

complaint

Mr S is complaining that Bank of Scotland plc (trading as Halifax) mis-sold him a payment protection insurance (PPI) policy on a credit card. He's unhappy with how much it's offered him in compensation. He's also complaining that it's charged him interest and bank charges on the credit card.

background

Mr S took out a credit card with Halifax in 2001. He took out a PPI policy on the card at the same time. And the PPI was cancelled in May 2004. Mr S went over the credit limit on his credit card in December 2005. And Halifax charged him for doing so. Mr S told Halifax that he couldn't afford the repayments. So in March 2006 he entered into an agreement to pay £60 per month for six months. And Halifax agreed to not charge him interest and charges. Mr S continued to pay £60 per month until December 2008 when he stopped making payments. Halifax had charged him interest and bank charges since September 2006. It referred the debt to a debt collector in April 2009.

Mr S complained in 2011 that Halifax had mis-sold him PPI. Halifax agreed and offered him £5,684.78 and sent him a cheque for the full amount. Halifax says that Mr S telephoned after it had sent the cheque asking that it pay £4,500 off his debt and then send the rest to him. So it cancelled the cheque that it had already sent to Mr S. And it sent him another cheque for £1,184.78. It also reduced his credit card debt by £4,500.

Mr S says that Halifax told him that it would send a cheque to him and that he could pay what he wanted to reduce his debt. So he cashed the first cheque that Halifax sent. But it bounced and Mr S was charged £180.52 in bank charges. Mr S says that Halifax confused him and he wants it to refund the charges plus interest. Mr S subsequently cashed the cheque for £1,184.78 on 6 January 2012.

Mr S is unhappy that Halifax has put an adverse record on his credit file. He says that he wouldn't have gone over his limit if he hadn't taken out PPI. He says various debt agencies have contacted him which has caused him a lot of worry and stress. He says it's also meant that it's hard for him to get further credit. He wants Halifax to take the record off.

Mr S has also complained that Halifax has charged him interest and bank charges on the credit card. He says Halifax shouldn't have done so as he had an agreement to repay £60 per month, but his debt kept increasing. He says that it took Halifax months to put him on a repayment plan. He said he asked Halifax to take him to court, but Halifax said he would have to pay its court costs. He said that he had to stop making payments to get the matter resolved. He says that, had Halifax referred the matter to a debt collector at the beginning, he wouldn't have incurred so many costs.

Halifax thought it was entitled to charge him interest and bank charges. But it agreed that the bank charges were sometimes too high and it should've only charged £12 for each charge. So it looked at the bank charges it had applied in the previous six years and, where it charged more than £12, it refunded the difference.

I issued a provisional decision in December 2015 partially upholding the complaint. I've attached a copy of my provisional decision to my final decision.

Mr S and Halifax accepted my findings in the provisional decision. Halifax worked out that it needs to refund £3,269.26 in fees and interest. Halifax has sold the total debt that Mr S owes to a third party. But it wants to buy back £3,269.26 of the debt to reduce the amount that Mr S owes. Mr S doesn't think this is fair. And he wants Halifax to pay the money to him directly.

Both Mr S and Halifax have said that, due to the passage of time, the default has been removed from Mr S's credit file. So they say that Halifax doesn't need to change the entry.

my findings

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

As both parties have accepted my findings as set out in my provisional decision, I see no reason to reach a different conclusion. So I partially uphold this complaint for the reasons set out in my provisional decision. I've not set out my reasons for upholding the complaint again as they're set out in my provisional decision attached. But I need to address the additional points that Halifax and Mr S have raised.

Halifax wants to buy the debt back from the third party

Halifax says it needs to refund £3,269.26 in fees and interest. It says that Mr S still owes money on the credit card. But it's sold the debt to a third party. Halifax wants to buy back £3,269.26 of the debt from the third party to reduce the amount that Mr S owes. Mr S doesn't think Halifax should be able to do this. He says it's sold the debt so it can't use the refund to reduce it. He thinks Halifax should pay the refund to him directly and he'll settle the debt with the third party.

I've taken into account what Mr S has said, but I think what Halifax wants to do is fair. Mr S is right that Halifax can't use the money if Halifax doesn't own the debt anymore. But it has the right to choose to buy it back from the third party.

Mr S still owes money on the credit card. And part of this is the fees and interest that Halifax has now agreed to refund. This means Mr S hasn't actually paid for them. And he's not out of pocket as a result of Halifax adding them to his account. So, if Halifax chooses to buy the debt back, Mr S would owe Halifax this money again. And I think it's fair that Halifax can use the refund to reduce the debt in this situation. But, if Halifax doesn't buy the debt back, it must pay this money to Mr S directly.

