

The complaint

Miss R complains Bank of Scotland plc trading as Halifax continued charging her excessive amounts for her overdraft when she was in financial difficulty.

What happened

Miss R complained to Halifax and said the overdraft charges were contributing to her financial hardship as the extra cost was making her overdraft more difficult to repay. Halifax didn't uphold the complaint. And as Miss R was dissatisfied, she referred the complaint to our service.

I issued an initial provisional decision in July 2021 and went on to issue a further provisional decision in September 2021. I explained I couldn't consider Miss R's concerns about overdraft charges applied until August 2018 as the matter was referred to us too late. In relation to charges applied after that date, I explained why I intended to conclude Halifax acted unfairly when it continued charging overdraft interest and associated fees from July 2019 onwards.

I found Halifax had suspended all overdraft-related fees on Miss R's account until April 2019. Then at the start of May 2019, when the charges resumed, I noted Halifax's system notes showed Miss R had reached out and explained she was unable to manage her account as she didn't have an income. The notes went on to state Halifax had given Miss R breathing space for 30 days and explained the consequences of this on her credit file.

I noted Miss R asked for more time at the end of this 30-day period to stabilise her finances, and Halifax agreed to a further 30-day hold. It also explained this was the last time it would be able to offer this. Then in July 2019, when Miss R asked for another hold, it said it was unable to agree to this. Halifax told Miss R it needed to go through an income and expenditure analysis to potentially consider setting up a long-term payment arrangement to clear the overdraft would have meant a default being applied which would stay on her credit file for six years. Miss R didn't agree to this as she was regularly relying on her overdraft facility. She made a complaint, but Halifax closed it as she didn't accept its proposal of a payment arrangement.

I explained I'd carefully considered the available information and could see that by July 2019, Halifax had already provided assistance to Miss R for well over a year by suspending fees and charges during that time. So, a temporary solution had already been put in place. But Miss R's financial situation hadn't improved, and she made it clear to Halifax she still couldn't afford the overdraft charges. I noted Halifax recognised this – after all it did suggest a longer-term solution.

I thought Halifax's offer of a longer-term arrangement was fair given Miss R's financial situation was no longer temporary. By this point, it had already agreed and offered a temporary arrangement. Under the terms and conditions of the account, Halifax was entitled to withdraw the overdraft facility immediately and seek repayment of the outstanding balance. I also thought it would have also been fair of Halifax to record and report a default on Miss R's credit file. I explained lenders have a duty to report accurate information to credit

reference agencies so other lenders can make informed decisions about future lending applications.

While I appreciated Miss R was concerned about the impact on her credit file, I didn't think this meant a lender shouldn't have proactively stepped in to take corrective action. I thought Halifax should have imposed its proposal when it was clear Miss R was unlikely to sustainably repay what she owed within a reasonable period of time.

I went on to explain that not only did Halifax let Miss R continue relying on her overdraft (which is meant for unforeseen emergency borrowing) for day-to-day expenditure, it also renewed the existing arrangement for a further year at the start of September 2019. As a result, Miss R ended up paying additional fees and charges on her overdraft and this ended up exacerbating difficulties she's already had in trying to clear it. In July 2019, the account was around £700 overdrawn. By July 2021, the account balance had reached (and occasionally exceeded) the agreed overdraft limit of £1,990.

I acknowledged Halifax refunded some fees over this period. But I didn't think this went far enough or it meant Halifax acted fairly and reasonably when Miss R told it she was struggling to pay the overdraft charges. So, I found Halifax acted unfairly when it continued charging overdraft interest and associated fees from July 2019. I noted that by this point, it ought to have been clear Miss R's financial situation hadn't improved despite temporary assistance offered for over a year. And she'd made it clear she was unable to afford the charges and wasn't in a position to sustainably repay what she owed within a reasonable period of time.

I invited both parties to make any final comments ahead of my final decision.

Miss R didn't provide further comments or information for me to consider.

Halifax accepted my provisional findings. It said it would refund the overdraft fees applied to Miss R's account since July 2019, taking into consideration any refunds already made during this period. Halifax told us an outstanding balance would remain after this refund, and it would reduce the existing overdraft facility to around this amount to prevent further borrowing.

Halifax also said Miss R would need to engage with it within 30 days of accepting my final decision to discuss a suitable repayment plan for the outstanding amount. If Miss R doesn't enter into a dialogue with it or the overdraft isn't repaid through alternative means, Halifax said it would look to remove the overdraft facility entirely after giving an additional 30 days' notice. At this point, Miss R's account would move to its Recoveries team and this would have an impact on her credit file, including the possibility of a default.

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 thank Miss R and Halifax for their responses. As neither party has provided anything further for me to consider in relation to why we can't consider Miss R's concerns about overdraft charges applied until August 2018, I find no reason to depart from my provisional findings. I conclude we can't consider this aspect of the complaint as it was referred to us too late and I'm not persuaded exceptional circumstances apply.

I've next considered the additional comments Halifax has made in relation to the steps it intends to take in putting things right regarding the overdraft charges applied after August

2018.

In my provisional decision, I found Halifax didn't take corrective action after Miss R complained and made it clear she couldn't afford the overdraft charges or sustainably repay what she owed within a reasonable period of time. Halifax has a duty and a responsibility to act. By reducing the overdraft facility on Miss R's account following a refund, Halifax is now taking corrective action in ensuring the outstanding amount she owes doesn't increase again through further borrowing. Given the nature of the complaint – the overdraft facility being unsustainable – I consider this action reasonable.

By engaging with Miss R to discuss a suitable repayment arrangement to clear the outstanding balance, Halifax is now also taking steps for a longer-term solution. So, having carefully considered its response, I consider Halifax's proposal is reasonable. I would encourage Miss R to engage with Halifax to see what arrangements can be made.

Fair compensation – what Halifax needs to do to put things right for Miss R

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

- Reworking Miss R's current overdraft balance so that all interest, fees and charges applied to it from July 2019 are removed.

AND

- If an outstanding balance remains on the overdraft once these adjustments have been made Halifax should contact Miss R to arrange a suitable repayment plan for this. If it considers it appropriate to record negative information on Miss R's credit file, it should reflect what would have been recorded had it started the process of taking corrective action on the overdraft in July 2019.

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 Miss R 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 Miss R's credit file.

† HM Revenue & Customs requires Halifax to take off tax from this interest. Halifax must give Miss R a certificate showing how much tax it has taken off if she asks for one.

My final decision

For the reasons given, my final decision is I uphold this complaint. Bank of Scotland trading as Halifax needs to put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss R to accept or reject my decision before 8 November 2021.

Gagandeep Singh
Ombudsman