

The complaint

Mr W complains about how Bank of Scotland plc, trading as Halifax, handled his Data Subject Access Request (DSAR). Also, he believes they've made a data breach.

What happened

I issued a provisional decision on 26 April 2024, and this is what I said:

I've considered the relevant information about this complaint.

Before I issue my final decision, I wanted to give everyone a chance to reply.

I'll look at any more comments and evidence that I get by 10 May 2024. But unless the information changes my mind, my final decision is likely to be along the following lines.

The complaint

Mr W complains about how Bank of Scotland plc, trading as Halifax, handled his Data Subject Access Request (DSAR). Also, he believes they've made a data breach.

What happened

On 3 August 2023, Mr W made a DSAR for information on his bank account.

Mr W didn't receive a response within one month of making the request, so he complained to Halifax.

Halifax confirmed they'd responded to his request on 1 September 2023 and told Mr W to 'check his spam folder as the email might have been filtered there'. Also, they said 'Additionally, I have taken the liberty of asking our DSAR team to re-send the information to you'.

As Mr W couldn't see a response, he brought his complaint to our service looking for £200 in compensation.

During our investigation it became clear that:

A. Halifax had responded to Mr W's DSAR within a month.

B. Mr W had made an error, transposing two letters, when he entered his email address.

Our investigator didn't uphold Mr W's complaint because of point B, but Mr W remained dissatisfied and asked for an ombudsman to further consider his complaint. This is because:

- He didn't request an email response.*
- Regardless of whether he made an error with the email address, Halifax should've checked this and noticed it differed to the email address on file.*
- Now knowing that Halifax used an incorrect email address, as he believes this to be a valid email address, he considers they've made a serious data breach.*

What I've provisionally 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.

Having done so, I'm not upholding this complaint and I'll explain why.

I should first explain that:

- I can't tell a business to make alterations to their systems, procedures or processes, including for DSAR's. I say this because we aren't the regulator of the financial services industry and businesses can make commercial decisions.*
- Our service doesn't have the power to issue fines or penalties for complaints about DSAR delays or omissions, however complainants do have the option to refer allegations of breaches to the Information Commissioner's Office (ICO).*
- What we can do though is consider each individual case and, where we think a business hasn't acted fairly and reasonably in the circumstances, decide what should be done to put right any financial or non-financial losses that a consumer has experienced. So, we can ask a business to pay a proportionate level of redress.*

As Mr W says he didn't request his DSAR to be responded to by email and the issues here could've been avoided if Halifax had responded by post, I first considered how Mr W made his request.

Mr W says, 'I don't have 'evidence' of the exact moment I asked for the information via post apart from their online submission form'. Halifax's on-line submission form allows for DSAR's to be sent by either post or email and they've provided a report of the entries Mr W made. From reviewing these against the available data fields (post and email), I'm satisfied his request was to receive the DSAR by email.

It's clear from Halifax's report that Mr W entered an incorrect email address, and I can't see that Mr W disputes this. Mr W's argument is that Halifax should've checked and noticed this and therefore didn't exercise due care and attention.

Although I understand Mr W's argument here, Halifax's process allows customers to receive a DSAR at any email address they choose and therefore they don't have a checking process. I think this is reasonable because, when they respond to a DSAR by email, Halifax do so in a secure way. They email a link and a one-time secure password to the customer's nominated mobile number. So, in the case of a customer making an error with the email address, and being concerned, data won't be put at risk.

I therefore can't see that Halifax have made a data breach here. Also, I don't think it would be fair or reasonable to ask Halifax to pay compensation for a customer not getting a timely response when they followed an instruction.

So, having considered the above and all the information on file, I'm not upholding this complaint.

My provisional decision

For the reasons I've given above, it's my provisional decision not to uphold this complaint against Bank of Scotland plc trading as Halifax.

I'll look at anything else anyone wants to give me – so long as I get it before 10 May 2024.

Unless that information changes my mind, my final decision is likely to be as I've set out above.

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 didn't receive a response from either Mr W or Halifax.

So, as no further arguments or evidence have been produced in response to my provisional decision, my view remains the same.

I therefore adopt my provisional decision and reasons as my final decision.

My final decision

My final decision is that I'm not upholding this complaint against Bank of Scotland plc trading as Halifax.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 8 June 2024.

Paul Douglas
Ombudsman