

The complaint

Mr and Mrs L complain that Bank of Scotland plc trading as Halifax failed to cancel a cheque as they had instructed and about Halifax's delay in telling them the cheque had been paid.

What happened

Mr and Mrs L have a joint bank account with Halifax.

On 18 January 2022 Mr L visited his local Halifax branch and asked it to issue him with a cheque for £3,225 payable to the HM Revenue & Customs (HMRC). Halifax raised what it calls a counter cheque or 'banker's draft' and debited Mr and Mrs L's account with £3,225 the same day. For ease, I will refer to the counter cheque as 'the draft'.

Mr L posted the draft to HMRC by second class post. On 20 January 2022 he discovered that money was not in fact owed to HMRC. He went back to the branch and instructed it to cancel the draft. He says the branch agreed to cancel the draft. The £3,225 was refunded to Mr and Mrs L's account on 24 March 2022.

It was not until the following year (June 2023) that Halifax says it discovered that its branch had made an error when it refunded Mr and Mrs L's account with the amount of the draft. This was because HMRC had presented the draft to Halifax for payment on 31 January 2022. Halifax paid the draft on 1 February 2022.

Halifax says it wrote to Mr and Mrs L in June 2023 and again in July 2023 asking them to get in touch about the draft. It says it didn't hear from them so on 27 July 2023 it debited their account with £3,225.

In early August 2023 Mr L complained that Halifax had not cancelled the draft as he'd instructed, pointing out that he'd given this instruction well before Halifax had paid the draft. He said he had contacted HMRC to obtain a refund of the draft but he'd not had any response.

Halifax accepted that it had made an error. It said a banker's draft is a guaranteed form of payment. It could only stop a lost or stolen draft, which did not apply in this case. Halifax apologised for not explaining this to Mr L at the time he asked for the draft to be cancelled. It also paid Mr and Mrs L £250 compensation for their distress and inconvenience.

Mr and Mrs L came to us, complaining that Halifax had failed to cancel the draft as instructed. Mr L said that Halifax's delay in telling them of its error meant it was "*much more difficult if not near impossible*" to obtain a refund from HMRC.

Our Investigator concluded that a fair outcome would be for Halifax to refund Mr and Mrs L the £3,225 it had paid to HMRC because it had failed to cancel the draft and had delayed in telling them about this. She thought the compensation of £250 was fair.

Halifax responded to say it would try to recover the money from HMRC. But it has now told us that it cannot recover the money because HMRC could not give it any information about

the payment for data protection reasons. Although Halifax accepted the shortcomings in its service to Mr and Mrs L, it said it could never have cancelled the draft as Mr L had instructed. So he would always have had to recover the money from HMRC. As such, Halifax did not agree to refund Mr and Mrs L £3,225.

I reviewed the complaint. I issued a provisional decision explaining that I intended to uphold the complaint and setting out how I thought the complaint should be fairly resolved. I said:

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

Halifax accepts that it made mistakes and gave Mr and Mrs L a poor level of service. The issue I need to decide is a fair level of compensation for its original error and delay.

A banker’s draft is one that is drawn on a bank or building society’s own account rather than on the customer’s individual account. The bank will not issue a draft unless the customer has paid the bank so the money is usually debited to the customer’s account at the time the bank issues the draft. That’s what happened here.

Halifax is correct when it says that a banker’s draft cannot be stopped or cancelled in the way a personal cheque drawn on an individual bank account can be stopped or cancelled. The only circumstances in which a banker’s draft will not be paid is where the draft itself has been forged or stolen.

Halifax doesn’t dispute that Mr L must have been given incorrect information by the branch when he asked for the draft to be cancelled. Unfortunately, Halifax then compounded its error when it refunded £3,225 to Mr and Mrs L’s account in March 2022. That shouldn’t have happened because Halifax had already paid the draft.

As far as Mr and Mrs L were concerned, the matter had been dealt with satisfactorily in early 2022. So I can see it would have been most unwelcome and unpleasant news when Halifax told them the following June 2023 that it had paid the money to HMRC, and that it would debit their account in July 2023.

I’ve carefully considered whether the fair outcome would be for Halifax to stand the loss of the £3,225 and refund that amount to Mr and Mrs L. But I don’t think that would be fair in this case. I’ll explain why.

Where (as here) the bank has made a misrepresentation, it’s not the case that the bank must put the consumer in the position they would have been had the misrepresentation been true. Rather, we would consider whether and to what extent the consumer would have been in a better and different position if they had been given the correct information at the outset.

In this case, it was not possible for Mr and Mrs L to cancel the draft after it had been issued. But Halifax should have clearly explained that to Mr L when he asked it to cancel the draft. Had it done so, Mr and Mrs L could have promptly contacted HMRC to ask it either not to present the draft for payment or to return the money to them when it had been paid.

But instead Halifax gave Mr and Mrs L incorrect information and took 19 months to inform them that it had paid HMRC the £3,225. Although Mr and Mrs L would always have had to contact HMRC to recover their money, I think the delay by Halifax has caused them unnecessary inconvenience and distress.

But I can only decide this complaint between Mr and Mrs L and Halifax. I have no power to consider HMRC’s part in this, to include why it has not responded to them. In principle, it’s

not clear to me that Mr and Mrs L are unable to obtain a refund of money they've overpaid to HMRC. It is possible that having a copy of the paid draft to send to HMRC might assist Mr and Mrs L in their request. I will ask our Investigator to provide them with a copy of the draft.

So I don't think I can fairly hold Halifax responsible for any failure by HMRC to refund the money or to reply to Mr and Mrs L. Ultimately, Mr and Mrs L are able to make a complaint about HMRC as they have done against Halifax.

