

complaint

Ms F complains that Bank of Scotland plc, trading as Halifax imposed unfair and excessive charges on her account.

background

Ms F found herself in financial difficulties due to ill health beginning around 2008 and this resulted in her exceeding her agreed overdraft limit. From June 2009 a reducing overdraft limit was applied by the bank. Ms F took advice from a debt management company and it contacted the bank in the summer of 2009 and agreed a debt management plan in September 2009.

The bank says the account remained unfunded from July 2009 until November 2009 when reduced payments began. The bank froze interest and fees and the account was passed to its recoveries department which resulted in all fees and interest being stopped permanently. A final payment was made in September 2011 when the account was closed.

Ms F complained to the bank in 2014 that it had imposed unfair charges. It rejected her complaint on the basis the charges had been imposed in line with the terms and conditions of the account. Unhappy with the bank's response she brought the matter to this service.

The adjudicator did not recommend that the complaint be upheld. She found that the charges had been applied in line with the terms and conditions of the account and the bank had not made an error. She further explained that the Supreme Court ruling of November 2009 said that charges cannot be challenged because they are unfair or too high. She also considered the bank's response to Ms F's financial hardship and concluded that it had responded appropriately. Ms F did not agree and said that charges were excessive and she was entitled to a refund of charges due to her financial difficulties.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

I appreciate that Ms F has suffered financial hardship and she feels that the charges imposed by the bank to have been unfair. While I have some sympathy with her, ultimately the responsibility for managing an account lies with the customer. I am not persuaded that the bank has made any errors in how it has applied the overdraft charges. As mentioned above, following the Supreme Court test case, these charges cannot be challenged as unfair or too high. I can see no reason to direct the bank to refund all, or any, of them.

The second issue that Ms F has raised is that she considers the bank did not respond fairly when she was in financial difficulty. Because the account has been closed the bank no longer has detailed system notes of all the contact with Ms F. I acknowledge that Ms F thinks this is wrong, but a bank is not obliged to keep detailed records for closed accounts.

However, I can see from the records the bank did retain and from the information provided by debt management company that the bank was notified of Ms F's situation by August 2009 at the latest. I gather from Ms F that she had been in contact with the bank prior to this. I see from her statements that she first exceeded her overdraft limit in September 2008. In the

period from September 2008 until September 2009 when the bank stopped charges and interest Ms F did incur some charges and interest.

It is normal for bank to allow a customer some breathing space to resolve their financial problems before defaulting an account and entering into a repayment plan. In the circumstances I cannot safely conclude that the bank has acted wrongly by not defaulting the account sooner. As soon as it heard from the debt management company it stopped charges and entered into a repayment plan. I consider this to have been a reasonable response.

my final decision

My final decision is that I do not uphold this complaint. Under the rules of the Financial Ombudsman Service, I am required to ask Ms F to accept or reject my decision before 24 March 2015.

Ivor Graham
ombudsman