

## **The complaint**

Mrs R complains Bank of Scotland plc trading as Halifax (Halifax) are holding her solely responsible for the repayment of an overdraft on a joint account. She also complains they failed to support her during times of financial difficulty.

## **What happened**

Mrs R opened a joint account with Mr R in 1996. It had an arranged overdraft limit of £2,500. They separated in 2017. As a result, Mrs R said her personal and financial circumstances changed significantly.

Between July and October 2019, Halifax sent letters stating the overdraft had been exceeded and if action wasn't taken, the account would be closed and transferred to their recoveries team. In response, Mrs R advised she was experiencing financial difficulties and asked for the balance to be written off due to medical reasons. The account was transferred to Halifax's vulnerable consumers team. They agreed to temporarily stop the daily overdraft fees. They asked for medical evidence but this wasn't received. They also said they had made attempts to speak to Mrs R but they were unsuccessful in doing so.

A formal demand letter was sent in May 2020 stating the full balance of £2,693 had to be paid otherwise the account would be defaulted. As no payment was received, a default was applied around July 2020. The account was passed to the recoveries team in September 2020.

Mr R entered into an individual voluntary arrangement (IVA) in August 2021. In turn, Halifax said Mrs R was solely liable for the debt. Mrs R complained. She didn't believe that was fair and she was unhappy Halifax never responded to her letters regarding her financial difficulty.

Halifax accept they should've started the default proceedings sooner given they were made aware of Mrs R's financial difficulties. To put things right, they said they would backdate the default to November 2019 and pay £50 compensation for the trouble and upset caused. They also confirmed all interest and charges from August 2019 were refunded.

They said as per the terms and conditions, both parties were liable for the debt balance until it was repaid. However as Mr R had entered into an IVA, he was removed from the account meaning Mrs R was fully liable for the debt.

Unhappy with their response, Mrs R referred the complaint to our service. The investigator recommended the complaint wasn't upheld. They concluded Halifax had acted fairly by backdating the default, refunding charges and paying some compensation. They said, based on the terms, Halifax could hold Mrs R solely liable for the debt.

As an agreement couldn't be reached, the complaint has been referred 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.

Having done so, I've decided not to uphold this complaint. I'll explain why.

I'm aware I've summarised this complaint in far less detail than has been provided and I've done so using my own words. No discourtesy is intended by this. Instead, I've concentrated on what I think are the key issues. This reflects the nature of our service as an informal alternative to the courts. I'm satisfied I don't need to comment on every detail to be able to reach what I think is a fair outcome in the circumstances of this complaint.

As a starting point, I've referred to the terms and conditions regarding joint accounts. It says:

*"You are each, separately, responsible for complying with the terms of this agreement. If any one of you does not comply, we can take action against any or all of you"*

It also says:

*"Both people are responsible for any debts – such as the overdraft – and fees on the account. This means we can choose to claim the money from either person".*

This means, Mrs R and her ex-partner, Mr R, are joint and severally liable for the account balance. Meaning Halifax can ask either her, Mr R or both of them to repay the debt. Mrs R believes they should be held equally liable (50/50). While I can understand why she feels that way, the terms don't say that must happen.

Based on the evidence provided, I can see the balance of the account was above the agreed overdraft limit for some time. I've seen copies of the letters that were sent about it and Halifax's request for payment. They were sent as separate letters to both parties at the same address. Given the circumstances, I find Halifax acted fairly by sending the same and their communication was clear about the status of the account and what actions were needed.

Halifax's system notes confirm Mrs R contacted them to say she was experiencing financial difficulty and she could no longer afford the daily overdraft fees. There is no indication, Mr R responded to these letters.

In instances of financial difficulty, I expect financial businesses such as Halifax to treat their consumers with forbearance and due consideration as outlined in the Financial Conduct Authority's (FCA) Consumer Credit Sourcebook (CONC). There's not a defined list as to what supportive measures should be applied but it may include accepting reduced payments, waiving interest, applying a payment deferral, etc. In this case, Halifax agreed to apply a 30 day hold on the account in July 2019 meaning no interest or charges would be applied during that time. This was later extended on more than one occasion.

To get a better understanding of Mrs R's financial circumstances, Halifax carried out an income and expenditure assessment to review her incoming and outgoing expenses. They found she had no disposable income so I can understand why they were unable to set up a repayment plan given this situation.