But I do accept that the original poor advice and the delay in Halifax informing Mr and Mrs L of its error has caused them unnecessary distress and inconvenience. I don't currently think that Halifax's compensation payment of £250 goes far enough, given the long delay in Halifax correcting its original error. I think Halifax could have reasonably foreseen that this delay would complicate matters for Mr and Mrs L in obtaining a refund. It would have been clear to Halifax that Mr and Mrs L would be involved in more work recovering their money than would have been the case had they known the draft could not be cancelled and had, in fact, been paid back in January 2022.

I think a total compensation payment of £400 for Mr and Mrs L's distress and inconvenience would be fair, so I think Halifax should pay them an additional £150. I think this would represent a fair and reasonable outcome in all the circumstances."

Responses to my provisional decision

Halifax responded to accept my provisional decision. It agreed to pay Mr and Mrs L an additional £150 compensation.

Mr L responded to say that he and Mrs L did not accept my provisional decision. In summary, Mr L said:

- Halifax could have taken action to cancel the draft by contacting HMRC but did not. I was confusing the issue as it was not the wrong advice by the Halifax that is the key issue but its failure to take any action.
- I seem to have ignored the impact of the period of 19 months elapsing before Halifax told him about the problem.
- It is not clear why I have reversed the Investigator's findings that said it was Halifax's error the draft was not cancelled. I had not given sufficient weight to the significance of the delay in my reasoning. He is clearly in a much worse position because of Halifax's inadequate advice and service.
- He has written to HMRC five times and has received only an acknowledgement. An early telephone call from Halifax would have resolved the problem. A copy of the draft is helpful but does not add significantly to the information he has already supplied to HMRC.
- It is wrong for me to "advise" him to enter into a "long and tortuous" complaint process with HMRC. This would have been avoided had he not received the wrong advice from Halifax. For me to say that Halifax should bear no responsibility for this is contrary to natural justice.
- If he had used a professional charging rate in this matter his bill would have exceeded £2,000. Halifax has been "slow, obstructive and unwilling to reply to correspondence" from himself and this Service. It is inaccurate to say that he did not reply to Halifax's correspondence (in June 2023) because the person dealing with the matter was on holiday and he had to visit a branch to obtain an answer. His letters to Halifax's senior management went unanswered. My current proposed award is grossly inadequate, is not punitive and should reflect "the time and effort put into the case and also carry a measure of deterrent."

What I've decided – and why

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

I've carefully considered Mr L's detailed response to my provisional decision. But I still think a fair way to resolve this complaint is for Halifax to pay Mr and Mrs L an additional £150 compensation (£400 in total). I'll explain my reasons.

I don't agree with Mr L that Halifax could have cancelled the draft. Halifax debited his account with the amount of the draft on the day it was issued. The draft was then drawn on Halifax's own account. I don't accept Halifax could have cancelled the draft, given it was not stolen or fraudulent. But it's certainly not in dispute that Halifax caused Mr and Mrs L distress and inconvenience by not properly dealing with Mr L's request to cancel the draft.

I appreciate it must have been disappointing for Mr and Mrs L that my findings were different from our Investigator's, who had tried to resolve the complaint informally. As this was not possible the complaint came to me. I review each complaint that I decide afresh based on its individual facts and circumstances. In this case, I did not agree with our Investigator that Halifax should refund the amount of the draft to Mr L for the reasons I explained in my provisional decision.

I did take into account the long delay in Halifax contacting Mr and Mrs L to tell them it had paid the draft and needed the money back. I referred to that delay when explaining my reasons for increasing the compensation.

Mr L has clarified that he contacted Halifax as soon as he received its June 2023 letter. To be clear, I don't think there was any suggestion of any undue delay on his part. I accept it was frustrating for Mr and Mrs L not to receive responses to all Mr L's letters. But I see that Halifax responded to their complaint within eight weeks, which is the time its regulator gives it to review complaints. Halifax also accepted its shortcomings and paid Mr and Mrs L compensation. Halifax made enquiries of HMRC to see if it could help recover Mr and Mrs L's money but was unable to do so. I don't think Halifax has been obstructive.

Mr L has explained that he is still having difficulties obtaining a response from HMRC and naturally that must be frustrating for him and Mrs L. As I understand it, he is not saying that he can't recover his money but that HMRC has not responded adequately. I should say that it is not my role to "advise" him to take any action. Rather, I was observing that HMRC has its own complaints process given Mr and Mrs L's concerns that it has failed to respond to them.

I've noted Mr L's point about natural justice. But I would be acting outside my legal powers if I made an award of compensation against Halifax for any delays or failings by HMRC to respond to Mr and Mrs L.

I do consider that Halifax's overall handling of the matter has been poor and I think it could have reasonably foreseen that its delay would complicate matters for Mr and Mrs L in recovering their money. I've noted Mr L's point about professional fees. But I do not usually base any award for a personal financial matter on a professional charging rate, and I see no reason to do so here.

I should say that my awards are not designed to penalise a financial business or to function as a deterrent. That is because I do not have a regulatory function. It is open to Mr and Mrs L to raise their concerns with Halifax's regulator the Financial Conduct Authority (FCA), though they should note that the FCA will not consider individual complaints.

I still consider £400 compensation in total to be fair and reasonable to reflect the distress and inconvenience that I accept Mr and Mrs L have experienced due to Halifax's shortcomings in this matter. Halifax has already paid them £250. So I consider Halifax should pay them an additional £150 as it has now agreed to do.

My final decision

My final decision is that I uphold this complaint. I require Bank of Scotland plc trading as Halifax to pay Mr and Mrs L an additional £150 compensation for their distress and inconvenience (£400 in total).

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L and Mrs L to accept or reject my decision before 19 June 2024.

Amanda Maycock
Ombudsman