

complaint

Mr L complains Bank of Scotland plc (trading as Halifax) wants to close his account and won't accept his repayment offer of £1-£2 a month towards his outstanding debt with it.

background

Mr L has a current account with Bank of Scotland that has an overdraft facility of £1,000. He has been out of work for a number of years and is in receipt of benefit payments. His overdraft facility on this account is used fully every month and Mr L has debts in the region of £40,000 elsewhere.

Mr L has an existing health condition which means he is unable to leave his home and requires help and assistance in carrying out his daily and financial affairs. When Mr L stopped work a number of years back, due to his condition, Bank of Scotland agreed to waive the interest and charges on the account for a period of time. Due to an oversight this remained in place until recently.

Bank of Scotland now want repayment proposals from Mr L. It went through income and expenditure details with him and he was able to offer £1-£2 a month towards repaying the outstanding balance. Bank of Scotland wasn't willing accept that amount and keep the account as it is. It offered to close the account and move Mr L's balance to its recoveries department that could agree a long term repayment plan. It also said Mr L could open a basic account with it on-line or in branch.

Mr L complained as his condition means he's unable to go to branch and he is unable to use a computer. He didn't think it fair it wanted to close his account as this is where his benefits are paid to. He was also unhappy with the customer service provided during some of his calls with it. Bank of Scotland didn't uphold Mr L's complaint so he asked us to look into it.

Our investigator didn't think Bank of Scotland had taken Mr L's specific needs and requirements into account and upheld the complaint. She didn't find it fair that Bank of Scotland close his existing account and ask him to open a new account. She also didn't think there was a realistic prospect of Mr L repaying the balance and so the debt should be written off.

Bank of Scotland disagrees and so the matter was referred to me for review and determination. In summary, it said:

- It is just one of a number of debts that Mr L has and it doesn't think it is fair that it should have to write off its debt. It said Mr L has had the benefit of the money and so it should be repaid.
- Mr L has other accounts with it and he uses internet banking, His testimony surrounding being able to access a computer has changed and it thinks he should be able to open a basic account.
- It considers the account being passed to recoveries to be a suitable option given Mr L's long term financial difficulties. It says the account would be defaulted, and interest and charges on the account would cease and recoveries would be able to agree repayments of £1-£2 a month.
- It considers it has gone above and beyond in providing assistance to Mr L and the fee suppression is still on the account.

- It questions whether this office has jurisdiction to recommend a customer be allowed to keep an account open or recommend they have a product.

I issued my provisional decision on 9 January 2019 where I proposed upholding the complaint but asking Bank of Scotland to do something different. I said:

Firstly the bank has questioned whether this office has jurisdiction to recommend a customer has a particular product or an account should remain open. I am not aware of any jurisdiction rule which means I'm unable to require a bank takes specific action on a complaint. If the bank is able to point to a specific jurisdiction rule then I ask it to let me know in response to this provisional decision.

Whilst who a bank decides to provide services to is usually a matter for its commercial discretion and not something we would generally interfere with, that is only where the discretion has been exercised fairly. If we find commercial discretion hasn't been exercised fairly then we can require the bank to do something to put matters right.

It's not in dispute here that Mr L is in financial difficulties – he has been for some time and I think it fair to say, his position is unlikely to change in the near future. I also accept that suppressing the fees and charges as Bank of Scotland has done has provided assistance to him. But what I need to think about is whether or not its proposed actions are fair for Mr L given his needs and circumstances.

Mr L currently has his benefits paid into this account. I readily accept that for most people changing an account might not present many difficulties. But for Mr L it does and he has a carer who helps him with his day to day and financial affairs, including internet banking. And although he has other accounts with the bank, I haven't been given any reason why it can't simply downgrade the account he has to a basic account rather than making him go through the process of completing another application. Mr L won't simply have to change where his benefits are paid to, which might involve calls or contacting other parties, he will also have to change the details for payments coming from the account. Given Mr L's health situation I don't consider this to be a fair requirement.

Mr L has offered £1-£2 a month towards the amount he owed the bank. It seems to me the bank is willing to accept this amount, but not on the basis of his account staying as it is. So it does appear the bank is actually willing to accept Mr L's repayment proposal.

