

The complaint

Mr V has complained that Bank of Scotland plc ("Halifax") discriminated against him because he says the members of staff in branch failed to make a reasonable adjustment for his medical condition by not allowing him to jump the queue or not opening up another till for him.

Mr V has also complained about how Halifax has handled a number of Data Subject Access Requests (DSARs). Specifically, Mr V is unhappy that he'd requested CCTV footage from the branch in question to be provided to him, but the footage was deleted, even though he'd submitted his DSAR well within the retention period and had specifically asked for the footage.

What happened

On 18 October 2022, Mr V attended a Halifax branch to withdraw £40 from the counter. Mr V says that there was a very long line, which took around 30 to 40 minutes before he was served. Unfortunately, due to Mr V having mental health conditions, which he says he particularly experiences in public and crowded places, he started to feel anxious whilst he was waiting.

Mr V eventually got served and then left the branch, but very quickly realised he'd lost £30 of the £40 he'd only just withdrawn. Within about 10 minutes or so, Mr V went back into branch to make another withdrawal at the counter (as he had no debit card on him), to replace the money he'd just lost. However, by this stage Mr V started to suffer from a panic attack, whereby he was becoming manic, feeling highly anxious and started pacing up and down and sweating.

Mr V says he explained his situation, including that he is registered as disabled, his health conditions and how he was suffering from a panic attack at the time, to a member of staff in the hope that he could jump the queue or that another till could be opened for him, so he could get out of the branch as quickly as he could. Mr V says that the member of staff told him that he'd have to wait in the existing queue as there were not enough staff to open another till.

Mr V says some people in the queue heard his predicament and allowed him to cut in the queue, which fortunately reduced the amount of time he had to wait to be served again. After the above occurred, Mr V submitted a DSAR to Halifax on 24 October 2022, and specifically asked that CCTV footage of his visits to the Halifax Branch be provided. Halifax never actioned this request due to Halifax writing to a different address from the one it held for Mr V on its systems.

Mr V made further DSARs, but by the time Halifax responded, the CCTV footage was no longer available as it had been deleted. Halifax initially responded to the complaint on 8 November 2022. It acknowledged that the level of service in relation to the long wait times in branch wasn't acceptable, so Halifax paid Mr V £60 for the distress and inconvenience he experienced.

Mr V contacted Halifax again as he didn't feel that his complaint had been investigated thoroughly enough and he wanted to raise further concerns about the way his DSAR request was handled.

Halifax issued a further final response dated 14 December 2022, where it acknowledged that there were mistakes made in relation to Mr V's DSAR requests, resulting in the CCTV footage no longer being available by the time it had responded. Halifax again apologised for the long wait times Mr V experienced in branch but explained that it is a particularly busy branch.

Within the letter Halifax also addressed Mr V's concerns regarding reasonable adjustments and the fact that Mr V felt discriminated against under the Equality Act. Halifax said it takes its duties under the disability discrimination act regarding reasonable adjustments very seriously, but said it wasn't possible to make adjustments on the day, as the branch was extremely busy and there were no staff members available to open another till. Halifax also said it would have been unreasonable to allow Mr V to jump the queue and be served ahead of other customers.

Halifax awarded Mr V with an increased settlement of £200, to acknowledge the poor service that he experienced in branch, relating to the longer than usual wait times, and then a further £36 to cover the cost of phone calls he made.

One of our adjudicators assessed the complaint, and in summary they didn't think that Halifax had treated Mr V unfairly or unreasonably, essentially because they were satisfied by Halifax's explanation that there were not enough staff in which to open another counter. They concluded that what Halifax had already offered to resolve the complaint was reasonable.

I issued a provisional decision on 28 July 2023, explaining why I didn't think that Halifax had treated Mr V unfairly whilst he was in branch. But I did think that Halifax had handled Mr V's DSAR request unreasonably. I have included an extract of my provisional decision below, and it forms a part of this decision.

"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.

Having reviewed everything that Mr V and Halifax have provided, I currently think that Halifax has not acted unfairly or unreasonably towards Mr V because it did not let him jump the queue or open a new till for him.

However, I do think that Halifax should pay Mr V further compensation because of how it handled the DSAR requests. I have explained why I think this below.

Limitations on what our service is able to do

Firstly, I'd like to make it clear that our service is unable to make findings on whether or not something constitutes discrimination under the Equality Act 2010. This is because the Financial Ombudsman Service is an informal alternative to the courts.

However, if Mr V wants a finding as to whether or not Halifax's failure to let him jump the queue or open another till whilst he was in branch is a breach the Equality Act (or indeed any other law), he will need to pursue it through the courts. This is because only a judge can give a formal decision on whether or not a piece of legislation has

been breached. It is outside of this service's jurisdictional remit and therefore not something I can do within this decision.

All I can consider is whether or not the business has acted in a fair and reasonable manner in this matter. Although, to do that, I take a number of things - including the Equality Act 2010 - into consideration.

Mr V's second visit to the branch

When Mr V went back to the Halifax branch, having realised that he'd lost some of the money he'd only just withdrawn, I can appreciate why Mr V was in a state of agitation – especially given what he has told us about his circumstances. And I can see why he didn't want to have to queue up, yet again, to withdraw more money from his account.

Mr V has explained that he told a member of staff about his situation, in summary: that he'd just been in and lost the money he'd only just withdrawn; that he's registered as disabled due to mental health conditions; and that he was suffering from poor mental health at the time. And Mr V says that Halifax dismissed what he'd said and told him that there were not enough staff to open another till, which meant he'd have to join the existing queue and wait to be served. Mr V says that this effectively meant that Halifax had failed to make a reasonable adjustment for him, as it was required to do under the relevant discrimination laws.

