

## **The complaint**

Dr L complains that Bank of Scotland plc, trading as 'Halifax', kept their personal data on its computer system when that data should have been deleted.

## **What happened**

Dr L says they had registered for online banking with Halifax. In 2010, they closed their Halifax accounts. They thought their data would have been deleted from Halifax's online banking facility at that time. They were not notified that any data was to be retained by Halifax.

In 2022, Dr L applied for a new Halifax credit card. They said they couldn't register for online banking because they were still registered from the last time they had a Halifax account.

Dr L says that Halifax should not have retained their data in a live system if they didn't have an account. They were able to reactivate online banking. But they believe their data had been at risk for over ten years.

Dr L says Halifax failed to keep customer data secure. They said there was information in the press in 2015 showing a Halifax data security flaw. Dr L said they wanted Halifax to undertake a review to identify historic data that should be removed from its electronic systems. Dr L also told us Halifax did not handle their complaint very well. They wanted Halifax to apologise for this.

In its first response to Dr L, Halifax said it was not part of its procedures in 2010 to deregister online banking when accounts were closed. It said that Dr L's information had been protected.

Halifax then issued a further response to Dr L. It said it had reviewed their complaint after receiving further information. It then said it was an error not to cancel Dr L's online banking.

It also said Dr L should have been sent a letter saying they could cancel their online banking when they hadn't logged on for a long time. Halifax offered to pay £50 to Dr L to compensate them for what had happened.

Dr L said they didn't think they had sent any new information to Halifax. They questioned whether Halifax had taken their disability into account when it was communicating with them.

Our investigator looked at all of this. She thought Halifax had already made a fair offer to put things right for Dr L. She didn't think it needed to take any further action.

Dr L did not accept our investigator's view and so the matter was passed to me for an ombudsman's decision.

I asked our investigator to find out some more about how all of this had affected Dr L. Dr L told us that they have autism spectrum condition. They said the Equality Act 2010 deems the way they experience the world to arise from a disability. They said their experience with Halifax had caused them very intense and very unpleasant feelings. Dr L told us that the consequence of the mistake made by Halifax and the lack of clarity in its complaint response had an impact on their physical and mental health. In their response, Dr L said it might help effective communication if they could speak with me directly.

I issued a provisional decision in this matter because I thought Halifax needed to do more to put things right for Dr L. I said:

“I know Dr L said they thought it might help effective communication if they could speak with me directly. But I’m satisfied I have enough information to make a decision from the written documents Dr L and Halifax have given me.

I intend to tell Halifax to do more to put things right for Dr L. I’ll explain why.

Firstly, I have to make clear what I can consider about Dr L’s complaint.

Dr L said they want Halifax to change its processes and identify other customers who may have been impacted by the same data issue as them. As a service, we don’t regulate financial businesses. The regulator is the Financial Conduct Authority. What that means in practice is that I can’t tell Halifax what its processes should be. However, I can look at Dr L’s individual complaint and how they have been affected by the problems they identified with Halifax.

In the complaint form, Dr L said they wanted me to look at how Halifax had failed to show it had complied with the Equality Act 2010. Our service can’t determine whether Halifax has complied with the Equality Act 2010 – that would ultimately be for a court to decide. But in this decision, I have considered the Equality Act 2010 to help me decide a fair and reasonable outcome to this complaint.

Dr L and Halifax now agree that it made a mistake. Dr L’s online banking should have been closed in 2010 when they closed their accounts. And Halifax should have sent them a letter to see whether they still needed access to their online account when they hadn’t logged on for a long time.

When Dr L complained about all this to Halifax, the response Halifax sent was confusing.

First of all, it said there had been no mistake. Then it said it had new information and there had been a mistake. But Dr L hadn’t sent any new information and it wasn’t clear what Halifax was referring to.

So, what I have to look at now is how this has all affected Dr L. It looks as though there was some inconvenience to Dr L initially in that they couldn’t get online access and this took a little bit of extra time to sort out. I think this would have caused Dr L some inconvenience at the time.

Dr L told us they were worried that their data had been at risk for over ten years. They told us about a Halifax data breach they’d read about that happened in 2015. I haven’t seen any evidence to suggest that Dr L’s data was impacted by that breach or that any of their data fell into the wrong hands.

But it’s clear from reading Dr L’s complaint that the matter has caused them a lot of worry since they found out their online banking data had been retained. Dr L told us they have autism spectrum condition and the situation with Halifax had caused a significant knock-on effect on their physical and mental health. Dr L told us that it should not be assumed that all of this would have a small impact on them just because that impact may be small on a ‘typical’ person. Dr L told us that because of what happened and the impact on their mental health, they developed poor eating habits. They did not go out to exercise, which they said led to back pain.