The investigator thought the balance owed ought to be written off. I have thought about this carefully and can understand why the investigator made that recommendation. At £1-£2 a month, the debt will take many years to repay unless Mr L's situation changes drastically. But I do agree with the bank, that Mr L has had the benefit of the funds he spent at some point in the past and it is fairly entitled to have those repaid. So I'm not currently minded to find the bank should write off Mr L's debt with it. But my disagreement about that doesn't mean I think the bank is fairly entitled to close this account and move the balance to recoveries and insist Mr L open a new basic account. Instead, I have thought about this differently, as the bank ought to have done and come to a compromise between Mr L repaying the debt and him not building up more new debt, which is an understandable concern of the bank.

how the bank should put this right

I'm therefore currently minded to find the bank should move Mr L's debt to an interest free loan which he can repay at £1-£2 a month (subject to the bank's usual reviews on income and expenditure, but not an application process). The bank should then downgrade his existing account to a basic account so he is unable to build up any further debt that he won't be able to repay based on his current circumstances. This will mean the bank is receiving repayments towards the money Mr L owes it, but that Mr L keeps his current bank account and doesn't have to go through a process to open a new account, or change his account details for payments into or out of his account.

I think this strikes a fair balance between the interests of both parties in this matter.

If Bank of Scotland is unable (rather than unwilling) to downgrade the account, then I ask it to provide specific evidence of why in response to this provisional decision.

Mr L has replied, accepting my provisional decision. Bank of Scotland said it wasn't able to carry out my suggested award as its systems don't allow it to set up loans for the length of time needed here. So it said it was going to review what other options were available. We agreed an extension for Bank of Scotland to reply by 1 March 2018 but it didn't reply by that date.

Bank of Scotland then asked if it could look into what other options were available for Mr L. We agreed a date for it to reply by. Again it didn't meet that date and the matter was referred back to me. As I about to issue my final decision, Bank of Scotland replied explaining it was only able to facilitate loans of up to 96 months, which wouldn't be sufficient for Mr L. And it said it's not possible to open an account on behalf of a customer, they would need to initiate that themselves and it's not certain the account would be offered. But it said it is now willing to bring the overdraft balance to zero and remove the overdraft facility on Mr L's account so he can't build up more debt.

As Bank of Scotland has now replied, albeit very late, it's right that I take into account what it has said.

my findings

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

I haven't received any further submissions regarding the outcome of this complaint – only the proposed redress. So I see no reason to alter the reasons given for upholding Mr L's complaint.

It is very disappointing that despite being provided with additional time, Bank of Scotland didn't meet the extended time frame given on more than one occasion. This has left Mr L worried about when he can expect this matter to be finalised. And in the meantime the bank wrote to Mr L informing him he was now going to be charged for the overdraft – despite it knowing that I had provisionally upheld this complaint and asked it to take action. Steps should have been put in place by the bank to prevent this happening whilst the matter was with us.

I'm satisfied the offer Bank of Scotland has now made is fair. It means Mr L won't have the worry of repaying the debt, even though he was willing to do so. And removing the overdraft facility should mean he won't build up further debt in the future. It also means Mr L retains

his bank account and so won't need to go to the trouble of changing his details for any payments received in or going out of his account.

But I do feel I should comment on the points that Bank of Scotland has made in response to my provisional decision. It said its systems won't allow it to set up loans for the length of time needed here. But I note that it offers mortgage loans for up to 40 years on its website, so I'm unclear as to why it *can't* facilitate the loan I proposed.

Bank of Scotland also said that a customer needs to initiate a new account opening. And it wouldn't be certain Mr L would be accepted for a basic account. Again Bank of Scotland has provided no reason as to why it can't simply change Mr L's account to a basic account. And I see no reason why a customer should have to initiate an account opening in situations such as this; it doesn't appear in keeping with how the regulator would expect a bank to treat vulnerable customers. Given the bank knows all of Mr L's details and he is already a customer of the bank, I see no reason why it simply couldn't have facilitated this. But as the bank has now decided to write off Mr L's debt I don't need to press that point here.

how the bank should put this right

As I have upheld the complaint I require Bank of Scotland to take action to put matters right. I require it to reduce Mr L's overdraft balance to zero and remove the overdraft facility, as it has offered.

Bank of Scotland hadn't really thought about Mr L as an individual when speaking with him about his account. Rather it has sought to fit him into its process rather than see what it can do to help. It also delayed our process for Mr L and wrote to him to tell him it would be charging him for the overdraft, after I had already provisionally upheld his complaint. This caused unnecessary worry to Mr L. So I also require Bank of Scotland to pay Mr L £50 for the distress and inconvenience this has caused him.

my final decision

For the reasons given above, I uphold this complaint and require Bank of Scotland to put matters right in accordance with what I have set out above within 28 days of it receiving Mr L's acceptance of my decision. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 7 April 2019.

Claire Hopkins
ombudsman