

## The complaint

Mr P complains about the way Bank of Scotland plc trading as Halifax dealt with him in respect of his request for assistance with a dispute he had with a third party holiday provider he paid using his Halifax debit card.

## What happened

I recently issued a provisional decision setting out the background to this complaint and how I was minded to propose matters were best resolved. I've reproduced my provisional decision here, which forms part of this final decision.

### ***"My Provisional Decision"***

*Mr P has provided a very detailed timeline of the events that form the background to this complaint, along with call transcripts. His record of events doesn't appear to be in dispute so while I've reviewed the submissions in full, I trust the parties will understand why in the interests of brevity I'll simply summarise those events here.*

*Mr P and his family were looking forward to the two-week family holiday they'd booked. But when they arrived at the destination, they found a number of things were wrong with the property; most notably that air conditioning wasn't available in the bedroom and wasn't working in the rest of the property. Mr P attempted to get the problems resolved but without success. The family found the heat unbearable and left after a few days.*

*The holiday provider ("B") refunded some of the cost of the holiday, but Mr P was unhappy with the position. As he'd paid for the holiday using his Halifax debit card, he contacted the bank to see if it could assist him. He told the bank about the refund for terminating the holiday early and that he was calling to see if there was anything the bank could do to help with recovering the money spent on the first week of the holiday. Mr P says he made clear to Halifax in this initial conversation that if it couldn't assist, he would instead take up the matter at the Small Claims Court.*

*Halifax initially told Mr P (on three separate occasions, with different representatives) that he had a valid chargeback claim. After a further call it refunded his account, saying this was conditional on what B said in response, giving a 45-day period for this. Mr P submitted further evidence in support of his claim via an online file transfer service. However, Halifax then told Mr P it couldn't submit the chargeback claim at that time and that it was reversing the temporary credit.*

*When Mr P questioned this position with representatives including a senior manager, the bank told him it had got things wrong in terms of the date of the dispute and that as a result it would look to write off the disputed sum. Mr P was assured that the temporary credit reversal would be suspended, but this didn't happen and the reversal left Mr P over his agreed overdraft limit.*

*This caused Mr P further difficulty as he then had to deal with companies with whom he held direct debits as well as the problems with Halifax. The bank then told Mr P that it was unable*

*to progress the chargeback claim because the Visa card scheme rules limited a chargeback amount to the unused portion of a cancelled service. Mr P raised a formal complaint with the bank including querying why he wasn't told this from the outset, given his initial conversation with the bank.*

*Halifax applied charges to the overdrawn balance, although it appears to have told Mr P it would suspend these. It also reported the excess overdraft on Mr P's credit file. The bank's collections team went on to issue a demand for repayment of the full balance. Mr P also complained to Halifax about this stance, explaining that he'd taken a loan to clear the overdraft as he was worried about the impact on his credit file.*

*Halifax responded several times to Mr P's complaint. Its initial reply of 18 November 2022 expressed disappointment at the poor service he'd received but didn't consider it had done anything wrong in terms of the chargeback claim. Mr P escalated his complaint and received a lengthier response dated 25 November. That letter acknowledged the bank hadn't addressed all of Mr P's concerns and proposed increasing its compensation offer for poor service from £50 to £120. The bank maintained that it couldn't assist with the chargeback claim, but noted that it had given Mr P conflicting information and false promises.*

*At the same time, Halifax issued a second letter in response to Mr P's concern that it had sent its previous correspondence to the wrong address. It reiterated the previous offers made and proposed a further increase of £85 compensation to reflect its error in sending the letter. Halifax issued another letter dated 21 December addressing the points Mr P had made about its actions in relation to the overdraft and Mr P's credit file. It apologised for the service it had provided regarding these aspects and offered £75 compensation. However, the bank didn't consider it was wrong to report the account position to Mr P's credit file, or that it had any responsibility for Mr P's decision to take out a loan to repay the account balance.*

*Mr P remained dissatisfied and referred matters to our service. Our investigator recommended that Halifax increase its settlement offer to £500, which he felt was a fair way to resolve the dispute. He also recommended the bank remove adverse information from Mr P's credit file in relation to the overdraft.*

*Halifax said it was willing to agree to the recommendation. But Mr P wasn't happy with the proposal and the matter has been passed to me for review.*

### ***What I've provisionally decided – and why***

*Mr P has presented a cohesive and thorough account of his conversations with Halifax, supported by transcripts. I understand the bank has also provided call recordings. It hasn't suggested that the call recordings offer a different account of what happened; indeed, the bank's complaint correspondence describes giving Mr P conflicting information and false promises. I find Mr P's evidence to be an accurate and persuasive record of events, and that it is appropriate for me to base my findings on them.*

*I acknowledge Halifax's point about what the relevant Visa chargeback rule says in relation to limiting the dispute amount to the unused portion of the cancelled service. I'm not entirely persuaded that this prevents a card issuer from pursuing a chargeback in the circumstances described by Mr P. There is scope for interpreting that limitation differently; if there were not, the position would be that a chargeback could never be raised for any service that had been carried out irrespective of it being defective. That seems to me rather unlikely.*