Mr S's credit file

Mr S and Halifax have said that the default isn't on Mr S's credit file anymore. And Mr S is worried that changing the record could affect his credit rating. Given that the default isn't on Mr S's credit file anymore, Halifax doesn't need to change how it recorded the default entry.

what Halifax should do to put things right

Halifax should:

- refund all the interest and bank charges that it applied to Mr S's account since March 2006 (when he entered into the repayment plan). If Halifax chooses to buy the

debt back from the third party, it can use this refund to reduce the amount that Mr S still owes. But it must do so within 28 days of Mr H accepting my final decision. It should also write to him to confirm it has done so. If Halifax doesn't buy the debt back within 28 days of Mr H accepting my final decision, it must pay this money to Mr S directly;

- refund the £180.52 in charges that Mr S paid because of cashing the cheque for £5,684.78. Halifax should also pay 8% simple interest per year on this amount from the date that he paid it until the date Halifax refunds it[†]. Halifax must pay this money to Mr S directly;
- pay Mr S £500 in compensation for the trouble and upset it has caused him. Halifax must pay this money to Mr S directly.

[†] HM Revenue & Customs requires Halifax to take off tax from this interest. Halifax must give Mr S a certificate showing how much tax it's taken off if he asks for one.

my final decision

For the reasons I've set out above, I partially uphold this complaint. I direct Bank of Scotland plc to pay Mr S compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 19 February 2016.

Guy Mitchell
ombudsman

COPY OF PROVISIONAL DECISION

complaint

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background

Mr S took out a credit card with Halifax in 2001. He took out a PPI policy on the card at the same time. And the PPI was cancelled in May 2004. Mr S went over the credit limit on his credit card in December 2005. And Halifax charged him for doing so. Mr S told Halifax that he couldn't afford the repayments. So in March 2006 he entered into an agreement to pay £60 per month for six months. And Halifax agreed to not charge him interest and charges. Mr S continued to pay £60 per month until December 2008 when he stopped making payments. Halifax had charged him interest and bank charges since September 2006. It referred the debt to a debt collector in April 2009.

Mr S complained in 2009 that Halifax had mis-sold him PPI. Halifax agreed and offered him £5,684.78 and sent him a cheque for the full amount. Halifax says that Mr S telephoned after it had sent the cheque asking that it pay £4,500 off his debt and then send the rest to him. So it cancelled the cheque that it had already sent to Mr S. And it sent him another cheque for £1,184.78. Mr S says that Halifax told him that it would send a cheque to him and that he could pay what he wanted to reduce his debt. So he cashed the first cheque that Halifax sent. But it bounced and Mr S was charged £180.52 in bank charges. Mr S says that Halifax confused him and he wants it to refund the charges plus interest.

Mr S is unhappy that Halifax has put an adverse record on his credit file. He says that he wouldn't have gone over his limit if he hadn't taken out PPI. He says various debt agencies have contacted him which has caused him a lot of worry and stress. He says it's also meant that it's hard for him to get further credit. He wants Halifax to take the record off.

Mr S has also complained that Halifax has charged him interest and bank charges on the credit card. He says Halifax shouldn't have done so as he had an agreement to repay £60 per month, but his debt kept increasing. He says that it took Halifax months to put him on a repayment plan. He said he asked Halifax to take him to court, but Halifax said he would have to pay its court costs. He said that he had to stop making payments to get the matter resolved. He says that, had Halifax referred the matter to a debt collector at the beginning, he wouldn't have incurred so many costs.

Halifax thought it was entitled to charge him interest and bank charges. But it agreed that the bank charges were sometimes too high and it should've only charged £12 for each charge. So it looked at the bank charges it had applied in the previous six years and, where it charged more than £12, it refunded the difference.

Our adjudicator partially upheld the complaint. She thought that the way Halifax had worked out the compensation for mis-selling PPI was fair. She also thought it was reasonable that Halifax recorded that Mr S had gone over his credit limit on his credit file. But she didn't think that Halifax should've charged interest after he had agreed to pay £60 per month. She also said that, based on what Halifax had told him, Mr S thought he could cash the first cheque. So she thought Halifax should refund the £180.52 it had charged him. She also thought that Halifax had caused him some trouble and upset. And she recommended that it pay him £500 in compensation.

Mr S and Halifax initially accepted the adjudicator's opinion. But Halifax then said it wanted to include the £180.52 in the £500 in compensation (i.e. only pay £319.48 in compensation). It also said it had recalculated its offer in compensation for mis-selling PPI, but it didn't think it owed Mr S anything more. Mr S says Halifax should refund all the interest it charged back to January 2006, because this

is when he says he started making the £60 repayments. He also wants Halifax to pay 8% simple interest per year on the interest. Halifax wasn't willing to pay anything further, so Mr S asked for an ombudsman to review the complaint.

my provisional findings

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

I intend to partially uphold Mr S's complaint.

compensation for mis-selling PPI

Halifax has agreed that it mis-sold the PPI. So I haven't looked at how it was sold. I've looked at how Halifax has worked out its offer. And I think it's fair and I'd like to explain why.

In a situation like this, I'd expect the bank to put someone in the position they would've been in if they hadn't taken out PPI. Halifax needed to refund all the premiums Mr S paid and the interest he was charged for PPI on his credit card. Halifax then needed to pay 8% simple interest per year for the time he was out of pocket.

