

complaint

Ms S complains that Bank of Scotland plc (trading as Halifax) gave her sisters confidential information about her joint account and her son's account.

background

Ms S had a joint account with her late father. Her son also has an account with the same bank. Ms S says that after her father died in 2014, Halifax gave her sisters information about her joint account and about her son's account. Ms S is unhappy as she thinks the bank shouldn't have given this information to her sisters. Ms S says the bank's actions have caused problems between her and her sisters.

Halifax said it didn't have a record of Ms S's sisters visiting the bank. But the bank said its usual procedure would be to ask a deceased's next of kin or executor to identify themselves, and to provide a copy of a death certificate, before it provided any information to them. The bank has a record of the fact that one of the sisters is named on the death certificate. So the bank said it may have told one of Ms S's sisters about her late father's joint account. The bank paid Ms S £100 compensation as it couldn't be sure whether it had followed its internal procedures by checking her sisters' identification and recording their visits.

Our adjudicator didn't uphold this complaint. She thought the bank had acted reasonably in giving her sisters information about their late father's accounts, including the joint account. She said she had seen no evidence that the bank had disclosed information about the son's account. She thought £100 was fair compensation for not recording the visits, assuming they had happened. So the adjudicator said she didn't think that Halifax should do anything else.

Ms S didn't agree with the adjudicator and asked for an ombudsman to reconsider. She was still unhappy that her sister had been given information about her son's account. She thought the bank had breached the Data Protection Act. She suggested that the only reason that there was no evidence that this information had been disclosed was because the bank had not followed its own procedures by not recording the sisters' visits. So Ms S suggested Halifax should provide its CCTV footage to see if her sisters had visited the bank.

I wrote a provisional decision as follows.

my provisional findings

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

Halifax has no records of Ms S's sisters visiting the branch. But it has a record that one of her sisters was named on her late father's death certificate. And Halifax accepts that it may have given information about the joint account to her sisters. So I don't think I need to see CCTV footage to decide this issue.

Ms S has complained that Halifax gave information to her sisters without asking to see their identification. There's no evidence of that, but in any event it has not been suggested that anybody but her sisters was given the information. This isn't a case of impersonation. And it's not in dispute that the sisters were the deceased's next of kin. So I don't think there's anything in that part of this complaint.

Halifax has said that it will give information verbally to a deceased customer's next of kin or executors about his accounts, including joint accounts and trustee accounts. It won't usually provide statements, but sometimes it will if they are requested. I found this surprising, as a joint account does not form part of a deceased person's estate and doesn't have to go through probate. And the bank still has a duty of confidentiality to the surviving joint account holder, as indeed it has to all of its customers. So I asked Halifax to provide a copy of its policy about this.

Halifax doesn't have a written policy about disclosing such information. But it did provide me with a leaflet available to its customers, entitled "Bereavement Services." Under the heading "Joint accounts" is a paragraph which reads as follows:

"All regular payments will continue. We'll transfer the accounts into the sole name of the remaining account holder straight away and provide you with a list of the regular payments to check whether you still want them all to be paid."

A bank statement contains rather more information than just a list of regular payments. And the statements in question contain some quite large, occasional transactions. So I don't think Ms S had any reasonable way of knowing that confidential personal information about her joint account, beyond the limited kind mentioned in the leaflet, would be disclosed to third parties. I can see why it must have come as a shock to her when she learned that her sisters had obtained this information. She says this caused her great distress.

Ms S feels that Halifax's actions have breached the Data Protection Act. Halifax denies that disclosing bank statements is a breach of the Act. But I don't think I need to decide that, because the bank's duty to keep its customers' information confidential arises independently of the Act. I think that Ms S did have a legitimate expectation that the bank would keep her statements confidential. So I propose to award her some compensation for that.

Ms S also says that the bank shouldn't have given information about her son's account to one of her sisters. The bank originally said that her father had been a trustee of that account, and that it would disclose information about this kind of account too. The bank has since confirmed that her father had never been a trustee, and it had been mistaken when it said that he was. But the adjudicator thought that there was no evidence that this information had ever been given out, so she still didn't uphold the complaint. I think that CCTV footage would have helped to establish what happened, but it is too long ago to obtain this now. I think it will have been routinely deleted within a few weeks of being recorded. So I will have to consider circumstantial evidence to decide what I think happened.

Halifax thought that Ms S's father was a trustee of her son's account. It says that it would disclose such accounts to the executors of deceased trustees. One of the sisters had become an executor by the time Ms S says her son's information was disclosed. And Halifax accepts that it may have disclosed the joint account statements without recording that it did. So on balance, I think that it's likely that it did the same thing again.

I don't think the bank could have foreseen that Ms S would be caused great distress, but I think it is foreseeable that a customer would be quite concerned. So I think that £200 would be fair. I will deduct from that figure the money Halifax has paid her already, which leaves £100. She may care to share that money with her son, who she says was also distressed, but that is up to her.

My provisional decision is that I intend to uphold this complaint. Subject to any further representations I receive, I intend to order Halifax to pay Ms S £100, in addition to the £100 it has already paid her.

responses to my provisional findings

Ms S accepted my provisional findings. Halifax did not. It sought to resile from its earlier concession that it may not have followed its internal procedures. It reminded me of what those procedures were. Those procedures include making a record of any meeting with a relative of a deceased customer, and there is no record of such a meeting taking place. Halifax also pointed out that Ms S has no evidence that bank statements were passed to her sisters.

my findings

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

I appreciate that if Halifax's procedures had all been followed properly, then there would have been a record of the visits, if they happened. Then the absence of such a record would suggest that the visits did not happen. So if I was persuaded that the procedures had been followed, I would reject this complaint.

But as I have said above, Halifax has a record of the fact that one of the sisters is named on the death certificate. Halifax must have got that information from somewhere, but it hasn't recorded where or how it came by it. But it's very likely that it came from a bereaved relative of the deceased. That in itself suggests that Halifax did not follow its own procedures, and is indeed the reason why Halifax conceded that that may have been the case. In my view, it was right to do so. And I don't think it would be fair to let it withdraw that concession now. So I think it's reasonable to regard Halifax as being bound by it.

It's not quite right to say that Ms S has no evidence that documents were given to her sister. Her account of what her sister said to her is itself evidence, and I accept it. She may not have independent evidence to *corroborate* what she says, but it's not clear what form Halifax is suggesting that might have taken. In any case, I don't think she is making it up.

I think that the above reasons are enough to decide that this complaint should be upheld. But I should mention that in response to my provisional decision Halifax said, for the first time, that it would only disclose written statements to an executor. It had previously said (in April and October 2015) that it would also give written information to the next of kin, and described the relevant procedure. I don't know which position is correct, but the conflicting information suggests that there are at least some staff who believe that statements may be disclosed to next of kin who are not executors. So I am not persuaded that Ms S's account is implausible.

my final decision

So my final decision is that I uphold this complaint. I order Bank of Scotland plc (trading as Halifax) to pay Ms S £100, in addition to the £100 it has already paid her.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S to accept or reject my decision before 11 April 2016.

Richard Wood
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