DRN-2888955

The complaint

Mr H complains that Bank of Scotland plc, trading as Halifax, increased his arranged overdraft on his current account several times. He believes these increases were unaffordable and should not have been granted.

What happened

Mr H holds a current account with Halifax. It initially did not have an arranged overdraft facility.

Between November 2015 and April 2016 Mr H made several applications online to take out and then increase the level of an arranged overdraft. The majority of these applications were accepted by Halifax and the agreed overdraft level increased as follows;

- From £0 to £500 on 30 November 2015
- To £750 on 26 January 2016
- To £1,500 on 16 February 2016
- Then to £2,500 also on 16 February 2016
- To £3,000 on 18 March 2016
- To £4,500 on 1 April 2016
- Finally, to £5,000 on 29 April 2016

Mr H has continued to use his current account, and the overdraft facility, since then.

In April 2020 Mr H complained to Halifax. He said that the overdraft and subsequent increases to it should not have been allowed. He said that if Halifax had done proper checks at the time it would've seen that he had a lot of unsecured borrowing and that he was making regular gambling transactions. He explained that the borrowing was unaffordable and so he asked Halifax to refund all interest and charges he'd paid in respect of it.

Halifax said it didn't think the overdraft increases were unaffordable at the time they were granted. It said it was unaware that Mr H was making regular gambling transactions – and this isn't something it would usually check unless he made them aware of a problem, as it doesn't interfere with how its customers use their money. It also didn't think the frequency of the requests gave cause for concern. So, it didn't think it had done anything wrong.

I issued a provisional decision explaining that I was inclined to partially uphold Mr H's complaint. Below are extracts from those provisional findings, explaining why I thought this.

Business are required to make sure that, where they agree to lend, they do so responsibly. How they go about determining this is a matter of their own judgement – as there aren't set requirements of what a business must do in every instance. But generally, it is expected that they will carry out appropriate and proportionate borrower focused checks, taking account of the applicant's financial situation, before lending.

Halifax has said that Mr H applied for each increase to his arranged overdraft online, so didn't speak to a member of staff or take advice. It has said that, as a result, all of the *applications were considered in the same way – by an automated system taking into account the information Mr H had provided about his income and expenditure and credit scoring information based on how his accounts with Halifax had been run and information from credit reference agencies. And this wouldn't include a review of how he spent his money.*

I think in respect of the first three lending decision – to grant a £500 overdraft in November 2015, increase this £750 in January 2016 and then to £1,500 in February 2016 – these checks were appropriate and sufficient. Income and expenditure were reviewed to asses affordability – and this was information provided by Mr H so was specific to him. And Halifax has said information from credit reference agencies and the conduct of the accounts Mr H held with it were considered. I think this would've provided a reasonable illustration of Mr H's financial position in order to assess if the lending was affordable.

Mr H has said he had a lot of borrowing elsewhere. But already having borrowing does not automatically mean further lending is irresponsible. I haven't seen anything to suggest that Mr H had missed or was behind with payments on any of the borrowing outstanding at that time. Or that this made the new borrowing unaffordable.

Mr H has also said he was regularly gambling. But that alone doesn't make the decision to lend irresponsible. I'd also point out that information from credit reference agencies wouldn't have illustrated this. And Mr H's current account statements indicate that, while he had gambled previously – notably between June and August 2015 – there don't appear to be any recent instances around the time of these lending decisions.

So overall, given the level and nature of the borrowing requested, I think Halifax did appropriate checks and acted reasonably when making these lending decisions.

But I'm not sure that the same checks went far enough for the applications made after that point. While the same information was looked at – income and expenditure details Mr H provided and credit scoring data – the situation and circumstances were not, in my view, the same.

On 16 February, Mr H applied to increase his overdraft limit from £1,500 to £2,500 – which was accepted by Halifax. This was having already increased this limit from £750 to £1,500 on the same day. And this was the fifth request to increase the level of borrowing through the overdraft in the space of three months (as in addition to the three previous approved applications Halifax rejected a request from Mr H for an overdraft of £1,000 in early November 2015).

I think the frequency of the requests at that stage should've led to additional checking and scrutiny from Halifax. Halifax has indicated this isn't how its systems work, but I'm not commenting on the processes Halifax chooses to use. I'm simply looking at whether, on a fair and reasonable basis I think it did enough to check that the lending decisions were appropriate. And as I've said, for the second increase on 16 February 2016 and the requests after that, I don't think it did as I think the frequency of the requests being made should've prompted further analysis of the requests – including looking at how the account was being run, through the statements, which Halifax had access to. And this should've included, in my view, looking at what the money was being used for. Halifax has said it doesn't generally look at how customers spend their money, but I think it would've been reasonable to do so here, given the frequency of the requests being made. And the rules set by the regulator do say that lenders should have regard for information they are aware of which might indicate someone is vulnerable, before lending.

I've gone on to think about whether the lending would still have been made available to Mr H, if further checks had been carried out – if it was still responsible of Halifax to have lent.

I think, even with additional, more appropriate checks, the overdraft limit increase to £2,500 on 16 February 2016 would still have been agreed. The information provided around income, which was supported by the income being received to the current account, and expenditure does suggest Mr H had disposable income available. In addition, the current account had not exceeded the agreed overdraft limits in the six months prior to this request – which I think shows that the account was manageable. There is nothing to suggest that Mr H had missed payments on any of the other borrowing that he had, and no new borrowing seems to have been taken elsewhere at that time. And there had been no spending on the current account

– information available to Halifax - at that point that I think should've caused concern, as again there appears to have been little, if any gambling, since August 2015. So, I think the decision to approve this lending was reasonable.

