

The complaint

Miss T complains that Bank of Scotland plc (trading as Halifax) placed her account in debt after she paid a cheque into her account which was unpaid by the drawing bank. She is also unhappy that Halifax closed her account.

What happened

The detailed background of this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here.

Miss T had a current account with Halifax.

Miss T deposited an international cheque for US\$ 5,264.51 on 27 February 2023, and this was credited to her account on 1 March 2023, for the amount of £4,249.00. Miss T has explained that she received the cheque for work she'd done

When depositing a foreign cheque Halifax customers are presented with the options' they have in order to collect the funds.

- Collection: The Bank waits until the cheque(s) has been cleared and the funds obtained from the drawee Bank, before crediting customer with the proceeds.
- Negotiation: The Bank credits the customer before the cheque(s) is cleared by the drawee Bank. In effect, the Bank is lending the customer the money until the cheque(s) is cleared.

Halifax's normal process is to negotiate foreign cheques presented by customers – which is what happened here. The funds were credited to Miss T's account.

The cheque then bounced because there were insufficient funds in the drawing account, and Halifax were unable to collect the funds, so they were taken back from Miss T's account on 25 May 2023. Miss T had used the funds before Halifax was asked to return them and this put her in an unarranged overdraft.

Miss T said she had been deposited in good faith. So, she said Halifax should honour the cheque.

In response, Halifax said it was sorry for the position Miss T found herself in, but it had acted in line with its processes and the terms and conditions. Halifax explained that she'd need to repay her overdraft.

Halifax wrote to Miss T, on 2 June 2023 to ask her to repay her unarranged overdraft. They wrote to her again on 18 July 2023 with a formal demand for the sum of £4,048.28 to be paid in 30 days or her account would be closed in two months from the date of the letter and Halifax may ask a debt collection agency to recover the funds.

Miss T didn't set up a repayment plan or repay the balance. So, Halifax sent Miss T a letter on 23 August 2023. The balance she owed on this date was £3,932.28. Halifax said if she

didn't get in touch or they didn't receive a payment from Miss T in 30 days, her account would be closed.

Following this Miss T's current account was closed on 26 September 2023 and the debt was moved to collections.

Miss T brought her complaint to our service where one of our investigators looked into what had happened. After looking at all the evidence, the investigator said:

- Halifax had told Miss T of the risks of depositing foreign cheques and that funds may be debited from her account if the cheques were unable to be paid.
- Halifax acted in line with the terms and conditions of Miss T's account when they debited the funds from her account.
- Halifax told Miss T that the cheque was fraudulent but this was incorrect. So it should pay Miss T £50 compensation for any trouble and upset this caused her.
- Halifax didn't do anything wrong when it asked Miss T to repay her overdraft, and closed her account.

Miss T disagreed. She said the cheque should have been verified before it was credited to her account and that she is the victim of fraud. She added that the way everything was explained by the branch staff when she paid the cheque into her account, led her to believe that they'd be no problems with the cheque. So she thinks Halifax should honour the cheque.

Halifax also disagreed. It said it didn't think it should pay Miss T any compensation as it hadn't given her the impression the cheque was fraudulent – in fact it was Miss T that had come to this conclusion. So it said it hadn't done anything wrong.

As no agreement could be reached the matter has come 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.

I want to make it clear that I do have some sympathy for the situation Miss T finds herself in as it does appear she had done work and not been paid. She's not been able to contact the person who employed her. So, I can understand this has left her in a difficult situation. But what I need to decide is whether Halifax has done anything wrong, and if it has, whether it needs to do anything to put that right.

Cheque deposit

Firstly, I need to explain that Halifax was carrying out a banking service for Miss T, facilitating the banking of a foreign cheque. Financial advice is a different service and there is no evidence that Halifax was providing Miss T with any advice during that process.

Miss T paid in the foreign cheque she received from her client into her account in February 2023. Halifax has explained that if a customer comes into branch to deposit a foreign cheque, they ask the customer if they were familiar with the process. If not, they would explain how it differs from paying in a domestic cheque (including collection/negotiation) and support them with filling out the paperwork.

Having looked at the deposit form the terms Miss T was asked to agree to say the following:

"Our normal practice is to negotiate foreign cheques presented to us by our customers, [...] These services are explained below:

Negotiation

This means that we'll credit your account before we present the cheque for payment, and so will have to debit your account later if the cheque is unpaid."

I wouldn't necessarily expect a customer to understand the difference between funds being available and the cheque being cleared. And I can't comment on the conversation Miss T may have had with the staff because I wasn't there. That said, based on the available evidence, I'm satisfied that Miss T was given a copy of the terms and conditions for depositing foreign cheques and was aware the cheque would be sent for negotiation. This means the bank converts the value of the cheque into sterling and will either credit the account straight away or within a few days.

