

complaint

Mr N's unhappy about the way Bank of Scotland plc (trading as Halifax) has dealt with him when he was experiencing financial difficulty.

background

In 2010 Mr N contacted Bank of Scotland when he was in financial difficulty. He says it transferred him to a debt management company which advised him but charged for doing so. Mr N says this wasn't in his best interests and he should've been referred to a free debt management charity instead. Bank of Scotland later accepted it was wrong to refer him to this company and it refunded some of the charges he paid.

Mr N remains unhappy with the service provided and says as a result he's now in a worse position than he would've been if properly advised. He wants the payments he made towards his debts repaid and the balances cleared.

Bank of Scotland said in its initial final response in 2012 that it wasn't its policy to increase a customer's financial hardship by recommending a debt management company that charges for its services. It agreed to reduce Mr N's debt by £2,000 and pay him £100 compensation.

Mr N complained again and a second final response was sent in 2017. Bank of Scotland said it hadn't made an error defaulting his accounts and couldn't agree to write off the outstanding balances. But it offered to pay him another £150 compensation.

Our adjudicator felt this complaint should be upheld. In summary he said:

- We don't know exactly what was discussed in 2010. But when upholding the complaint in 2012 it seems Bank of Scotland gave Mr N the benefit of the doubt that he'd been referred to the debt management company that charged for its services. And Bank of Scotland agreed to reduce his debt by £2,000.
- Bank of Scotland now says it was wrong to reach this resolution as there wasn't any evidence to support Mr N's claim. And he would've entered into an agreement with the debt management company which would've included details of its charges. The bank says it also sent Mr N letters in 2010 and 2011 advising him about free advice organisations.
- Mr N has provided evidence that he paid the debt management company £2,079 charges between September 2010 and September 2012. So, it's fair the additional £79 is now taken into account and reimbursed to Mr N. Bank of Scotland also needs to ensure the correct defaulted balances have been recorded with the credit reference agencies.

Bank of Scotland has agreed to pay the additional £79 to Mr N.

Mr N remains unhappy with the way and Bank of Scotland has handled matters and says it hasn't disclosed all the relevant information. He also says it has only ever paid him £100 compensation. Mr N has asked for an ombudsman review.

my findings

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

Some of the evidence in this case is incomplete, inconclusive or contradictory. So, I've made my decision based on what I think is more likely to have happened than not.

We don't now know what was said or exactly what happened in 2010 and 2011. But I think it's more likely Mr N was made aware of the debt management company's charges at that time, than not. It was only later in 2012 that he ended this agreement when he saw how it was affecting his debts. I also think Bank of Scotland has shown that it mentioned other free debt management services in correspondence it sent Mr N in 2010 and 2011.

Bank of Scotland now says there wasn't evidence to support the 2012 resolution of the complaint. But whatever happened and was said in 2010 and 2011 the simple fact remains that using a debt management company that applied regular charges wouldn't have likely been helpful to Mr N and Bank of Scotland agreed at that time to uphold his complaint. It reduced his debt by £2,000 which appears to have been to compensate him for the charges he'd paid to the debt management company.

Overall I think Mr N has provided enough evidence after all the time that has gone past that he likely paid a total of £2,079 charges to the debt management company. And I think it's therefore fair and reasonable, and in the spirit of the original 2012 complaint resolution, for the additional £79 to now be refunded to Mr N's account.

I'm pleased to note that Bank of Scotland has agreed to do so.

Bank of Scotland had to treat Mr N positively and sympathetically when he was experiencing financial difficulty. But that didn't mean it had to refund or stop interest and charges. And if contractual payments weren't being made it was entitled to consider defaulting the accounts and debt recovery. Mr N's credit file doesn't now show these accounts being reported as the defaults were more than six years ago. But I agree with the adjudicator that it's fair for Bank of Scotland to ensure the correct defaulted balances are recorded with the credit reference agencies.

Mr N says the long term effects of Bank of Scotland's actions prevented him from buying a house and forced him to rent. But I don't think it can reasonably be held responsible for this.

Mr N also says he wants Bank of Scotland to refund all the payments he made to his debts following the involvement of the debt management company and for his outstanding account balances to be written off. But I don't think that's something we can fairly or reasonably expect Bank of Scotland to do. It's reasonable for it to expect repayment of the money Mr N borrowed and owed. It's also not for Bank of Scotland to have to consider Mr N's lending with other banks.

I'm also not convinced on balance that it would be fair or reasonable to require Bank of Scotland to pay or offer Mr N any more compensation over and above the £100 it's already paid and the £150 it offered him in 2017. Taking everything into account, including the level of awards we make, I think a payment of a total of £250 compensation for the distress and inconvenience Mr N has been caused is fair and reasonable.

my final decision

I uphold this complaint. To put things right I require Bank of Scotland plc (trading as Halifax):

1. To refund £79 to Mr N's account;
2. To ensure the correct defaulted balances are recorded on Mr N's credit file with the credit reference agencies; and
3. To pay Mr N a further £150 compensation in addition to the £100 it's already paid.

Bank of Scotland must pay the additional compensation within 28 days of the date on which we tell it Mr N accepts my final decision. If it pays later than this it must also pay interest on this additional compensation from the date of my final decision to the date of payment at 8% a year simple.

If Bank of Scotland considers that it's required by HM Revenue & Customs to withhold income tax from that interest, it should tell Mr N how much it's taken off. It should also give him a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 9 December 2018.

Stephen Cooper
ombudsman