

complaint

Mr I complains that Bank of Scotland plc (trading as 'Halifax') charged a service fee for managing his overdraft.

background

Mr I opened a current account in 2014. It went overdrawn immediately.

He was allowed a planned overdraft up to £250. Anything above £250 was unplanned. Sometimes, he had an overdraft of more than £250. Halifax charged him overdraft fees for having a planned and an unplanned overdraft.

He discussed his overdraft with Halifax. It said it would provide him with a service to help him manage his overdraft. This was called a 'control facility.' But it forgot to do this.

He chased Halifax in January 2015. That's when it gave him the control facility. It also refunded all the overdraft fees. And, it gave him £25 for his trouble and upset.

In February 2016, Halifax charged him overdraft fees of £34 and £2. He complained. He said he didn't have to pay overdraft fees because his account was under the control facility.

Halifax refunded the fees.

In November 2017, Halifax changed its fee structure. It started charging a new daily fee and removed the

control facility. As a result, Mr I incurred overdraft fees of £140.42.

Mr I complained again.

Halifax reviewed his account. It said it should've paid more attention earlier to his financial difficulties. It said if it had, it would've sent his account to its Recoveries team and the fees would've been frozen.

It decided to:

- refund the overdraft fees of £140.42
- remove the overdraft facility
- stop charging fees for 60 days, allowing him time to repay the overdraft
- stop any recovery action for 30 days.

Halifax also paid him £100 for the trouble and upset it caused him.

Mr I was happy with the refund, but he didn't want Halifax to remove the overdraft facility. Instead, he wanted Halifax to write it off. He brought his complaint to this service.

Our investigator thought Halifax had treated him fairly and reasonably. He said:

- Halifax was entitled to charge him overdraft fees. The terms and conditions for the account say it can.

- Halifax got rid of the control facility when it changed the way it charged for overdraft fees. That's why he couldn't have it any more.
- Halifax removed the overdraft facility because it passed his account to its Recoveries team. It did this to help him.
- It also helped him by stopping all overdraft fees for 60 days.
-

Mr I said our investigator hadn't understood his complaint. He said Halifax:

- charged him for the control facility. He said he should've had 12 months' use for free
- should've capped his overdraft fees at £10 a month when he had the control facility
- made changes to the fee structure without his consent
- owes him £500.

This complaint has now come to me for an ombudsman's final decision.

my findings

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'm afraid I won't be upholding Mr I's complaint. I'll explain why I've reached this decision.

Before I do, I must make a note of the fact that Mr I closed his account in June 2018 with a nil balance. And Halifax has refunded all the overdraft fees.

However, Mr I is still very upset at the way he's been treated. He continues to complain about the overdraft fees and removal of the overdraft facility. I spoke with him at length to try to understand his concerns. I also asked Halifax for more information. And I've looked at his bank statements to work out what's happened. I've considered all this information to determine what is a fair and reasonable outcome in this case.

should Mr I have paid for the control facility?

Mr I said he should've had 12 months' free use of the control facility. In his words, 'two six- month fee free periods.'

Halifax put a control on his account in January 2015. With the control facility, he paid £1 a day for an unplanned overdraft. It was normally £5 a day.

Halifax said the control facility lasted six months at a time. Normally, the customer pays a £10 monthly fee for the control facility. It didn't charge him for the first six months.

I've looked at Halifax's internal notes. They show it renewed the control facility in May 2015. Mr I's bank statements show he didn't pay the monthly fee, or any overdraft fees, from May 2015 to January 2016.

In January 2016, Halifax charged him the £10 monthly fee. He complained. This time, it seems the control facility ended because Mr I had taken advantage of a 'switchers' overdraft tariff.' So he shouldn't have been charged the £10 monthly fee. Halifax refunded the fee.

It seems the tariff period ended by December 2016. Halifax put the control back on his account. It started charging him the £10 monthly fee and the overdraft fees. It can't clarify when the control facility was removed, but the statements show last monthly fee debited his account on 2 May 2017.

I think Mr I believes he was starting afresh in December 2016 and so should've had another six months' free. I asked Halifax about this. It said the control facility is normally free for the first six months. After that, the customer must either pay the normal monthly fee or ask for the facility to be removed.

As it was, he'd already had 12 months of the control facility free. And its notes say he'd maximised the limit. He wasn't entitled to another six months' free. So, I won't be asking Halifax to refund the monthly fees he paid from December 2016 until May 2017.

was there a cap on the overdraft fees?

