

Complaint

Mr A has complained about the overdraft fees and interest Bank of Scotland plc (trading as “Halifax”) applied to his current account. He’s said the fees caused him financial hardship and also that he’s paid far in excess of what he borrowed in interest, fees and charges.

Background and my provisional decision of 28 September 2021

One of our adjudicators looked at Mr A’s complaint. He thought that Halifax ought to have realised Mr A was in financial difficulty when he telephoned to inform of this in September 2019.

So he thought that Halifax should refund the fees from this point. Halifax disagreed with the adjudicator and asked for an ombudsman’s decision.

On 28 September 2021, I issued a provisional decision setting out my initial findings on Mr A’s complaint. I won’t copy that decision in full, but I will instead provide a summary of my findings.

I started by making it clear in that I hadn’t considered whether the various amounts Halifax charged were fair and reasonable, or proportionate in comparison to the costs of the service provided. As ultimately how much a bank charges for services is a commercial decision. And that wasn’t something for me to get involved with.

However, while I didn’t look at Halifax’s charging structure, it though that it won’t have acted fairly and reasonably towards Mr A if it applied these interest, fees and charges to Mr A’s account in circumstances where it was aware, or it ought fairly and reasonably to have been aware Mr A was experiencing financial difficulty.

So I went on to consider whether there were instances where Halifax didn’t treat Mr A fairly and reasonably. In other words, I considered whether there were periods where Halifax continued charging Mr A even though it knew he was in financial difficulty or it ought to have realised this was the case.

My consideration of this matter started by noting that it wasn’t in dispute that Mr A got in contact with Halifax in September 2019. And he said that he was in financial difficulty at this stage. So I thought that it was clear that Halifax ought to have been on notice Mr A might have been experiencing financial difficulty based on what it had been told. In these circumstances, I thought it reasonable to expect Halifax to have offered assistance with a view to Mr A getting back on track and repaying what he owed. But I didn’t think that this in itself meant that Mr A was automatically entitled to a refund of all the interest, fees and charges added to his account from this point onwards.

I saw that Halifax responded to Mr A request by immediately refunding £100 worth of charges and also providing a further 30-day breathing space from any further charges. Mr A was also given the option of being referred to Halifax’s Money Management Team but declined this. I thought that these were appropriate and proportionate temporary measures

and so I was satisfied that Halifax did act fairly and reasonably when Mr A initially got in contact to say he was struggling.

I then went on to consider the conduct of Mr A's account after he got in contact. I did this because even though Mr A might have refused longer-term assistance, I didn't think it would have been fair and reasonable for Halifax not to have imposed a longer term solution on Mr A's overdraft had his account conduct indicated continued and prolonged financial difficulty and/or that the facility had become unsustainable. And having considered Mr A's account conduct after he got in touch with Halifax, I didn't think the circumstances were such that they warranted Halifax stepping in and taking such corrective action here.

I considered this the case because, while I wasn't seeking to make retrospective value judgements over Mr A expenditure, this clearly wasn't Mr A's main account. And most of what was going out of this account was non-committed, non-contractual transactions and transfers to another account. Equally the amount being credited to Mr A's account didn't indicate that there was no reasonable prospect of him seeing a credit balance at any stage either. Indeed, it was my understanding that Mr A didn't manage to clear the overdraft in full a little over six months later.

I did accept neither of these things in themselves (or taken together) meant that Mr A wasn't experiencing financial difficulty, or that he clearly could repay what he owed. But there wasn't anything in what I had seen which clearly showed Mr A was in prolonged difficulty. In these circumstances, and given Halifax had provided Mr A with temporary relief and Mr A refused the option of a longer-term solution, I didn't think that it was unreasonable for Halifax to proceed with adding the interest, fees and charges it did.

So I didn't think it was the case that Halifax unfairly charged Mr A in circumstances where it ought to have realised that he was experiencing financial difficulty. And I let the parties know that I was intending to issue a final decision that didn't uphold the complaint.

Halifax's response to my provisional decision

Halifax responded to confirm receipt of my provisional decision and acceptance of my findings.

Mr A's response to my provisional decision

Mr A didn't respond to my provisional decision or provide anything further for me to think about.

My findings

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

In my provisional decision, I set out, in some detail, why I was intending not to uphold Mr A's complaint. And as neither party has provided anything further for me to think about, I see no reason to depart from these conclusions.

As this is the case, I still find that Halifax didn't treat Mr A unfairly and that it doesn't need to refund any of the interest, fees and charges it added to his overdraft. I appreciate that this will be very disappointing for Mr A. But I hope he'll understand the reasons for my decision and that he'll at least feel his concerns have been listened to.

My final decision

For the reasons I've explained above and in my provisional decision of 28 September 2021, I'm not upholding Mr A's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 10 November 2021.

Jeshen Narayanan
Ombudsman