

The complaint

Mr R complains Bank of Scotland plc trading as Halifax have unfairly defaulted a loan account in his name. Mr R was also unhappy Halifax hadn't properly updated his address.

What happened

In March 2022 Mr R was unfortunately involved in a scam, which led to him taking out a £25,000 loan. He complained to Halifax, and then our service. We issued a final decision in November 2022 which, in brief, said Mr R was partly responsible for what happened – but so were Halifax, so we said the loan should be reduced by 50%, and Mr R would still need to pay the remainder. Mr R accepted this outcome.

I can see Mr R expected the default on the loan to have been removed, but the Ombudsman's final decision didn't require this – so he raised a new complaint to Halifax. In doing so, he also said he was unhappy letters were still being sent to his old address.

Halifax accepted they'd made an error regarding his address and paid him £100 to reflect this. But, in respect of the default, they said they'd done nothing wrong. They said when an account is between three and six months in arrears then they need to record a default. They said the number of holds on the loan account had been exhausted, and Mr R's budget showed the arrears would continue to build. They said they were sorry, had sent several letters explaining this, and there was no way they could prevent it.

Mr R asked us to look into this issue, saying he didn't get the letters Halifax said they sent and didn't think it was fair the default was being applied.

One of our Investigators looked into things, but overall felt Halifax had provided a fair response to Mr R's complaint.

Mr R didn't agree. He said Halifax were happy to offer a freeze on the account for three months – but on the fourth month they then defaulted the account without giving him the opportunity to avoid the default. Mr R added he did at one point before our service considered the original fraud start making the contractual £550 payment, but it was clear this wasn't sustainable for him. After our service had considered things, Mr R entered into a payment arrangement of £50 a month – and with the £550 he'd have paid up to February 2023 effectively preventing the default. Mr R says he was the victim of a scam, and it's not fair he's still being penalised because of it. So, the complaint's been passed to me to decide.

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.

As a starting point I do want Mr R to know he has my sympathies for the situation he's found himself in. There is no doubt he was the victim of a despicable scam which has had a significant impact on him and on his life plans.

I do though need to set out the scope of what I can consider. In the previous Ombudsman's decision they found Mr R was liable for 50% of the loan. The Ombudsman also took account of Halifax's comments they couldn't restructure the loan. The Ombudsman subsequently directed Halifax to, effectively, remove 50% of the amount owing. The result of this meant the contractual monthly repayment of around £550 remained due every month. The loan itself would be paid off quicker due to less now owed, but the monthly payments never changed.

So, I can't consider whether the loan should or shouldn't be restructured – as the Ombudsman factored that into her decision.

But, I can look at whether the default has been applied fairly.

Halifax told Mr R they're usually required to report an account as being in default if between three and six months' worth of payments have been missed. To be clear, the 'three to six months' worth of payments' here means the contractual monthly repayment. In Mr R's case, that's £550 a month. Reaching an arrangement to pay won't necessarily stop a default being applied – that'd only be a short-term temporary measure until someone could start paying the contractual monthly repayment.

Mr R says he never got any letters from Halifax telling him they were going to default the account.

Halifax have provided copies of the letters they say they sent. I've seen no reason to assume they wouldn't have been – so I think it's more likely than not they were sent.

I'm not doubting Mr R's recollections here, but I can't hold Halifax responsible if they do send post and it's not received.

Halifax sent multiple letters. The last one dated 28 October 2022 told Mr R that he'd not repaid the arrears that'd built up on the account, so they had defaulted it.

From all I've seen, Mr R didn't repay the arrears, so Halifax have acted fairly in defaulting the account.

For Mr R's benefit, I've also thought about whether I'd have reached a different decision if I thought Halifax hadn't sent the letters – and I don't think I would have.

I can see in Halifax's notes in August 2022 they did an income and expenditure with Mr R – which showed he had around £150 a month spare – not including the £550 monthly loan repayment. So, it was clear to Halifax at this time he wouldn't be in a position soon to start meeting the monthly payments.

This is consistent with the rest of Mr R's circumstances as I understand them – he's said on several occasions he's not able to afford the £550 monthly repayment. And, it'd only have been by making that payment on a regular basis that he'd have been able to avoid the account being defaulted. Overall, I can't say Halifax have treated Mr R unfairly by registering the default.

In respect of the letters being sent to the wrong address, this is disappointing, but I'm satisfied the £100 Halifax have already paid is a fair remedy for this issue.

While I understand to Mr R this decision might not feel fair, I do sincerely hope my explanation lessens the injustice he currently feels about the situation he's ended up in.

My final decision

For the reasons I've explained above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 15 March 2024.

Jon Pearce
Ombudsman