

complaint

Mr E complains about how Bank of Scotland plc (trading as Halifax) has applied a refund of interest on his account.

background

Mr E got into some financial difficulties, and he asked a debt management company to help him to deal with his creditors. After he'd been making small payments towards his debts for some time, a family member offered to lend him some money. Unfortunately that was rather less than he owed in total to all his creditors. The debt management company showed him how to divide that money fairly between the businesses he owed money to. Mr E applied that formula, and worked out how much to offer each one.

Mr E owed Halifax a little over £9,500 at that time. He offered Halifax's debt collection agency £3,794.28 in partial settlement of his debt. The agent accepted that amount on Halifax's behalf in late October 2017.

But at the same time, Halifax itself was working out a refund of interest that was due to a number of its customers, including Mr E. It worked out that it owed Mr E a refund of just under £3,000. And it wrote to him at the start of November to say that it was going to use this refund to reduce his debt to a little over £6,500. But this was after Mr E had already made his payment in partial settlement of the debt. So, instead, Halifax used the refund money to pay off some of the remaining balance on Mr E's loan. Then it wrote off what was left.

Mr E didn't think that was fair. He said that he appealed against Halifax's refusal to pay the refund to him. He said it had already agreed to write off the full amount of his outstanding debt, before the refund was applied to the account. But Halifax said it wouldn't give him the refund. It said that it did think that some confusion had been caused because it had written to Mr E to say it was reducing his debt, at a time when its agents had already accepted a partial settlement. So it paid him £50 to say sorry for that.

Our investigator asked Halifax for more information about how this settlement was reached with its agent. Then he said that he thought this complaint should be upheld. He said that Mr E applied a formula to work out how much he should offer each of his creditors. And if Mr E had known that Halifax was just about to reduce his debt, he would've offered less money. But, because his overall debt to Halifax would've been reduced, the offer would've covered a higher percentage of Mr E's outstanding debt. So our investigator thought that Halifax would've accepted that reduced amount.

Our investigator said that Halifax should pay Mr E the difference between what Mr E paid to settle his debt, and what he would've offered if his debt had already been reduced. Our investigator worked that out as £1,025.52.

Mr E agreed with that, but Halifax didn't. It said that Mr E hadn't actually paid the interest which was wrongly charged on his debt, then had been refunded. So it didn't think it would be fair if it had to give this money to him. Halifax said that it had agreed not to pursue Mr E for the rest of the money he owed, but he did still owe that money. And it said that it was a hypothetical question to say whether Halifax would've accepted a lower settlement figure. It may not have done so. The percentage it had accepted was already well below what it would normally expect.

Our investigator didn't change his mind. Because our investigator and Mr E didn't agree, the case was passed to me for a final decision.

my provisional decision

I issued a provisional decision on this complaint and explained why I didn't propose to uphold it. This is what I said then:

- Our investigator suggested that Mr E would've acted differently if he'd known about the refund to his debt that Halifax was about to make. He thought Mr E would've made a lower offer, and that Halifax would've accepted it, as it would've been around the same percentage of Mr E's outstanding debt. I agreed with that.
- Because of that, our investigator suggested that Halifax should pay Mr E back any money it wouldn't have received if it had processed the refund earlier.
- But that remedy meant that Mr E would get back a little over £1,000. I didn't think that's what would've happened if Mr E had realised this debt was smaller than he thought, before he made his offer of settlement.
- In October 2017, Mr E was dividing up a small pot of available money between his creditors. I thought that it was likely that, if Mr E had known then that he had less debt with Halifax, he would've offered other creditors more. He wouldn't have kept some of the money that he has paid to Halifax. And if that's right, then Mr E wouldn't have been any better off financially if he had realised that he didn't owe Halifax quite so much money. The other businesses that Mr E owed money to would've been better off. They would all have received a little more if Mr E had known that Halifax was about to pay a refund which would reduce his debt by almost £3,000. But I couldn't make an award to those creditors.
- So I needed to think about who gets to keep the money.
- I knew that Halifax agreed to accept an amount which was less than half what Mr E owed, in settlement of this account. But I also thought it was important to consider what Halifax agreed to do, in return for that payment.
- I listened carefully to a call that Mr E had to reach an agreement with Halifax's agent on 17 October 2017. Mr E went through his income and expenditure, and he listed his repayment offers to other creditors, so that Halifax's agent would be able to see if he was dividing up his funds fairly between the companies he owed money to.
- Halifax's agent explained that it would accept the amount of £3,794.28 that Mr E offered. His credit file would show as partially settled and no one would chase him for payment any more. The agent also said that Mr E would have the option in future to pay the rest, and the debt would then show as fully satisfied.
- Mr E said that the debt management firm that was helping him had drafted a letter for him to send asking for full and final settlement. That was what he wanted.
- If Halifax had accepted Mr E's payment in full and final settlement, then I would've said it wasn't fair for it to keep the refunded interest on this account. I would've said that Halifax

had no expectation of receiving more money for that debt, and no right to ask for any more.

- But Halifax's agent said it would only settle as a full and final settlement if Mr E paid off the full balance. So Mr E said that before confirming the payment he would check with the debt management company.
- Mr E rang back 3 days later, on 20 October, and made the payment. There was nothing on this call to show that Halifax had agreed to accept this payment on different terms than those its agent set out three days earlier. And at the time of writing this provisional decision, I hadn't seen anything else that made me think that.
- So I thought that all that Halifax had agreed to do in return for the partial payment was not to chase Mr E for the money any more. Mr E still owed it that money. And because of that, I didn't think that Halifax did anything wrong when it used the refund of interest to reduce the debt that Mr E owed to it.
- I realised just how disappointed that Mr E would be by this decision, but my provisional view was that Halifax doesn't have to pay him back any part of the settlement that he paid to it, or the interest that Halifax subsequently refunded and used to pay off more of his debt.

I invited the parties to make any final points, if they wanted, before issuing my final decision. Halifax didn't reply. Mr E replied to say that he wanted to use the money to pay another debt.

my findings

I've reconsidered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. I haven't changed my mind.

Mr E said that he could agree that the money shouldn't just be given to him. But he said he wanted to use the money to pay another debt, to HMRC. He said he would be happy for the money to be sent directly there to reduce his tax bill.

I'm sorry to hear that Mr E has a priority debt outstanding. I would expect Mr E to have been advised that he needed to pay priority debts like this one off in full before he reached a settlement with lenders. And I can't hear that he mentioned a debt to HMRC at the time that he was reaching a settlement with Halifax. But even if Mr E did owe HMRC this money then, I don't think that, if he had been aware that he owed Halifax less money when he reached a partial settlement with it, that he would've used that money to pay a bill at HMRC. I'll explain why I think that.

I can hear on the phone call Mr E had with Halifax that he listed the other lenders he was also making offers to, and he sets out in detail where the money he could borrow was going to be used. And he also told us the formula that he used to work this out, which was based on the total amount of money that he had available, and the amount that he owed each creditor. So I still think that if Mr E had been aware at that time that Halifax was going to reduce the amount he owed it, he would just have paid those other creditors a little more each. I'm sorry to have to tell Mr E that I still don't think this complaint should be upheld.

my final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 7 September 2018.

Esther Absalom-Gough
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