

The complaint

Mrs T complains that Bank of Scotland plc, trading as Halifax, lent to her irresponsibly.

What happened

In 2019 Halifax provided Mrs T with a credit card account with a limit of £4,300. Following sustained difficulties for her in managing the account, Halifax ultimately sold the balance on to a third party in 2022.

Mrs T complained that it had lent to her irresponsibly as she was unable to sustainably afford the repayments. Halifax didn't initially accept that, so she brought a complaint to this service. An investigator looked at the evidence and thought that it ought to have been clear to Halifax in 2019 that this borrowing would not be affordable and sustainable for Mrs T. So he upheld the complaint and suggested that Halifax should refund the interest and charges on the account, in line with our established approach.

Halifax accepted that and confirmed the amount that it would effectively pay to the third-party owner of the debt, thereby reducing what Mrs T would owe in relation to the account.

Mrs T did not accept that outcome. She believes that the refund amount should go directly to her, rather than being used to reduce what she owes. She questions that the calculation is correct, and also says Halifax had no right to sell her account on without her permission, and that the redress should therefore not be paid to that third party.

As Mrs T has not accepted the investigator's outcome, the case has been passed to me for a final 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.

As both parties accept that this complaint should be upheld, this case now only requires me to consider what Halifax should do in order to put things right.

Our well-established approach to such cases is to direct the business to refund the interest and charges to Mrs T, as the best way of putting her back in the position she would have been in. This is because Mrs T has had and spent the money she borrowed, so the fairest approach in cases such as this is to ensure that the business who made a mistake doesn't profit from that mistake.

Mrs T appears to accept those principles. However, she has questioned the amount that Halifax has calculated she is to be paid. And she also insists that any redress should be paid directly to her, and not to the third party which now owns the debt, saying that the refund has "...*nothing to do with*..." it. Furthermore, she seems to suggest that Halifax was not entitled to sell her account on without her permission.

Turning first to the matter of Halifax's redress calculation, Mrs T has not said why she questions that amount, or on what basis she considers it to be incorrect. I have double checked the details with Halifax, including that Mrs T paid no interest at all for the first year of the account, and have no reason to doubt its calculation.

As to whether Halifax should pay the redress directly to Mrs T, or use it reduce the balance she owes on the account, I have been given no reason here to depart from our standard approach. So, where there is still a balance outstanding, as there is here, any refund can be used to reduce the balance that the customer still owes.

Generally speaking, Halifax should buy the debt back from the third party to which it sold the debt in question. If it is not able to buy the debt back, then it should liaise with the new debt owner to adjust the account and reduce the amount owed by Mrs T.

Halifax has provided the terms and conditions of the account which Mrs T agreed to when she applied. Those terms and conditions confirm that Halifax reserves the right to sell any debt on to a third party, as is standard practice in the banking and credit sectors. So I have no basis on which to fairly direct Halifax to pay the redress directly to Mrs T. A balance is outstanding, and the redress can be used to reduce that balance, regardless of the fact that it is currently owned by a third party.

Putting things right

Halifax should buy the debt back, and then take the following steps. If it is not able to buy the debt back, then it should liaise with the new debt owner to achieve the results outlined below.

In order to put things right for Mrs T, I direct Halifax to do the following:

- a) Rework the account to remove all interest and charges incurred on the account since opening.
- b) If that calculation means the adjusted balance would have been cleared, Halifax must refund any remaining sums to Mrs T with 8% simple interest*, calculated from the date of overpayment to the date of settlement.
- c) If after that calculation a balance remains, Halifax must work with Mrs T to arrange an affordable repayment plan for her.
- d) Once the resulting balance has been repaid in full, Halifax must remove all adverse information it reported on Mrs T's credit file in relation to this account.

*HM Revenue and Customs requires Halifax to deduct tax from any award of interest. It must give Mrs T a certificate showing how much tax has been taken off if she asks for one. If it intends to apply the refund to reduce an outstanding balance, it must do so after deducting the tax.

My final decision

For the reasons I've explained, I uphold this complaint and direct Bank of Scotland plc to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T to accept or reject my decision before 9 May 2024.

Siobhan McBride

Ombudsman