

The complaint

Miss G complains Bank of Scotland plc, trading as Halifax, disclosed information about her to a third-party after receiving a court order. Miss G says the court order has been executed without legal basis – and is therefore fraudulent. Miss G is unhappy that despite several requests Halifax didn't give her a copy of the court order.

Miss G also complains Halifax didn't retrieve her payments in line with the Direct Debit guarantee.

To put things right, Miss G wants Halifax to send her a copy of the court order, evidence of the validity of the direct debits on her account, refund them, and pay her compensation. To keep matters simple, I will refer to "Halifax" mainly in my decision.

What happened

The details of this complaint are well known by both parties, so I won't repeat them again here in detail. Instead, I'll focus on setting out some of the key facts and on giving my reasons for my decision.

In October 2023, Halifax informed Miss G that it had received an arrestment order in connection with a debt she owed to her local council. Halifax explained the arrestment order was used in Scotland to secure payment of a debt, which allows a court to freeze specified funds held in a customer's account.

Halifax removed around £128 from Miss G's account and explained it was legally obligated to do so. Halifax also explained Miss G could authorise it to pay the debt in full or partially by completing a mandate from the Sheriff Officer – whom I will now refer to as "S".

Halifax informed Miss G that after 14 weeks, the funds frozen would be released to satisfy the order. Halifax also informed Miss G that if she wanted the legal documents it relied on, she should contact the court or S directly.

Miss G says Halifax breached its obligations and data protection rules by complying with S' instruction. Unhappy with this, and Halifax declining to refund her direct debits and providing signed mandate forms, she complained. Miss G also raised a Data Subject Access Request (DSAR) with Halifax and complained to the ICO (Information Commissioner's Office).

Halifax responded to Miss G's complaint. In summary, the main points it made in its correspondences were:

- Halifax is sorry Miss G feels the funds shouldn't have been debited without her authorisation, but it's instructed by the court to retrieve them. So Halifax can't refund the money back into her account. Miss G would need to discuss this with a Solicitor or S
- Miss G can request a direct debit indemnity on her account for payments that have been made. And she needs to give Halifax a reason for why it should do this and

inform the companies payments were made to. There is no guarantee such a request will be approved as an investigation needs to take place

- Miss G can find a list of her direct debits (DD) on her internet banking or statements. And if she wants to claim back the DD's then Miss G will need to ask each company to refund the payments. If Miss G has paid for a service which she has received then each of those companies will need to look into her request individually
- Halifax is sorry Miss G didn't receive the high level of service it expects to provide in branch. The branch manager Miss G spoke to should've provided their name to her as requested and not said the documents were fraudulent

Miss G referred her complaint to this service. She added that HM Courts and Tribunals Service (HMCTS) don't hold any documents or orders which afforded her council or S to impose an arrestment on her account.

One of our Investigator's then looked into Miss G's complaint, and they recommended it be upheld in part. In short, their key findings were:

Direct debit concerns

- From the information Halifax has provided, they can see that as of June 2024, Miss G had several DD's listed with around five companies. They note Halifax explained to Miss G that if she was pursuing a claim under the DD guarantee scheme, they would have had to been taken without her authority or incorrectly. So she would have needed to provide details as to why each DD was in dispute as well as directly contacting the payee company
- Halifax said it had no paper DD mandates on the account. DD agreements can be made verbally, electronically, and more rarely, in paper format. The information is sent to a bank by the Automated Direct Debit Instruction Service (AUDDIS). Miss G says Halifax are acting unfairly by not providing a paper-based agreement, but if there isn't one to provide, Halifax isn't doing anything wrong given most DD's are set up in a different way
- Miss G has been made aware by Halifax how she can dispute any DD, and it has acted reasonably in doing so

Disclosing information to a third party

- When Halifax received the arrestment order it was obliged to act in line with it. It isn't the role of this service to make a finding on the validity of a legal order. But we must determine a regulated business has acted fairly. In circumstances like this, there would be exemptions applicable to a firm allowing them to release customer information, or funds from an account

Declining information as part of DSAR

- Miss G has asked Halifax, S, and the Court, for information she says she has the right to see. Miss G says by not providing it, Halifax are in breach of data rules. Our Investigator has asked Halifax why it isn't providing a copy of the order, and they're satisfied its response is inadequate. So Halifax should provide the information Miss G wants or provide proper justification for refusing to do so

In response Miss G reiterated that Halifax has no basis to withhold this information from her.

She also argues that the DD's are contracts between her and Halifax. And the DD Guarantee doesn't say she has to contact a third party, and the indemnity should result in a refund where there has been an error or fraud. A customer doesn't have to disclose personal information as to why there was an error.

Initially Halifax maintained that Miss G must contact the relevant body to obtain the legal documents she is after. But after further consideration, Halifax sent a redacted copy of the 'Schedule of arrestment in execution'.

