complaint

Mrs N complains that Bank of Scotland plc (trading as Halifax) allowed payments to be made from her account after she asked it to stop them, and is now holding her responsible for the debt.

background

Mrs N arranged for a company ("the company") to provide her with a service. She says she agreed to pay the company monthly. And she says the arrangement was that the company would phone her and she'd make a card payment each month.

The first payment left Mrs N's account with Halifax in December 2012. The second payment was made in January 2013. Halifax's notes show that Mrs N contacted it a few days after the January payment was taken. They say Mrs N's husband told Halifax that the contract with the company had been cancelled. The company had told them that it would need to phone them for their card details before a payment could be made. So Mrs N and her husband had called the company that day to ask why it had taken the money. It had referred them to Halifax. Halifax said it would dispute the transaction and refund the money. The note also says "Accnt on monitoring & they should no longer take out funds".

Mrs N says an adviser in her local branch suggested that she cancel her debit card and get a new one. This would mean that the company wouldn't have her card details and wouldn't be able to take further payments. She did so, but in February 2013 the company took another payment. When Mrs N contacted Halifax about this, it again refunded the money and raised a chargeback. But Halifax subsequently contacted the company, which said it had provided a service to Mrs N. Mrs N closed her account in April 2013. In September 2013 Halifax re-debited the January and February payments to another account in Mrs N's name. These totalled more than £800.

In September 2013 Mrs N's account was transferred to Halifax's collections department. And in November 2013 Mrs N agreed to repay the money at £10 per month. She's kept up with the payments. But in September 2015 Halifax wrote to her to say that her financial position seemed to be long-term. So her account would be closed and transferred to its recoveries department unless she paid the outstanding balance within 30 days. And a default would be registered with credit reference agencies.

Our adjudicator recommended that Mrs N's complaint should be upheld. She thought that Mrs N had asked Halifax not to allow any further payments from her account before the January 2013 payment was taken. So Halifax shouldn't have allowed the payments in January and February 2013. It was for Mrs N to deal with any dispute she had with the company directly. What's more, she wasn't convinced that Halifax had made it clear to Mrs N that the agreement to repay the debt at £10 per month wasn't a long-term plan. She recommended that Halifax write off Mrs N's debt and remove the adverse data from Mrs N's credit file from January 2013 onwards. And she said that it shouldn't transfer the account to its recoveries department in the circumstances.

Halifax wasn't happy with the adjudicator's view. It's provided notes which it says suggest that Mrs N first disputed the payments a few days after the January payment had left the account. It says the company confirmed that the payment wasn't a continuous payment authority ("CPA") and provided confirmation of the service it had provided. It says that since

Mrs N couldn't pay more than £10 per month, it passed her account to its recoveries department so that a longer-term payment plan could be agreed.

my provisional decision

After considering all the evidence, I issued a provisional decision on this complaint to Mrs N and to Halifax on 18 December 2015. I summarise my findings:

- I acknowledged that Mrs N says she asked Halifax not to allow the January 2013 payment. But I wasn't convinced from the available evidence that she contacted it in time to stop the payment leaving the account. I accepted that she may have told the company she was unwilling to make further payments after the December 2012 payment. But from the available evidence, I thought that the first time she told Halifax that she didn't want to make any further payments to the company was when she noticed that another payment had been taken. Halifax raised a chargeback request. But the company said it had provided the service to Mrs N and refused to refund the money. So I considered that Halifax was entitled to re-debit the January payment.

- Halifax hadn't been able to show when Mrs N's original card was cancelled, but it ordered a new card for her on 29 January 2013. So I thought it likely the old card was cancelled around that time. The company took another payment from Mrs N on 18 February 2013. Halifax has confirmed that the new card would have had a new number. So the only way it could have taken the payment would have been if Mrs N had provided it with her new card details or if she'd given the company a CPA at the outset. A CPA would have allowed the company to take future payments out of Mrs N's account using her debit card.

- Halifax says that the payment wasn't made using a CPA. But it's confirmed that if there was a CPA, the company could have taken the February payment regardless of the fact the new card had a different number. Its internal notes show that it spoke to the company in April 2013 and the company said that the transaction was "not recurring".

- Having considered the evidence carefully, I wasn't satisfied that Halifax should have allowed the payment in February 2013. It may be that the transaction wasn't intended to be recurring. And if Mrs N gave the company her new card details I couldn't fairly hold Halifax responsible for the fact that another payment was taken. But I wasn't satisfied, on balance, that Mrs N provided her new card details to the company.

- I accepted that the whole point of Mrs N ordering a replacement card in January 2013 was to prevent the company from taking any further payments. And Halifax's own records show that she phoned it in January 2013 because she wasn't happy that the company had taken £440 from her account. So I thought it more likely than not that the February payment was collected without Mrs N's knowledge, using the original card details. I thought the most likely explanation for this was that it was, in fact, taken using a CPA. But whatever the method used, I considered that the note Halifax made when Mrs N's husband spoke to it in January 2013 should have alerted it to the fact that she didn't consent to any further payment being made to the company.

- In the circumstances, I considered that Halifax should re-credit the £440 that was debited in February 2013 to Mrs N's account.

- I acknowledged that when Halifax sent Mrs N its final response to her complaint in September 2015, it explained to her that repayment plans are intended to be for a short period of up to 12 months. And it told her that if she couldn't repay the balance within that time, the account would be passed to its recoveries department and a default would show on her credit file for six years. But I could see no record of Halifax having told Mrs N this before. And I couldn't be satisfied that if she'd been told about the consequences of not repaying the debt within 12 months, she wouldn't have found some way of repaying it. My view was strengthened further by the fact that I considered that the total amount Mrs N needed to repay should have been £440 less than it was.

- So I agreed with the adjudicator that Halifax should remove the adverse data from Mrs N's credit file. And it shouldn't record any further adverse data relating to the debt within six months of the date of my final decision of this complaint. This would give her a chance to repay the remaining balance if she's able to do so.

- Finally, I considered that Halifax should pay (not credit) Mrs N £150 to reflect the trouble and upset the situation has caused her.

further submissions

Both Mrs N and Halifax have accepted my provisional decision.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I can see no reason to depart from the conclusions I reached in my provisional decision.

my final decision

My final decision is that Bank of Scotland plc (trading as Halifax) should re-credit Mrs N's account with £440, remove all adverse data relating to the debt from Mrs N's credit file, and pay (not credit) her £150. And it should ensure that no further adverse data relating to the debt is recorded within six months of the date of this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs N to accept or reject my decision before 18 February 2016.

Juliet Collins
ombudsman