

The complaint

Mr B has complained that Bank of Scotland plc trading as Halifax ("Halifax") continued charging him excessive amounts for his overdraft when he was in financial difficulty.

What happened

Mr B complained to Halifax that the overdraft charges applied to his account left him in a cycle of debt and that it acted unfairly by continuing to apply these charges when he was in financial difficulty. Halifax didn't uphold the complaint. And as Mr B was dis-satisfied he referred the complaint to our service.

Mr B's complaint was considered by one of our adjudicators. She thought that Halifax ought to have realised that Mr B was experiencing financial difficulty by November 2017 and so shouldn't have added any more interest, fees and charges from this point onwards. Halifax didn't respond so the case was passed to an ombudsman.

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.

Halifax will be familiar with all the rules, regulations and good industry practice we consider when looking at whether a bank treated a customer fairly and reasonably when applying overdraft charges. So I don't consider it necessary to set all of this out in this decision.

Having carefully considered everything provided, I'm intending to find that Halifax acted unfairly when it continued charging overdraft interest and associated fees on Mr B's overdraft from November 2017. By this point, it ought to have been clear that Mr B was in no position to sustainably repay what he owed within a reasonable period of time.

By this point, Halifax ought to have realised that Mr B's use of his overdraft was unsustainable. Mr B's statements show significant gambling and that he hadn't maintained a credit balance for an extended period of time and that he was in a cycle of repeated high-cost borrowing. In these circumstances, Halifax ought to have realised that Mr B was at a significant risk of being unable to repay what he already owed. So Halifax should have stopped providing the overdraft on the same terms and treated Mr B with forbearance rather than charge even more interest, fees and charges on the overdraft.

Mr B ended up paying additional interest, fees and charges on their overdraft and this ended up exacerbating difficulties he already had in trying to clear it. So I think that Halifax didn't treat Mr B fairly and he lost out because of what Halifax did wrong. And this means that it should put things right.

Putting things right

Having thought about everything, I think that it would be fair and reasonable in all the circumstances of Mr B's complaint for Halifax to put things right by:

- Reworking Mr B's current overdraft balance so that all interest, fees and charges applied to it after the renewal in November 2017 are removed.

AND

- If an outstanding balance remains on the overdraft once these adjustments have been made Halifax should contact Mr B to arrange a suitable repayment plan for this. If it considers it appropriate to record negative information on Mr B's credit file, it should reflect what would have been recorded had it started the process of taking corrective action on the overdraft in November 2017.
- It is unclear whether Halifax has sold an outstanding balance on this account to a third-party debt purchaser, or asked a third-party to collect the balance on its behalf. But if Halifax has sold an outstanding balance on this account to a third-party debt purchaser, it will need to either buy the account back from the third-party and make the necessary adjustments, pay an amount to the third party in order for it to make the necessary adjustments, or pay Mr B an amount to ensure that it fully complies with this direction.

OR

- If the effect of removing all interest, fees and charges results in there no longer being an outstanding balance, then any extra should be treated as overpayments and returned to Mr B along with 8% simple interest† on the overpayments from the date they were made (if they were) until the date of settlement. If no outstanding balance remains after all adjustments have been made, then Halifax should remove any adverse information from Mr B's credit file.

† HM Revenue & Customs requires Halifax to take off tax from this interest. Halifax must give Mr B a certificate showing how much tax it has taken off if they ask for one.

My final decision

For the reasons I've explained, I'm upholding Mr B's complaint. Bank of Scotland plc should put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 1 November 2021.

Caroline Davies
Ombudsman