

The complaint

Mr C complains that Bank of Scotland plc trading as Halifax failed to reply to a subject access request he made, and didn't answer his questions about how staff were paid for advice he received.

What happened

In 2007 Mr C was advised by Halifax to invest £7,000 into a stocks and shares ISA. In March 2021 he called Halifax for a valuation and was unhappy with the fact the ISA was only worth around £5,000 more, despite having invested for 14 years. He raised a complaint about the performance of the ISA as well as a complaint about the advice he was given to invest.

He brought both complaints to our service and they were considered separately. An ombudsman at our service considered the performance complaint, and didn't uphold it – for clarity I will not be commenting further on that decision.

I considered the complaint about the advice, and on 26 August 2022 found it was not within our jurisdiction, as it had been brought too late for our service to consider it.

In August 2022 Mr C raised a complaint about a data subject access request (DSAR) he made on 18 January 2022, as Halifax hadn't replied to it. In September 2022 Halifax sent him the requested information and apologised for not responding sooner, and paid Mr C £75 for the delay. Mr C remained unhappy and asked our service to look into the complaint because:

- The information in the DSAR had been redacted
- It didn't contain any evidence of communication between the complaint handler who had dealt with his complaint about the advice he was given, and the adviser who had given him that advice.
- Halifax had refused to answer other questions set out in his letter of 18 January 2022 about how the adviser had been remunerated for the advice he was given, and her qualifications.

An investigator at our service looked into his complaint and found we couldn't look into the last complaint point. She explained this was because it related to his complaint about the advice he was given, which our service had found we couldn't look at. The investigator explained that complaint handling is only something we can look at, if we can also look at the financial activity, like advice to invest, alongside it. As we had found we couldn't look at the complaint about the advice, she said we couldn't look at the complaint about the way questions were answered during that complaint.

Similarly, the investigator explained we can only look at complaints about DSARs if they are related to a financial activity that we cover. Here, because Halifax safeguarded Mr C's investments and we could look at a complaint about the performance of the investments, she felt that the DSAR was sufficiently linked to that financial activity for us to consider how Halifax answered the DSAR. The investigator found that the amount offered by Halifax was

fair for the delay in sending Mr C the DSAR and that the redaction of the documents was reasonable.

Mr C didn't agree and felt we should be able to look into both issues. Regarding the information about the adviser, Mr C responded with comments about the sale of the investments and why he felt the answers he'd been given supported his arguments about the sale of the investment. In relation to the DSAR, he remained of the opinion that the level of redaction was unreasonable. As a result, the complaint has been passed to me for a 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.

Having done so, I agree with the outcome given by the investigator for the same reasons. I've considered the two issues separately for clarity.

The DSAR

Having reviewed the documents Mr C was sent, I can see the following information was redacted:

- 'Created by' task fields
- Names in email signatures
- Email addresses
- Salutations, including names
- Signatories of letters
- Call handler names

I don't think it's unreasonable that Halifax redacted this information, as the documents are still legible and comprehensible without it. For instance, if needed the emails can be referred to by the date and time they were sent, even if Mr C doesn't know who the sender and recipient were.

A DSAR only entitles Mr C to information about himself, and I'm satisfied that it's reasonable for Halifax to redact the names of the members of staff who have dealt with his complaints. I understand Mr C particularly wanted to know what the adviser he spoke to in 2007 had said regarding his complaint. Halifax has confirmed that she wasn't contacted as she doesn't work for them anymore. This is not uncommon in my experience - original advisers aren't often contacted, particularly where advice was given so long ago. This is because it's usually unlikely that the adviser would have any recollection of the advice, above and beyond the paperwork completed at the time. So, though I know Mr C disputes this, I'm satisfied there isn't any further correspondence from or to the adviser for Halifax to send him.

I've considered the impact Halifax's delay in sending the information has had on Mr C. I can see that in November 2021 Halifax had sent Mr C information following his first DSAR, consisting of around 200 pages of documents. So, when he requested the further correspondence in January 2022, there was only a few more pages of information to send him. The content of those documents was simply internal emails between November 2021 and January 2022 that are administrative in nature, primarily discussing who at Halifax should deal with Mr C's letters.