Mr S had a PPI policy from when he took out the credit card until May 2004. Halifax has refunded all the premiums that it says he paid (£1,129.39) and the interest that it says it charged him on the premiums (£4,517.74). It also paid 8% simple interest per year for the time he was out of pocket (£37.65).

Halifax later recalculated what it thinks it owed Mr S in compensation and this gave a lower figure. But it's agreed to honour its first offer. So I think it's put Mr S back into the position he would've been in had he not taken out PPI.

interest and bank charges applied after the repayment plan

Mr S has told us that he had to send an expenditure form to Halifax. Following this it seems that Halifax said Mr S could pay £60 per month towards the debt, but only for six months. Mr S did this and Halifax didn't apply any interest or charges to the account. But after the six months, Halifax started to charge interest and bank charges again.

I think it's likely that Halifax agreed to allow Mr S to pay £60 per month because that is what it thought he could afford to pay each month. The lending code for that time said that Halifax shouldn't increase the debt because of interest and bank charges if the consumer could only make *token payments*. Halifax is aware that Mr S couldn't make the full minimum payments. So I think it should've contacted Mr S when the six month repayment plan ended to make further arrangements. And I can't see that it did. Mr S continued to pay £60 per month for three years. So he clearly wanted to try and repay the debt. And he says that he asked Halifax to continue with the repayment plan previously agreed, but it wasn't willing to do so.

I think Halifax should've taken steps to find out what he could pay. And I think it needed to find out whether Mr S could've paid more than he had or chosen to continue with the plan. Instead it chose to continually increase his debt and allow Mr S to pay £60. And I don't think this was fair.

So I think that Halifax should remove all the interest and bank charges that it applied to his account since March 2006 (when he entered into the repayment plan). Mr S wants Halifax to also pay 8% simple interest per year on the interest and bank charges. But I don't think it needs to. A business needs to pay 8% simple interest per year to compensate a consumer for being out of pocket. But Mr S hasn't paid off the credit card, which means he never actually paid for the interest and charges. And he hasn't made any payments that he wouldn't have had to, had Halifax not added the interest and charges. So I don't think he was out of pocket because of these.

Mr S's credit file

Mr S says that taking out PPI caused his credit card balance to be much higher. So he doesn't think he would've gone over his credit card limit had he not taken out PPI. I've looked at how Mr S used his credit card before he went over the limit. And I don't think PPI is what caused him to go over his credit limit. Mr S's balance was almost always around his credit limit. I also noticed that Halifax increased his credit limit by £1,250 in July 2005. And Mr S spent a further £2,000 on the card after then. I think Mr S used his card until it got close to the limit and then stopped. So, had he not had PPI on his card, I think it's likely he would've just spent more on the card, based on what I've seen of his spending practice.

Given this, I don't think I can safely say that he wouldn't have gone over the limit had he not taken out PPI. And Halifax had a duty to record accurate information on his credit file. So I don't think it's fair to ask it to take the record off his credit file. Although, I think it should amend the credit file to say that Mr S has been in a repayment plan since April 2006.

confusion over the PPI refund

Mr S says that Halifax told him that it would send a cheque to him and that he could pay what he wanted to reduce his debt. So he cashed the cheque that Halifax sent for £5,684.78. Despite numerous requests, Halifax hasn't given us anything to show that it clearly explained that it had stopped this cheque. Halifax has agreed to refund the charges Mr S incurred because of cashing the first cheque. And I think that's fair. But Mr S paid the charges. So he's out of pocket. Halifax should also pay 8% simple interest per year on the charges caused by the bounced cheque from the date that he paid them until the date Halifax refunds them.

trouble and upset Mr S has suffered

I think that Halifax should pay Mr S compensation for the issues I've set out above. But I also think it's caused Mr S additional trouble and upset throughout this matter. Mr S has had to contact it on many occasions to try and resolve the matter. And I don't think that Halifax has been helpful to Mr S's situation.

Halifax's actions in the handling of this complaint have also unfairly delayed Mr S's settlement. Mr S fairly understood that Halifax was willing to pay compensation in line with what the adjudicator recommended. But Halifax then said it wanted to reduce the offer. Mr S was understandably unhappy about this. And he had to contact this service a number of times to understand what Halifax was offering. So I think he's entitled to compensation for this.

Taking everything into account, I think Halifax should pay £500 in compensation for the trouble and upset it's caused Mr S

what Halifax should do to put things right

Halifax should:

- refund all the interest and bank charges that it applied to Mr S's account since March 2006 (when he entered into the repayment plan);
- refund the £180.52 in charges that Mr S paid because of cashing the cheque for £5,684.78. Halifax should also pay 8% simple interest per year on the charges from the date that he paid them until the date Halifax refunds them;
- amend the credit file to say that Mr S has been in a repayment plan since April 2006; and
- pay Mr S £500 in compensation for the trouble and upset it has caused him.

my provisional decision

For the reasons I've set out above, but subject to both parties' responses to this provisional decision, I intend to partially uphold this complaint. I intend to direct Bank of Scotland plc to pay Mr S compensation as set out above.

Guy Mitchell
ombudsman