ms T was having;
- It is likely, based on the small amount refunded in March 2020, that only one or two such items of correspondence weren't sent. And so the chances of one of those, in amongst all other correspondence, being discovered by Mr J was very remote;
- The correspondence the bank was sending was being directed to Mr J's online banking inbox in any case, and he wasn't accessing it. So even had the missing items been sent, there was no way he would have seen them;
- Looking at how the household finances were run – with overdue balances, utilities suppliers going unpaid and so on – it's likely there would have been many, many items of correspondence sent to Mr J's home by different businesses over the years. All would have indicated what the financial situation was, or at least all was not as Mr J believed. But it would appear Mr J never received any of them, likely because of Ms T's intervention;
- Mr J has said there is a joint account held with another bank that he had no idea about. That account had been open for more than twenty years at the point he made his complaint to Halifax, but he'd never seen any correspondence about it.

All of these points lead me to the conclusion that even had the bank sent the correspondence it ought to have done it would more likely than not have gone unseen by

Mr J (not forgetting the fact it wouldn't have actually come by post). The bank hasn't been able to demonstrate exactly when correspondence wasn't sent when it ought to have been. But that inability to provide that evidence doesn't lead to Mr J's complaint being automatically upheld.

I've also thought about Mr J's own responsibilities. All account holders ought to monitor their accounts. But Mr J appears to have not looked into the household finances or account balances for a period of perhaps six years prior to Ms T's passing. I appreciate that it will often be the case that one person in a household, being completely trusted, looks after the finances. But I don't find it reasonable to say that the bank should bear responsibility for Mr J's losses when he hasn't checked his own accounts over such a long period of time, and where doing so would have made the difference he says the overdraft letters would have made.

I've also found that the loss Mr J has described, including the cashing in of shares, is too remote from the bank's error. It wasn't reasonably foreseeable that the failure to send a piece of correspondence would lead to Ms T's gambling addiction and the losses Mr J has described, or that it would mean those things went undiscovered. Indeed, some of those losses had already happened by the time of the bank's error. And it's also the case that the impact of the gambling activity was - or ought to have been - visible to Mr J long before any error in respect of the missing correspondence.

Mr J has also commented that he thinks the bank ought to have reached out to him directly, as the 'as the major and only breadwinner'. But I don't find that the bank had to do more than it did. It was frequently writing to him, providing bank statements, and could see he was regularly paying into the account. Halifax was also in fairly regular contact with Ms T about the status of the household finances. I can't see there was anything to suggest Halifax needed to do more at the time.

I am sorry to disappoint Mr J with this outcome. I can't imagine how much of a shock it must have been to discover the position Ms T's gambling has left him in. And in reaching the outcome I have I'm not saying that Mr J hasn't been a victim or that Ms T did nothing wrong. But the responsibility for what's happened doesn't lie with Halifax and so it wouldn't be fair or reasonable to say it should pay Mr J for his losses.

### **My final decision**

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 25 October 2021.

Ben Murray  
**Ombudsman**