

The complaint

Mr H is complaining that Bank of Scotland plc trading as Halifax's mobile app wasn't working when he tried to complete a transfer to his trading account, which has caused him a financial loss and inconvenience.

What happened

At 3:57pm on 9 May 2022 Mr H tried to access the mobile app he uses to bank with Halifax. He said he intended to make a transfer of £5,000 from his account with Halifax to his trading account in order to make an investment, before close of trading at 4:30pm.

Mr H wasn't able to access the app. The app showed the message, " Sorry, we're experiencing technical problems." Mr H didn't complete the transfer.

At around 7:45pm on the same day he called Halifax to complain. The adviser Mr H spoke to apologised for the inconvenience of the app not being available, and offered Mr H £59 - £50 for the inconvenience, and £9 to cover the cost of his call. Mr H didn't accept this, as he felt it wasn't enough to reflect the inconvenience he'd experienced.

Mr H says that the next day he found out the trade he intended to make would have made him around £750 to £1,000, and he contacted Halifax again about this.

On 24 May 2022 an adviser called him to discuss his complaint. She explained that there hadn't been any IT issues reported with the app at the time Mr H was trying to use it, but she had noticed he was using an older version of the app so thought that could have caused the problem. She said that Halifax's terms and conditions explained that even if there was a problem with the app, Halifax wasn't liable for any losses. She issued Halifax's final response letter on the same day, which made the same points as she'd made on the phone.

Mr H brought his complaint to our Service. Our investigator thought Halifax's offer was fair. But Mr H didn't agree, so his complaint was passed to me for review and a decision.

My provisional decision

I issued my provisional decision on 16 February 2023. I explained I had reached a similar conclusion to the investigator – that Halifax's offer was fair – but for slightly different reasons. This is what I said.

Halifax and the investigator have quoted the terms and conditions for use of Halifax's website. I've looked at these and I don't think they are the relevant terms and conditions here. Firstly, because Mr H was attempting to use the mobile app, not the website. And secondly because they seem to be related specifically to using the website generally, rather than using online banking. Halifax have separate terms and conditions for use of online banking, which cover use of the mobile app too.

I've looked at these terms and conditions and I think the relevant section that would apply here is Section 8, as follows:

“ Please note

Not all Online Banking services are available 24 hours a day, 7 days a week.

You can usually use Online Banking and the Additional Services at all times but occasionally repairs, updates and maintenance on our systems may mean some or all of the services aren't available or may be slow for a short time.

We won't be liable to you if you suffer any loss in such circumstances. This is because you should be able to give us instructions by other means, for example by calling us or coming into one of our branches.”

I do agree with the investigator that it's unlikely we can say for certain whether the fault was with Halifax's systems or was related to Mr H's use of the app, either through it being an outdated version or due to connection issues. I can see the first adviser Mr H spoke to assumed that the fault was at Halifax's end, and offered Mr H compensation on the basis of this. But there hadn't been any investigation carried out at this point into whether there was a fault, and following an investigation Halifax concluded that there wasn't.

I appreciate this is frustrating for Mr H - but I don't think it affects the outcome of this complaint. This is because Halifax's online banking agreement makes it clear that online banking and additional services won't be available 24 hours a day - and that they're not liable for any loss if they're not available. So even if there was an issue with Halifax's systems at the time Mr H was unable to use the app, I don't think they are liable for the loss Mr H says he has suffered.

Mr H says he made it clear to Halifax, in previous conversations about similar issues, that he requires access to online banking 24 hours a day unless he's notified in advance. But I can't see that Halifax have ever offered this service, nor that it would be reasonable to expect them to do so.

I'm also taking into account that Mr H did have an opportunity to mitigate any potential loss of investment opportunity through the app not working. In this case, Mr H was aware, before 4pm, that he hadn't completed the transfer - but from what I've seen he chose not to pursue this at the time to ensure the transfer was made before 4:30pm. There were alternative methods other than the app to make the transfer - such as through online banking on the website, or telephone banking. But I can't see that Mr H attempted to use any alternative methods at the time.

Overall, I don't think Halifax have acted unfairly or unreasonably by not offering to pay Mr H the investment loss he says he incurred. The first adviser offered Mr H £59 for distress and inconvenience on the assumption it was an issue at their end - and bearing in mind we've not been able to reach a definite conclusion about what caused the problem, I think this is fair and reasonable in the circumstances.

My provisional decision is that I'm upholding this complaint, in the sense that Bank of Scotland plc trading as Halifax have made a fair offer which has not yet been paid.

Bank of Scotland plc trading as Halifax should pay Mr H £59 in settlement of this complaint.

I asked Halifax and Mr H to reply with anything else they wished to add by 2 March 2023.

Halifax replied to my provisional decision to say they accepted it.

Mr H replied to say, in summary, that he felt that Halifax were hiding behind the terms and conditions while not providing the service he expected, and he was confused about why they couldn't fully explain what had happened. But he respected the findings, despite it not being the outcome he'd hoped for.

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.

I understand that Mr H remains dissatisfied with the outcome and I'm sorry to disappoint him.

But having reviewed the responses from both parties, I see no reason to change my provisional decision.

My final decision

My final decision is that I'm upholding this complaint, in the sense that Bank of Scotland plc trading as Halifax have made a fair offer to resolve it which hasn't yet been paid.

So Bank of Scotland plc trading as Halifax should pay Mr H £59.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 2 April 2023.

Helen Sutcliffe
Ombudsman