

## The complaint

Mr J complains Bank of Scotland plc trading as Halifax are continuing to send him bill payment reminders for his credit card when he's asked them not to.

## What happened

I issued a provisional decision setting out what'd happened, and what I thought about that. I've copied the relevant elements below, and they form part of this final decision.

*Halifax send text messages reminding their customers the bill is due if no payment has been received around a week before the payment is due.*

*Mr J received one of these text messages, and asked Halifax to stop sending them – but they said they couldn't. Mr J asked about removing his mobile number from their systems but realised this would cause him to not receive the One Time Passcode (OTP) messages when online shopping. So, he's kept his mobile number with Halifax, but complained about them not stopping the bill payment reminder messages.*

*Halifax said the text alert was issued as part of their regulatory requirement and was a friendly reminder Mr J had a payment due on his credit card. They added as this is a mandatory requirement there is no opt out option and will only be issued if the relevant criteria has been met. Halifax said the text alert was triggered on 30 May 2022 because no payment had been received and was due around a week later on 6 June 2022.*

*Unhappy with this Mr J asked us to look into things. One of our Investigators did so, but overall didn't think Halifax had done anything wrong.*

*Mr J didn't agree with this, in summary he said:*

- *Halifax told him they had to send this text, but he felt them sending the paper statement fulfilled their obligations of notifying him of the payment reminder*
- *Halifax need his mobile number for OTP messages, but they're using his mobile number in a way he doesn't want*
- *He feels Halifax is ignoring his rights under General Data Protection Regulations (GDPR) as he's asked them not to send payment reminders but they continue to do so*

*As Mr J didn't accept our Investigators outcome, the complaint's been passed to me to decide.*

*Before doing so, our service asked Halifax to explain what regulations they were relying on to justify sending these text messages. Initially, they told us there were regulations from the Competitions and Markets Authority (CMA) – which when reviewing what CMA said in their report only related to current accounts, not credit cards. We challenged them, saying this appeared to be incorrect information, and they provided a further reply after speaking to their legal department. I've talked in detail about the last round of information Halifax have provided below.*

### ***What I've provisionally 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.*

*I should make it clear to Mr J that generally it's not my role to tell Halifax they're required to change their procedures. So, I can't make them stop sending the text messages to Mr J as he may want. I'll go on to explain the regulations Halifax have now told us they're relying on – as well as my thoughts on whether Mr J has agreed to his data being used in this way. I do also need to make it clear my role is to decide, taking into account all of the information available to me, whether they've treated Mr J fairly and reasonably.*

*Halifax have explained their rationale for continuing to use Mr J's mobile number for alerts. They've said paragraph MM5 of The Lending Standards Board (LSB) says:*

Firms offering credit card products should, in line with industry Credit Card Market Study information remedies, have in place processes to ensure:

- a. Customers are prepared to make timely and informed decisions about the options open to them when a promotional rate comes to an end.
- b. Borrowing prompts help customers to take account of their spending and make informed decisions about how they use their credit card and avoid incurring over limit charges.

*Halifax said The Credit Card Market Study (CCMS) information remedies conducted by LSB gives more detail about how alerts should be sent to consumers – and says:*

1. If a firm offers a credit card product with a promotional rate, the customer should receive a standalone written reminder of the expiry date of their offer.
- c. The expectation is that, where the appropriate contact details are held, firms will send the information digitally.

*And, regarding messages about borrowing, says:*

*“2. Where a credit card customer crosses a threshold between 80% and 95% of their available credit card limit, they should be contacted to alert them to this and to remind them if charges will be made for exceeding it.*

- c. Contact with the customer should be made via a digital channel. Eligible customers should be automatically opted-in to the alert, but provided with the ability to opt-out, should they wish to do so, at the firm's discretion.”

*Halifax added that the Information for Practitioners guidance sets out some helpful explanations on the types of communication channels they can use. And page 36 of this report refers to when a promotional period is due to come to an end:*

“There is an expectation that, where the appropriate contact details are held, firms will send information digitally. However, firms may wish to consider whether the reminder could be delivered to customers via a range of channels, including written, digital, and via SMS... When deciding the form of communication, firms should also consider what is most appropriate for the customer, based on any information held by the firm”

*Finally, Halifax said it's also agreed practice between the Financial Conduct Authority (FCA – who are the regulator of the financial services industry), and members of the UK Cards Association (of which Halifax are a member) that members would provide prompts to customers to help manage their spending. They said this was contained in the FCA's Credit card market study on pages 63-64 at paragraph 8.15.*

*A copy of these documents will be provided to Mr J with this provisional decision, so he can review them.*

*When answering his complaint, Halifax said it was part of their regulatory requirements they had to send this payment reminder – and there was no opt-out option.*

*Although much of the information Halifax have referred to above talks about sending alerts digitally, none of them appear to place a regulatory requirement (as Halifax told Mr J) in his specific circumstances. The final response letter from Halifax doesn't say Mr J had a promotional balance expiring, nor have Halifax said he was near his credit limit. The only reason given to Mr J for sending payment alerts is because he was within a week of his payment due date.*

*Given this is the second time our service have asked Halifax to explain what regulations they're relying on, it seems appropriate I consider the complaint at this point.*

*As things stand, I think it's fair to say the information Halifax have pointed to fully encourage them to use digital prompts where possible. And, I think it's also fair to say the information says Halifax can choose whether they want their customers to be able to opt-in or opt-out of this.*

*So, I can't say Halifax at face value are wrong for sending Mr J text messages, nor for not offering him the option of opting out. But I've not been persuaded by Halifax there is a regulatory requirement for them to do so. This is because none of the evidence provided says they're required to send alerts when someone is within a week of their payment due date but haven't made a payment yet. As far as I can see so far this means it is, effectively, Halifax's choice about whether to send these alerts or not – which is not what they told Mr J or our service.*

*I'm aware Mr J also specifically says he doesn't want Halifax to use his data in this way. But the terms and conditions of the account Mr J uses with Halifax says:*

*“If you provide your mobile phone number or email address, we will register you for our free account alerts service so we can send you messages to tell you about certain activity on your account. We will use the most recent contact details we hold for you.”*

*This means by continuing to use Halifax's credit card, Mr J is accepting the terms and conditions of the account – meaning he is accepting, albeit not willingly, Halifax can and will use his data in this way.*

*I can't decide if Halifax have broken any rules under GDPR, only the Information Commissioners Office can do that. But, as Halifax tell Mr J in the terms and conditions this is how they'll use his data, I can't reasonably say they've done anything wrong in sending him these alerts.*

*To summarise then, I don't think Halifax have done anything wrong by sending Mr J these alerts, nor can I say they've breached GDPR or acted unfairly by not allowing him to opt-out. But Halifax's explanation of it being a regulatory requirement for them to send these text messages isn't demonstrated by the evidence they've given me. So I think Mr J has been caused distress and inconvenience as a result of Halifax providing incorrect information. I think a fair and reasonable outcome then would be for Halifax to pay Mr J £200 compensation to reflect this.*

## **Responses to my provisional decision**

Halifax said they accepted my recommendations, and if Mr J accepts the outcome, they'll pay the redress into an account of his choosing.

Mr J didn't reply by the deadline set.

## **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 Halifax accepted my recommendations, and Mr J didn't reply, I've seen no reason to change the original decision I reached – and still think £200 compensation is fair.

## **My final decision**

For the reasons I've explained above I partially uphold this complaint and require Bank of Scotland plc trading as Halifax to pay Mr J £200.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 14 March 2023.

Jon Pearce  
**Ombudsman**