Dr L also said that Halifax didn’t take account of their disability through all of this. Looking at the information Halifax had, I can see Dr L disclosed they had health concerns and could be vulnerable. I haven’t seen anything to suggest that Halifax took any further action to find out more about Dr L’s health or how it impacted on them day-to-day.

I think it would have been reasonable for Halifax to find out more about what Dr L had said about their health. I'd expect Halifax to think about how it communicates with customers who may be vulnerable and take account of their needs. If Halifax had done this, I think it would have realised it could have been helpful to adapt the way it communicated with Dr L.

As I said above, the way Halifax communicated with Dr L when it responded to their complaint was confusing. I can see that from what Dr L told us that this caused them a lot of concern and worry as well.

Putting all of this together then, my provisional view is that Dr L was put to some inconvenience when they ran into trouble setting up their online banking again. They have experienced a lot of worry because of the mistake Halifax made in retaining their data. And this worry was exacerbated by the unclear information in the letters Halifax sent to them. All of this had a greater impact on Dr L because of the way they experience the world.

With all of this in mind, I plan to tell Halifax to pay £250 to compensate Dr L for the upset and worry caused to them. I know Halifax already offered to pay £50, but it's not clear whether that's already been paid to Dr L. If it has, Halifax will be able to take that off what it will then owe Dr L."

Halifax said it accepted what I said in the provisional decision. It said it had already paid £50 to Dr L and agreed to pay a further £200.

Dr L made some comments about the provisional decision. By way of brief summary, they said:

- their complaint around the Equality Act 2010 was that Halifax had not provided evidence of how it had attempted to comply with the legislation; and
- it was not clear from my decision whether this service had investigated whether Dr L's personal data had been part of any breach whilst it was improperly retained.

### **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 have upheld the complaint to the same extent as set out in my provisional decision. I'll explain why.

I have carefully considered the additional information Dr L sent to us. I am sorry to learn that my provisional decision caused Dr L some anxiety. It was not my intention to cause them any upset. I also want to make clear that the reason I set out the parameters of this service in my provisional decision was not intended to be a criticism of Dr L, but to explain why I could not recommend the outcome they sought on their complaint form.

I can see Dr L was concerned as to whether we had investigated whether their data was affected by a data breach whilst it was improperly retained. Our investigator did look into this and made enquiries of Halifax.

Halifax told her that it did not record the names of data subjects who had been impacted by a data breach where such a breach had affected a large number of its customers. Halifax is unable to say definitively whether Dr L's data was affected by a breach. That said, as I set out in my provisional decision, I have not seen any evidence to suggest that Dr L's data has been affected or there had been any detriment to Dr L arising from such a breach.

However, I do acknowledge that Dr L has been very worried that their data was at risk when it was erroneously retained by Halifax. I took this into account when recommending Halifax compensate Dr L for the worry caused in that regard.

Dr L also said that their complaint in respect of the Equality Act 2010 was that Halifax had not shown how or if it attempted to comply with the legislation. As I said in my provisional decision, I can't decide whether the Equality Act 2010 has been breached and similarly, I can't make a finding about whether Halifax's actions complied with the legislation.

What I can consider is whether Dr L was treated fairly. On that basis, my finding is that Halifax made a mistake when it closed Dr L's account. As a result of that mistake and the way Halifax communicated with them afterwards, Dr L was caused a lot of worry. And it is on that basis that I think Halifax should pay compensation to Dr L.

I said in my provisional decision that I could not tell Halifax what its internal processes should be. Dr L said that there was no obstruction to me concurring with their desire for 'good practice' even if this service cannot enforce such practice. However, it is my role to consider individual complaints that arise between a customer and a business. We cannot consider the general policies and procedures of individual businesses as a whole. So, I'm sorry that I cannot suggest to Halifax how it must put things right for others who may have been affected by the data breach Dr L referred to.

With all of these things in mind and for the reasons set out in my provisional decision, I'm satisfied that a fair outcome to Dr L's complaint is for Halifax to pay £250 in total to them.

### **Putting things right**

Halifax must pay £250 in total to Dr L to compensate them for the impact the errors I have identified above. I understand Halifax has already paid £50 to Dr L, so it must now arrange to pay them £200.

### **My final decision**

I uphold this complaint and require Bank of Scotland plc, trading as Halifax, to put things right as I have set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Dr L to accept or reject my decision before 2 November 2023.

Nicola Bowes  
**Ombudsman**