None of that information would have given Mr C further information to assist with either of his complaints about performance or advice. So, although the delay itself was unacceptable, the overall impact was relatively minimal. As a result, I find that the £75 offered by Halifax is fair and reasonable to acknowledge the delay and inconvenience caused.

The questions about the adviser's remuneration and qualifications

I note that in some of his correspondence, Mr C has spoken about the questions he asked about the adviser's remuneration and qualifications as part of the DSAR. Because these questions aren't about his data, it's not information that would be included in a DSAR. The sorts of questions he's asked are commonly asked of public bodies as a freedom of information request, rather than a DSAR. However, I'm satisfied that Halifax is not a public body and so wouldn't be required to answer freedom of information requests. That's why we've treated this complaint point differently to his DSAR complaint, above.

Having considered this complaint point, I'm satisfied that it relates to the previous complaint Mr C made about the advice he was given and so we don't have the power to look into it. In the decision I issued in August 2022 about the advice Mr C was given, I explained that the complaint was out of jurisdiction because, in summary:

- Halifax had sent him two final response letters, dated 17 March 2021 and 19 November 2021 explaining that he had six months from the date of each letter to refer his concerns to our service.
- Mr C didn't contact our service until 14 June 2022, and so his complaint was brought outside of the time limits allowed.
- Though there was continued correspondence after 19 November 2021, including the 18 January 2022 letter at the heart of Mr C's current complaint, I wasn't persuaded that it extended the time frame Mr C had to refer his complaint to us.

The reason Mr C asked his questions in January 2022 was because he wanted to understand how the adviser was incentivised to sell the investment to him. He felt that incentives in any form would have made it more likely for the adviser to sell him something unsuitable.

I note that on 7 December 2021 Halifax had already said they wouldn't give more information about adviser remuneration. In their letter of 29 April 2022, Halifax again said they wouldn't enter into any further discussion about the adviser or the advice.

If we were to give Mr C our view on the amount of information he was given at the sale about the adviser's pay and whether the type or amount of pay incentivised her to mis-sell the investment, then we'd be providing our opinion on the advice he was given. This is because the questions go to the same complaint point – whether or not the investment had been mis-sold.

I appreciate that from Mr C's perspective, his complaint about Halifax not replying to his questions is separate from his complaint about the advice itself. However, at the heart of his complaint about the lack of answers, is the complaint about the advice – it's all about the same issue and so I think it forms part of the original complaint he brought to us about the advice.

As I explained in my decision in August 2022, the further correspondence didn't change the six-month time-frame Mr C had to bring his complaint to our service. The arguments Mr C has made under this current complaint don't change the outcome I reached on that complaint – as a result, we don't have the power to make a finding on the advice Mr C was given.

Even if I were to agree the complaint about not answering the questions was a separate issue, I agree with what the investigator has explained about the activities we can look at. The rules we follow – set out in the Dispute Resolution section of the Financial Conduct Authority's Handbook – say that we can only look at certain activities carried out by financial firms – the specific rules can be found in DISP 2.3.

Regarding investments, the most common activities we can consider are advising on investments, dealing investments, or safeguarding and administering investments. Customer service or complaint handling are not in themselves activities that we can consider. We can only consider them when they are 'ancillary' to the listed activities. The activity that Mr C's questions relate to is that of advising on investments – and we have no ability to look at the advice, as set out above and in my previous decision.

As a result, we can't look into Mr C's complaint about the ancillary activities Halifax carried out, including their answer to his questions regarding how the adviser was paid or their qualifications.

My final decision

Bank of Scotland plc trading as Halifax has already made an offer to pay £75 to settle the complaint and I think this offer is fair in all the circumstances.

So, my decision is that Bank of Scotland plc trading as Halifax should pay Mr C £75.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 11 August 2023.

Katie Haywood
Ombudsman