I also think, for largely the same reasons, that even with additional checks being done, the request to increase the overdraft to £3,000 on 18 March 2016 would've been deemed affordable. And I would also consider this reasonable. The situation was largely the same as at the 16 February 2016 increase. But I can see that between 17 and 18 February 2016 – shortly after the previous increase, Mr H had carried out a number of gambling transactions. But the account had remained within the agreed overdraft limit and indeed the transactions, while for quite a large sum, had not taken the account to its limit. Crucially also, as they seem to be the first significant gambling transactions since August 2015, there was no indication at that stage, in my opinion, that this was a pattern of behaviour – increasing the overdraft and then gambling. And, given gambling isn't prohibited, I don't think Halifax's decision to allow this overdraft extension was unreasonable.

But I don't think the same applied to the decision to increase the overdraft to £4,500 on

1 April 2016. This was an increase of 50% on top of the overdraft lending, that had only been agreed within the past several months. And the request came within a couple of weeks of the previous increase. I think this should've potentially triggered further questions around the reasons for, and the sustainability of the borrowing.

I accept that the account had not exceeded its limit. And again, there is nothing to indicate that additional borrowing had been taken elsewhere. But I can see that, since the increase in March, there had been further gambling on the current account. Again, this hadn't taken the account over its limit. And the amounts were less than in February 2016. But a second occurrence of gambling transactions, for what were quite significant sums, not long after the amount of lending available had been increased would in my view have been an indicator of a potential problem.

The amount of time the overdraft had been used for, and the level of indebtedness had also increased since the previous increase – indicating a greater reliance on the borrowing and that Mr H was potentially finding it more difficult to clear this. And I think this again potentially indicates issues with the sustainability of the borrowing.

With this in mind, I think, if Halifax had done more in-depth checks, which I think would've been appropriate, before agreeing to increase the overdraft limit to £4,500, it would've decided that it was not appropriate to allow this lending. And so, I don't think it acted responsibly by allowing this increase.

I also think the decision to allow the overdraft limit to increase to £5,000 at the end of April 2016 was not responsible. Again, I think further checks should've been carried out. Not only because of the frequency of the previous applications but also here because I can see that Mr H actually requested increases on three occasions on 5 and 6 April – all of which were declined. The income information then provided when the increase was approved at the end of April 2016, was higher than in those declined applications – raising questions about whether it was correct. And looking at the account statements it doesn't appear to be so. These anomalies should in my view have meant the application was scrutinised further.

And if it had been, I don't think Halifax would've granted the increase. I say this because, in addition to the issues with the income I've mentioned, I can see that there had been further significant levels of gambling since the overdraft increase at the start of April 2016. I think at that stage it would've been clear that a pattern of behaviour was emerging and that the new borrowing was being used for gambling. And I think Halifax should've been aware from this, that the borrowing appeared to be potentially unsustainable and shouldn't be extended.

So overall, I think there have been errors here by Halifax. I think the checks it carried out in relation to the borrowing granted to Mr H in some instances didn't go far enough. And if further checks had been carried out, I think some of the borrowing would've been deemed unsuitable and Halifax would not have provided it – specifically the extensions of the overdraft from £3,000 to £5,000. So, I think Halifax needs to do something to put things right.

Mr H has had the use of the borrowing provided under the overdraft. So, I don't think it'd be reasonable to say that the principal amount borrowed should be refunded.

And as I think the decision to provide the overdraft up to the level of £3,000 was reasonable, I don't think Halifax has done anything wrong by applying charges and interest to that amount, in line with the terms of the current account.

But in terms of the borrowing through the overdraft above £3,000 I don't think Halifax should've allowed this. And if it hadn't, this borrowing wouldn't have incurred any costs. So, to put things right, I think it'd be fair for Halifax to rework the account and refund all charges and interest applied to any outstanding balances above £3,000 since March 2016. I think it'd be reasonable for this amount to be used to reduce the outstanding balance on the account. In the event that this cleared the balance in full and there was a residual amount leftover, I think this should then be refunded to Mr H.

I understand Mr H is currently experiencing financial difficulties and that the account has been suspended, and defaulted, with interest and charges stopped. I think this action was reasonable by Halifax. And I note it will prevent further interest being applied to the amount that was let incorrectly.

In terms of the information recorded on Mr H's credit file about this account, I don't think it is wrong that the account be reported to credit reference agencies. And I note, although some of the borrowing should not in my view have been granted, the first £3,000 of the overdraft was in my view lent responsibly. Looking at the account statements it seems that the account has been overdrawn for a significant period of time. So, I think it's likely, based on what I've seen, even without the borrowing above £3,000 the account would've always reached a position of default at this stage. So, I don't think Halifax needs to remove any of the adverse information recorded in respect of the current account from Mr H's credit file as I think it's likely this would always have come about even without the errors made.

Responses to my provisional decision

I gave both parties an opportunity to make further comments or send further information before I reached a final decision.

Mr H said he accepted my provisional findings.

Halifax did not respond to my provisional decision.

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.

Having done so, and as neither party has provided anything further for me to consider, I see no reason to depart from my provisional findings. So, for the same reasons given in those findings, and summarised above, I think the decisions by Halifax to grant overdraft increases up to a level of £3,000 were reasonable. But I don't think it did sufficient checks in respect of the lending granted beyond this and I don't think it would've granted that further lending if it had carried out appropriate checks. So, I don't think it lent responsibly.

My final decision

For the reasons I've explained I uphold Mr H's complaint in part.

To put things right Bank of Scotland plc, trading as Halifax, should refund all interest, charges or fees applied to Mr H's current account in respect of borrowing through the overdraft above £3,000 from March 2016 onwards. This should be used to reduce the outstanding balance on the account in the first instance.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 20 July 2021.

Ben Stoker
Ombudsman