Halifax has explained that it was unable to open another till because it was really busy on the day and that its staff were already dealing with customers which meant there was no member of staff spare to be able to open another till.

Mr V says that staff members were standing around and he says they could've opened a till and served him. Mr V has provided photos of staff from his visit - one person looks to be reloading a coffee machine and another standing with his arms crossed, looking at something around a corner. However, I don't think that what Mr V has provided proves that Halifax did actually have staff that were able to open another till. I say this because, just because someone doesn't look busy, doesn't mean that they are not already in the middle of a task. Moreover, there's no guarantee that the people he saw 'standing around' were even trained to operate a till. For example, the people he took a photo of could well have been mortgage or financial advisors, rather than counter staff.

As such, whilst I recognise why Mr V wanted another till opened, and I appreciate his frustration that he had to wait to be served again, I'm satisfied with Halifax's explanation that there weren't enough staff available in which to open another till.

Mr V has also questioned why he was not allowed to jump the queue. But I don't think that Mr V's expectations that he be allowed to jump the existing queue is a reasonable expectation. Having said that, I do think he could've perhaps been offered the choice to sit down and have his place in the queue held for him – as Halifax suggested as an option in its response to the complaint. But from what I have seen, it seems that all of the members of staff in the branch, including the one that Mr V spoke to were already dealing with other customers at the time, so I can appreciate why the suggestion was not made at the time.

And from what I have seen of Mr V's testimony, it seems that he was frustrated largely because of how long it would take to make another withdrawal, so I'm not

sure that such a suggestion would've placated Mr V, even if the option had been offered to him.

Mr V has said that he was able to cut in to the queue in branch, as customers already in the queue allowed him to join the queue in front of them. Therefore, it seems that Mr V was fortunately able to reduce the amount of time he had to wait in any event.

In its response to Mr V's complaint, Halifax explained that it has made a note on Mr V's customer record, so that in future, when staff are dealing with Mr V, they will be aware of Mr V's circumstances. I can also see that Halifax suggested Mr V use another Halifax branch which is located closer to where he lives, on account that it is not as busy as the one he'd visited and so should be less stressful for Mr V to use, should he need to visit. Halifax has also offered to provide Mr V with a lanyard, again so that if he visits a Halifax branch, the staff will be made aware that he may have other needs.

Overall, these all seem reasonable suggestions to assist Mr V when using a branch going forwards. Although of course, Halifax can't guarantee that the branches will not be crowded (or that there will be enough staff to open more tills), should Mr V need to visit one again.

DSAR

In the course of the complaint, Mr V made a DSAR to Halifax, I understand a key piece of evidence Mr V wanted to obtain by making such a request was the CCTV footage from the day he was in branch. Due to Halifax writing to the incorrect address for Mr V, the DSAR was not actioned within the specified time frame, which in turn led to the footage being deleted before Mr V was able to see a copy of it.

In the circumstances, I think that Halifax did get matters wrong in terms of it's handling of the initial DSAR. I understand that in a later DSAR, Halifax had missed a number of call recordings, although this was quickly rectified, and the call recordings sent out to Mr V a short time later.

So, it's clear that Halifax failed to respond to the initial DSAR within the specified time. But I don't think writing to an address that doesn't match the one it already held on file for Mr V is reasonable. Afterall, if there was uncertainty about which address to use, Halifax could've contacted Mr V using another method or written to the address it held for him in the first instance. And not only did Halifax fail to respond to Mr V in time, it also chose to delete the requested footage, even though it knew that Mr V wanted to obtain a copy of the footage.

I can see why Mr V was frustrated with Halifax, as it's clear that he believes that the CCTV evidence was central to proving his complaint and corroborating his testimony.

However, I don't think the absence of the footage changes my thoughts on this case. I say this because Mr V says the footage would show he was not swearing whilst he was in branch, or indeed acting in the way that the member of staff said he was. But even if I just accept Mr V's testimony at face value, I still don't think what he says happened means that Halifax treated him unfairly or unreasonably whilst he was in branch.

So, although I appreciate that Mr V was suffering from poor mental health at the time, in my view this does not mean that Halifax acted unfairly or unreasonably because it was unable to open another till for Mr V because members of staff were already busy

dealing with customers at the time. Nor do I think Mr V having to join the existing queue rather than being allowed to jump the queue was being unreasonable either.

As such, taking everything into account, I think that what Halifax offered, which was a total of £260 for the distress and inconvenience Mr V experienced during his branch visit, is not unreasonable compensation.

But I do think that Halifax should also pay Mr V compensation for how it handled his DSAR – particularly for how it handled his first DSAR request.

Having reviewed what Mr V has told us, and the evidence that Halifax has provided, I currently think Halifax should pay Mr V a further £150 for the distress and inconvenience Mr V experienced when making his initial DSAR and the subsequent chasers. I say this bearing in mind that Halifax has already paid Mr V £36 towards the costs of the calls he made to Halifax about this matter.

Putting matters right

I currently think that, in addition to what Halifax has already paid Mr V, Halifax should also pay Mr V £150 for the distress and inconvenience caused because of Halifax's handling of the DSARs."

Mr V didn't respond to the provisional decision, but Halifax did and it said that it had nothing further to add.

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 reconsidered everything, and as no new information has been provided by either party, I see no reason why I should reach a different outcome to the one I reached in my provisional decision.

Putting things right

So, to put matters right, in addition to what Halifax has already paid Mr V in relation to this complaint, Halifax should also pay Mr V £150 for the distress and inconvenience caused by its handling of Mr V's DSARs.

My final decision

Because of the reasons given above and in my provisional decision, I uphold this complaint in part and require Bank of Scotland plc ("Halifax") to do what I have outlined above to put matters right.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr V to accept or reject my decision before 13 September 2023.

Thomas White
Ombudsman