

complaint

Mr and Mrs H complain that Bank of Scotland plc (trading as Halifax) has registered a default against Mrs H, without giving her a chance to pay off the debt.

background

Mr and Mrs H had a joint account with Halifax, which had a large overdraft. Mr H told us that he is self-employed, and problems with his business had forced him into bankruptcy. Mr and Mrs H understood that Mrs H would be responsible for paying the overdraft on their joint account. But they told us that Halifax defaulted their joint account without giving them a chance to clear the debit, or even telling either of them. And it registered a default on Mrs H's credit record.

Mr and Mrs H feel strongly that Mrs H should've been given a chance to pay off the debt either by borrowing money elsewhere or by agreeing a repayment plan with Halifax. And they think she should've been given that chance before a default was registered on her credit record.

Halifax said that it thought it had made a mistake when it failed to write to Mrs H in advance of defaulting the account. It said that it would pay Mrs H £200 to say sorry for that, and refund £75.05 in bank charges, which meant that all the bank charges since Halifax was told about the bankruptcy had been refunded. And Halifax would give Mrs H 60 days to pay off the debt, starting from 26 January 2018. If she did that, it would remove the default from her credit file. Halifax didn't think it had to do any more than that.

Our investigator didn't uphold this complaint. He said that Halifax should've given Mrs H notice before the default, but he thought that £200 and a refund of all fees charged since the bankruptcy was a fair way to make up for that. He didn't think that Halifax should remove the default. He said that there have been six months since the account was defaulted, and if Mrs H had paid off the debt in that time, the default would've been removed. So he thought that Halifax had given Mrs H a reasonable time to pay off the debt. He didn't think the default had been wrongly recorded.

Mr and Mrs H wrote to us to tell us more about the impact that this issue has had on them. And they said that Mrs H couldn't possibly borrow money to pay off the debt while she had a default registered against her. Halifax should've removed that to give her a chance to pay the debt off by borrowing elsewhere, or by reaching a repayment plan with Halifax.

Mrs H said she had never received any correspondence from Halifax to say what was happening with the debt, even after this service got involved. She said that Halifax still wasn't helping her to pay off the debt.

Because Mr and Mrs H didn't agree with our investigator, this case was passed to me for a final 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. I've reached a different conclusion on this complaint to our investigator. But I've discussed that conclusion with both sides, and both sides have agreed to my proposed award. So this decision will be final.

Mr and Mrs H's account was over the agreed overdraft amount in September 2017. So I think that Halifax was entitled to default this account.

But Halifax didn't give Mr and Mrs H any notice of the default. And it didn't provide any help or information when Mr H contacted it about the frozen account, before the default was applied. I have listened to calls that Mr H made to try and sort out this issue. On those calls Mr H repeatedly asks for help, for reassurance that his wife's credit file won't be affected by his bankruptcy, and for information on what will happen to the couple's joint debt. I think that Mr H was trying to avoid exactly the sort of problems that his wife is now facing.

Halifax didn't help Mr H on those calls. Instead, it said that he needed to wait until the account was closed completely and passed to the recovery team. It did say that a default would be applied to both Mr and Mrs H, but it failed to explain how that would happen, or answer Mr H's questions about how the couple could avoid the default. I don't think the couple knew this account would be defaulted without notice to either of them.

I think that Halifax should've given Mrs H notice before it defaulted the couple's account. And Halifax has said that it was sorry it hadn't done that.

Halifax says that it would usually give someone who owes it money 60 days to pay that off, before it defaults an account. I think that is a reasonable time period for Halifax to have given Mrs H to clear this debt.

Halifax said in January that it would give Mrs H 60 days to pay off the debt. And if she did that, it would remove the default.

This service would usually expect a notice of default, or other warning that a default may be registered on someone's credit file, to be issued before that default is actually registered on someone's credit file. As Mrs H says, it's very difficult to get credit to pay off a debt once a default has been registered. So I think that Halifax also made a mistake when it offered Mrs H 60 days to pay off the debt, but left the default on her credit file for those 60 days.

I think that Halifax should remove the default from Mrs H's credit file. Once it is satisfied that this amendment has taken effect at all three of the major credit reference agencies, it should then write to Mrs H to tell her this has been done, and to offer Mrs H 60 days to clear her debt. If Mrs H is able to get credit elsewhere, and pay off the debt, then her credit record will no longer show this default.

It's also possible that Halifax will be happy to enter into an agreement with Mrs H to repay this debt. If so, then a default may be avoided this way. But I'm not directing Halifax to make any particular decision on whether to lend Mrs H more money to clear the overdraft, or to accept any payment offer she might make. Halifax can make up its own mind about that.

If no arrangement is put in place to clear the debt, then after 60 days, Halifax can default this account again, and record that default on Mrs H's credit record.

I think it's clear that this issue has had a significant effect on the couple, and Mrs H in particular. I don't think that a payment of £200 is enough to make up for that. I think that a compensation payment totalling £600 would more properly reflect the effect that Halifax's mistake has had on Mr and Mrs H. Halifax can include in that amount the compensation payment of £200 it has already made to Mrs H.

Separately, Mrs H said that she hasn't had any correspondence from Halifax, even after this service became involved in this complaint. I can see that Halifax did write to Mrs H at the end of January to confirm that it would offer her 60 days to pay off the debt. The address Halifax used for that letter seems to me to be correct. But Mrs H said she didn't get that letter. I don't think it would be Halifax's fault if that letter wasn't delivered to her, so I don't uphold that part of Mrs H's complaint.

my final decision

My final decision is that Bank of Scotland plc (trading as Halifax) must remove the default from Mrs H's credit file. Once Bank of Scotland plc (trading as Halifax) is satisfied that this amendment has taken effect at all three of the major credit reference agencies, it should then offer Mrs H 60 days to clear her debt.

If no arrangement is put in place to clear the debt, then after 60 days, Bank of Scotland plc (trading as Halifax) can default this account again, and record that default on Mrs H's credit record.

Bank of Scotland plc (trading as Halifax) must also pay Mrs H a total of £600 in compensation. It can include in that amount any compensation it has already paid to Mrs H for this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs H to accept or reject my decision before 5 July 2018.

Esther Absalom-Gough
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