After reviewing it, Miss G said it was counterfeit and she will take it to court for verification. She's also unhappy it took around a year from Halifax to send it to her and it shouldn't have been redacted.

As there is no agreement, this complaint has been passed to me to decide.

What I've decided – and why

I'm very aware that I've summarised the events in this complaint in far less detail than the parties and I've done so using my own words. No discourtesy is intended by me in taking this approach. Instead, I've focussed on what I think are the key issues here. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts.

If there's something I've not mentioned, it isn't because I've ignored it. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome. I do stress however that I've considered everything Miss G and Halifax have said before reaching my decision.

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, I have decided to uphold this complaint in part. I'll explain why.

Direct debit refunds

A direct debit is a consumer's authority to allow an organisation (the 'originator' or "payee") to claim a varying amount of money, on a varying day from their account. It's also the consumer's instruction to their bank or building society to allow the payments to be taken. So the money is claimed from a consumer's account by the originator. If the organisation wants to change the payment amount or date of collection, they must tell the consumer this first.

All direct debit instructions are covered by the direct debit guarantee. If the bank, building society or payee/originator has made a mistake, then the consumer is guaranteed a refund from their bank. The bank will then try to reclaim the money from the originator under the direct debit indemnity – but that claim might be challenged by the originator and evidence required that it was the consumer who set up the instruction or that proper notice of any changes was given.

It should be noted, and pertinently so in the circumstances of this complaint, that the direct debit guarantee isn't intended as a way for a consumer to reclaim years of payments simply because they are now in dispute with the payee.

Miss G hasn't said there's been an error on a variety of different DD's which I note have been taken for some time historically from her account. DD forms are more typically completed online or directly with the payee, particularly as a customer is giving them

authority to debit their account. As Halifax has pointed out, such instructions are then sent to it by AUDDIS.

AUDDIS' website says:

“AUDDIS enables organisations to send new Direct Debit Instructions to their customers' payment service provider (PSP) electronically, instead of in paper format. It is mandatory for all new service users that submit direct to Bacs.

AUDDIS automates the transfer of Direct Debit Instructions from collecting organisations to the paying PSPs via the Bacs service. The organisation keeps the original signed Instruction and electronically sends the details to the customers' PSP to validate and, if accepted, set up the Instruction on its database”

Halifax says it doesn't have any original paper-based mandate to give to Miss G. Given the electronic nature of how this information is shared and how DD's are set-up, I don't think Halifax has done anything wrong here. I'd also add for these reasons, Halifax not providing them isn't evidence that there was no basis for the DD's to have been set-up or that they are fraudulent. I also question why Miss G didn't raise an issue when the payments were first taken from her account.

The DD Guarantee says:

“If an error is made in the payment of your Direct Debit, by the organisation or your bank or building society, you are entitled to a full and immediate refund of the amount paid from your bank or building society”.

From the information I've seen, I haven't seen at any point that the payments were taken in error. Halifax has also given me a list of valid and invalid reasons for raising a claim under the guarantee. Having carefully considered this, I'm satisfied Halifax hasn't done anything wrong in not refunding historic payments to Miss G under the DD guarantee and signposting her to speak to the payee companies.

The arrestment order and disclosure of it

Halifax has given me a copy of the 'schedule of arrestment in execution' order that it was sent by S. Having done some investigation, I'm satisfied S are a firm of Messenger-at-Arms and Sheriff Officers. Their role, broadly speaking, is to provide a range of debt recovery, enforcement, and investigative services in Scotland.

Having looked at the order, I'm satisfied that it's a legal form of debt collection which is enforceable by the sheriff's office – in this case S. Given the debt this order relates to, it is my understanding that a Council has some autonomy to issue such an order without the court's direct involvement. So taken together, I'm satisfied that this was an order Halifax had an obligation to comply with.

S has its own website which, amongst other things, sets out information about an arrestment order and what a consumer can do to contest it. So to be clear, Halifax hasn't done anything wrong when acting on an order it received via S.

I do agree that it would have been fair and reasonable for Halifax to have provided a copy of the order to Miss G, but equally it's guidance to her to speak to S should also have yielded the information she wanted.

Halifax has subsequently sent a redacted copy to Miss G. I note that the Sherriff officer's name, witness details, S' details have all been redacted by Halifax. Having carefully reviewed this I'm satisfied that it's fair and reasonable for Halifax to have redacted it, especially as the key information, like the reference number and under who's authority it's been issued is on there. So I don't think Halifax need to anymore. I would add too that Miss G knows who S are.

SO if Miss G still wants more information about the order, she has enough information to do so directly with S or her council.

My final decision

For the reasons above, I uphold this complaint in part. I make no direction to Bank of Scotland plc, trading as Halifax, given it has done what I think it reasonably and fairly should have after sending its final response to the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss G to accept or reject my decision before 2 December 2024.

Ketan Nagla
Ombudsman