*That there is scope for interpretation offers a possible explanation as to why several Halifax representatives considered that Mr P did have a valid chargeback claim. But while I*

*appreciate Halifax has placed emphasis on whether the chargeback could be raised successful, to my mind that rather misses the point of Mr P's complaint.*

*He is primarily dissatisfied that Halifax led him to understand that:*

- a) the chargeback claim was valid and he should receive an immediate temporary credit;*
- b) whether the temporary credit would be reversed would be based on B's response;*
- c) the credit reversal would be suspended; and*
- d) that in light of service failings the debit amount should be written off*

*All of this is supported by the call records I've seen, including Mr P's conversation of 10 September 2022 with a senior department manager in Halifax's debit card disputes team.*

*There are three possibilities here. First, that Halifax gave Mr P correct information and then failed to adhere to it. Second, that Halifax gave Mr P a series of incorrect information. Third, that a number of Halifax representatives gave Mr P assurances that they lacked the necessary authority to provide to him.*

*I'm not inclined to say that any of these scenarios place Halifax in a particularly good light, or that they support the outcome it reached. I don't think it would be controversial to say that a customer is generally entitled to rely on what their bank tells them. If the bank doesn't take reasonable care to ensure what its representatives tell a customer is right, it is only fair that it bears the consequences of that. And if what Halifax told Mr P was right, then it should have taken the actions it said it would.*

*Bearing this in mind, I'm minded to uphold Mr P's complaint. Even if the bank was correct in its decision not to progress a chargeback claim (and I don't necessarily share that view), there were serious shortcomings in the way it dealt with Mr P. Those shortcomings caused Mr P a good deal of confusion and concern over whether he would be refunded. They also led Mr P to believe the temporary credit reversal would be suspended, leading to his account overdraft limit being exceeded.*

*All of this has undoubtedly caused Mr P a great deal of distress and inconvenience, which he's described in detail. He's spent a considerable amount of time and incurred costs in trying to deal with matters, and the stress of the whole situation has placed an avoidable burden on him. Having carefully considered all that's happened, I'm minded to conclude that they warrant a significantly higher compensation award than that previously suggested. Looking at the amount originally in dispute - £1,487.15 – I propose to require Halifax to pay this sum to address Mr P's distress and inconvenience.*

*I also take a different approach from Halifax in terms of the steps Mr P took to address the collections activity the bank took towards him. Halifax recorded the excess position on Mr P's credit file, causing him further concern over the impact on his ability to obtain credit. This was particularly pertinent due to Mr P's family situation and their plans to move house, which had to be put on hold. I'm aware Mr P was able to get a loan, which he used in part to repay the overdrawn balance I understand Halifax demanded in November 2022.*

*Although that suggests the information Halifax recorded hadn't at that point significantly impacted on Mr P's ability to borrow, that isn't the whole story. While Halifax has said it won't take into account Mr P's decision to take out the loan, I'm satisfied that in borrowing elsewhere to repay the debt owed to Halifax, Mr P was taking reasonable steps in mitigation to avoid further loss or harm. A failure to repay the overdraft on demand could have resulted in Mr P being in default.*

*Mr P has provided loan documents showing the annual interest rate on this loan as 11.4766%. That interest (insofar as it relates to the amount Halifax demanded, which I understand to be £3,146.57) represents a loss to Mr P attributable to Halifax's actions. As such I consider it fair for Halifax to compensate him for this in addition to the amount I've mentioned above. I don't consider it appropriate for the bank to pay this for the term over which Mr P took the loan. The loan amortisation schedule makes this inappropriate, and it is also open to Mr P to avoid or mitigate this interest by repaying a lump sum towards the loan.*

*To enable calculation of a fair sum in this respect, I instead propose that Halifax pays Mr P an amount broadly equivalent to one year's simple interest on the £3,146.57, which works out at £361.12. I should be clear to the bank that this is an amount of compensation to address Mr P's loss rather than a payment of interest, and as such there should be no deduction made for income tax.*

*I've noted Mr P's concerns about the excess overdraft information recorded on his credit file. I'm satisfied that, had Halifax dealt with matters better from the outset, this position wouldn't have arisen. Consequently I also intend to direct the bank to amend Mr P's credit file to remove reference to the excess overdraft position."*

I invited both parties to let me have any further comments they wished to make in response to my intended conclusions.

### **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.

Both Halifax and Mr P responded promptly to my provisional findings. I'm grateful to them for doing so.

Mr P accepted my provisional findings and proposed resolution. So did Halifax. With this in mind, I see no reason to depart from what I said in my provisional decision. I'm satisfied it's a fair and reasonable way to resolve this individual complaint

### **My final decision**

My final decision is that to settle this complaint, Bank of Scotland plc trading as Halifax must take the following steps:

1. pay Mr P a total of £1,848.27
2. amend Mr P's credit file to remove any references to the excess overdraft position since 1 September 2022

I'm conscious that Mr P has raised some concerns over the timescale for the amendment to his credit file, as it continues to have an impact on his house buying plans. Bearing this in mind, Halifax should notify the credit reference agencies as soon as possible, ideally within 14 days of receiving Mr P's acceptance of my decision,

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 8 September 2023.

Niall Taylor  
**Ombudsman**