In the meantime, the cheque is sent to the paying bank for clearance. So, if the cheque is returned as unpaid the bank can re-debit the money from the customer's account and cheques can be returned at any time. I would expect a customer to be told of these risks when a cheque is sent for negotiation. And that should this happen, the amount may be debited from the customer's account. I'm satisfied the information on the form clearly sets out the risks of cheques being returned unpaid. It also sets out what this might mean for a customer – the amount being re-debited from their account. It follows that I'm satisfied Halifax provided clear information to Miss T about those risks.

Unfortunately, when Halifax sort settlement from the foreign bank, there were insufficient funds in the account to pay the cheque. So, Halifax had to debit Miss T's account because the cheque was unpaid as per the terms. This left Miss T's account overdrawn.

Miss T says Halifax should honour the cheque and she shouldn't have to repay what she owes. I accept Miss T hasn't done anything wrong – she has carried out work and not been paid. But I can't hold Halifax responsible for this. I think it's reasonable Halifax should hold Miss T liable for the overdraft. I say this because the funds were credited and spent by Miss T while the cheque was being negotiated, spending the funds linked to the cheque was a risk as the amount could be debited from the account if for any reason the cheque was returned unpaid, which is what happened here. And as I've already said above, I'm satisfied that Halifax made Miss T aware of these risks.

In terms of communications between Halifax and Miss T, Halifax in common with other banks follow the approach of regular contact with customers until a payment arrangement is agreed. Halifax wrote to Miss T on 2 June 2023 to ask her to repay her unarranged overdraft. They wrote to her again on 18 July 2023 with a formal demand for the sum of £4,048.28 to be paid in 30 days or her account would be closed in two months from the date of the letter and Halifax may ask a debt collection agency to recover the funds.

I haven't seen any evidence Miss T set up a repayment plan or repaid the balance. Halifax sent her a letter on 23 August 2023 one final time. The balance she owed on this date was £3,932.28. Halifax said if she didn't get in touch, or they didn't receive a payment from

Miss T in 30 days, her account would be closed. Miss T didn't get in touch so her current account was closed on 26 September 2023 and the debt was moved to collections.

From my review of all the available information concerning Miss T's complaint I haven't found Halifax made any mistakes in its handling of Miss T's overdraft and I think its communications about asking Miss T to repay her overdraft were reasonable in the circumstances. So, I won't be asking Halifax to write off Miss T's overdraft. And I encourage Miss T to get in touch with Halifax to find a way forward to repay what she owes.

However, I do think Halifax could have been better in its communications about why it had to re-debit the funds. I say this because Halifax told Miss T that the cheque was fraudulent when it wrote to her on 20 July 2023 – which was incorrect. The investigator has recommended Halifax should pay Miss T £50 compensation for any trouble and upset this caused her. Halifax has objected and said that Miss T was already under the impression she had been a victim of a fraud and reported the matter to the police by the time it wrote to her in July 2023. So, it says it shouldn't have to pay Miss T any compensation.

Whilst I take onboard Halifax's comments, I don't think telling Miss T that the cheque was fraudulent was helpful – regardless of whether Miss T had been to the police or was already under that impression. I say this because Halifax were in possession of the correct facts regarding the cheque – which was that the drawing account didn't have enough money to honour the cheque. So, I think Halifax should have provided Miss T with this information, which might have gone some way to alleviate Miss T's concerns that she'd been scammed and meant she took a different tact trying to recover what she believes she is owed by her client.

Finally, I've looked at whether Halifax were fair to close Miss T's account. The terms and conditions of Miss T's account says Halifax can close an account immediately or by giving two months' notice. Halifax wrote to Miss T on 18 July 2023 to let her know that if she didn't repay her overdraft or get in touch to sort out a way forward it would close her account within two months. So, I'm satisfied that Halifax has complied with this part.

Miss T didn't repay what she owed or contact Halifax to sort out any arrangement to repay what she owed. So, Halifax closed her account on 26 September 2023. Given the circumstances, whilst I have some sympathy for the situation Miss T found herself in, I don't find Halifax treated Miss T unfairly when it closed her account.

My final decision

For the reasons I've explained, my final decision is that I uphold this complaint in part.

To put things right Bank of Scotland plc (trading as Halifax) should pay Miss T £50 for providing her with incorrect information.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss T to accept or reject my decision before 30 December 2024.

Sharon Kerrison
Ombudsman