Mr I said he believed the overdraft fees were capped at £10 per month.

He's also said he shouldn't have paid any overdraft fees when he had the control facility.

I think he might've thought the monthly fee was a cap. It wasn't. Halifax said it doesn't stop charging overdraft fees under the control facility. It's just that the fee for an unplanned overdraft is reduced to a daily rate of £1.

Halifax shouldn't have charged him planned overdraft fees during the tariff period, but it did charge him £34. He complained and it refunded this sum. But he still had to pay fees for having an unplanned overdraft.

Despite this, Halifax has refunded all the overdraft fees.

Based on this information, I don't consider he's entitled to any refund because:

- his overdraft fees weren't capped at £10
- the £10 monthly fee was for using the control facility
- he had free use of the control facility from January 2015 to January 2016•
- he had to pay overdraft fees when he had the control facility but Halifax has refunded all overdraft fees
- he didn't have the control facility from February to November 2016
- he had the control facility from December 2016 until May 2017. Halifax was entitled to charge the monthly fee and overdraft fees during this period.

could Halifax make changes without his consent?

Mr I didn't like the daily overdraft fee. He said Halifax couldn't make changes without his consent. I'm afraid it

can. The terms and conditions for the account say at section 11:

‘We can change the general or additional conditions that apply to a particular account, benefit or service.

The terms and conditions also say it will tell the customer, in advance, about the changes and how they will affect them.

The change happened in November 2017. Halifax said it sent letters to all its customers in August and September 2017, telling them about the changes. I haven’t seen a copy of the letter but I have no reason to doubt it sent one to Mr I.

I’m afraid it’s up to Halifax how it charges for overdrafts. This is within its commercial discretion. I can’t tell it to change to a monthly fee simply because this suits Mr I more.

I’m afraid I don’t think Halifax has treated Mr I unfairly here.

Was it unfair to remove the overdraft facility?

Mr I didn’t want Halifax to remove his overdraft facility. He said it should’ve written off the debt instead.

I’m afraid I disagree. An overdraft is a debt owed to the bank. I’m sure Mr I knows this. The bank is entitled to ask the customer how they will repay it. And the bank

must treat a customer in financial difficulties positively and sympathetically. But this doesn't automatically mean it has to write off a debt.

Halifax sent his account to Recoveries. It said it wanted to give him time to repay or reduce the overdraft. In this case, it provided him with a 60-day grace period in which to repay the outstanding balance. It froze all charges and fees during this period. But it had to withdraw the overdraft facility. This was its policy.

Again, I don't think Halifax acted unfairly here. I think it was trying to treat him positively and sympathetically when it froze the charges and fees. And besides, Mr I did clear his overdraft.

the £500

Mr I said Halifax used a deposit of £500 to reduce his overdraft. He wants this money back.

I've looked at the statements for the account. I can't see a single deposit of £500. However, between May 2015 and January 2017, Mr I paid approximately £500 in total into his account. His account was overdrawn during this period. The deposits reduced his overdraft.

Banks are entitled to use money, which the customer pays into an account, to reduce or pay off a debt owed to the bank. This is normal industry practice. A bank doesn't always have to do this, but I can't see any reason here to say Halifax was wrong to do so. There's

no evidence the money belonged to a third party or was ring fenced for specific purposes. So, I won't be asking Halifax to pay him back.

To conclude, I agree Halifax made some mistakes. It didn't apply the control when it said it would; it charged him fees during the tariff period; and it could've sent his account to Recoveries earlier. I appreciate he was frustrated by this. But I think its decision to refund all the overdraft fees and pay him a total of £125 compensation for his trouble and upset is a fair and reasonable settlement of his complaints. Halifax didn't have to refund the overdraft fees because they were applied correctly, in line with the terms and conditions. And he had the benefit of 12 months' free use of the control facility.

I don't think its mistakes were so serious that he suffered any financial loss or harm so I also think it was reasonable for it to offset the compensation payment against the overdraft. And as I've already noted, he did clear his overdraft.

Having considered the evidence, I don't think it would be fair and reasonable to ask Halifax to pay anything more to Mr I.

I'm sorry this will be disappointing news for Mr I but I hope the reasons for my decisions are clear.

my final decision

My final decision is that I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr I to accept or reject my decision before 25 November 2018.

Razia Karim
ombudsman