Given Mrs R's circumstances, the account was transferred to their vulnerable consumers team. She asked for the debt to be written off due to grounds of health. Halifax asked for medical evidence so they could consider her request and I find it was reasonable for them to do so. They applied an additional 30 day hold for Mrs R to provide the same however there is no evidence this information was received.

Thereafter, they sent letters chasing the additional information to the address held on file. According to their records, they also tried to call Mrs R but they were unable to speak to her.

I acknowledge Mrs R's comments that she preferred communication in writing due to personal reasons but I can't see she ever made that clear to Halifax so I can't say they did anything wrong by trying to call her to discuss the situation.

Given the lack of response from either party and the returned letters, I can understand why Halifax believed they had lost contact with Mrs R. Based on their system notes, they couldn't trace neither her nor Mr R. This may be due to both or either party moving address but as mentioned by the investigator, it's the responsibility of the consumer to update their contact details.

Having reviewed the evidence, I can see Halifax had taken steps to engage and provide financial support to Mrs R. This included extended 30 day holds and they were willing to consider her request for write off. So I can't agree with her comments that they never responded to her letters and they never helped her, I find they did. Overall, I'm satisfied Halifax acted fairly by communicating with Mrs R about the account and they made reasonable steps in providing financial assistance.

As Halifax hadn't heard from either party for several months, the account balance remained over the overdraft limit and there was no indication either party were able to make payments, they decided to take further action by initiating default proceedings. Given the circumstances, I consider this course of action reasonable.

Formal demand letters were sent in May 2020 to both parties outlining what was required. As no payment was received to satisfy the default by the deadline, I can't say Halifax did anything wrong by doing what they said they would do which is default the account and transfer it to their recoveries team. I'm aware Mrs R sent a letter to them in September 2020 to say her financial circumstances had changed and to let them know of her new address, but this was after the account had already defaulted.

However as it was clear from around July 2019 that Mrs R was in financial difficulty and Mr R wasn't responding to Halifax's letters, I agree the default proceedings should've been initiated earlier than May 2020. By doing so, it would've stopped all interest and charges meaning the debt wouldn't have increased. Halifax accept they should've started this process sooner.

Based on the guidance issued by the Information Commissioner's Office (ICO), it says defaults can be recorded when a consumer is at least three months behind in payments and it's expected to be in place by the sixth month. On that basis, I believe Halifax acted fairly in backdating the default to the earliest opportunity (November 2019), that is around three months from when Mrs R reported her financial difficulties and said she couldn't make the repayments. As already mentioned, by defaulting an account, interest and charges are stopped. In this case, Halifax has confirmed all interest and charges from August 2019 had been removed. By doing the same, I'm satisfied Halifax acted fairly. They've tried to put Mrs R as close to the position she would've been had they defaulted the account sooner. They also paid her £50 compensation which I consider fair in the circumstances.

Mr R entered into an IVA in August 2021 and as a result Halifax removed him from the account and is holding Mrs R solely liable for the outstanding debt. I've thought about Mrs R's comments that had Halifax acted sooner, any repayment plans could've been set up with joint and equal liability before Mr R entered into an IVA. While I recognise Mrs R's strength of feeling about this, for the reasons already explained above, Halifax can hold both or either party liable. So I can't say with any certainty Halifax would've evenly split liability. Nor can I say whether this debt should've or could've been subject to his IVA. As Mr R became insolvent, I don't find Halifax acted wholly unreasonable by saying Mrs R is solely liable for the debt.

I've carefully considered what Mrs R has said about her personal and financial circumstances at the time, including her health and her ongoing obligations to her family. I recognise this would've been a difficult time for her. For the reasons explained above, I'm satisfied they provided support during her time of financial difficulty and they had taken reasonable steps to engage with her about the same. I also find Halifax acted fairly in defaulting the account and based on the terms, they can hold her solely responsible for the outstanding debt.

Nevertheless, I empathise for the situation Mrs R now finds herself in. I wish to remind Halifax that if she is still experiencing financial difficulty, I expect them to treat her with forbearance and due consideration.

### **My final decision**

For the reasons set out above, I've decided not to uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R to accept or reject my decision before 20 February 2023.

Simona Charles  
**Ombudsman**