

## **complaint**

Mr L complains that Bank of Scotland plc (trading as Halifax) unfairly applied charges and fees to his account. Mr L is assisted in this complaint by his brother, Mr K.

## **background**

Mr K says that Halifax applied an excessive and unfair amount of fees and charges to Mr L's account. He says Mr L was on a low income and went overdrawn because of his gambling addiction. Mr K said his brother has been experiencing financial hardship as a result.

The adjudicator explained that the Supreme Court had ruled in 2009 that charges could not be challenged on the grounds that they were unfair or disproportionate. Mr L had been able to return his account back into credit within a reasonable timeframe and, in her opinion, there was no basis for the bank to believe he was experiencing financial hardship.

In response Mr K disagreed and said the fees and charges had been wrongly applied to his brother's account. He said that in particular the fees and charges applied between October and December of 2009 were excessive.

## **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 have looked carefully at the fees and charges applied to Mr L's account and taken a close look at those charges applied between October and December 2009. I can see that Mr L incurred a high number of fees and charges but these were applied when Mr L repeatedly went over his agreed overdraft limit. And I find the charges were applied according to the terms and conditions of Mr L's account.

I appreciate that Mr K says the amount charged was excessive but I find I have no basis for ordering the bank to refund those fees. This is because I find that the fees were correctly applied. And, as the adjudicator has explained, the ruling of the Supreme Court means that I cannot challenge those fees on the basis that they were excessive or unfair.

I acknowledge that Mr K says that Mr L incurred many of the fees because of his gambling and that his brother was experiencing financial hardship. It isn't the bank's role to make a judgement on what Mr L is spending money on – irrespective of what I or Mr K may think about the rights or wrongs of spending large amounts of money gambling.

The way in which a customer spends their money doesn't oblige a bank to suspend or waive its charges. There is no evidence that Mr K was incapable of managing his financial affairs, such that the bank might have intervened. Indeed in general, Mr L's account was quickly returned to within the agreed overdraft limits. That doesn't suggest that Mr L was in need of the bank's assistance in dealing with his financial difficulties.

Halifax has refunded £215 of charges as a goodwill gesture and paid Mr L £50 as compensation for not dealing with this complaint promptly. So I find that I have no basis for ordering Halifax to do any more.

**my final decision**

My final decision is that I do not uphold this complaint.

Sarah Brooks  
**ombudsman**