

The complaint

Mr N has complained that Bank of Scotland plc trading as Halifax (“Halifax”) provided an overdraft to him that was unaffordable.

What happened

Mr N held a current account with Halifax which had an overdraft attached to it. In November 2018, Halifax approved an application from Mr N to increase the overdraft limit from £500 to £600. Following this, in December 2019 Mr N made a further online application to increase his overdraft to £1,500 and in January 2020, he applied to increase it to £2,500. Halifax approved both these applications.

In July 2020, Mr N complained to Halifax and said he thought it irresponsibly provided the overdraft and the subsequent limit increases. He said he didn’t understand how Halifax could allow him to increase his overdraft from £500 to £2,500 so quickly, without querying this with him. He said options to freeze the account transactions were only provided after he complained. And he said the daily fees he was required to repay had a knock-on effect to his finances and day to day life.

Halifax looked into Mr N’s complaint, but it disagreed that it had been irresponsible in lending to him. It said the charges had been applied in line with the terms and conditions of the overdraft. And it said Mr N hadn’t contacted them to let them know he was in financial difficulty, so it wasn’t aware he was struggling to manage his finances. Unhappy with this, Mr N referred his complaint to our service.

Mr N’s complaint was considered by one of our adjudicators. He thought that Halifax ought to have realised that Mr N wasn’t using his overdraft as intended following the overdraft limit increase in November 2018. He said he didn’t think the checks Halifax did when it approved each of the overdraft limit increases went far enough and said if Halifax had carried out further checks, it would have seen Mr N was using the account to fund gambling transactions.

Mr N agreed with the adjudicator’s findings. But Halifax said the level of gambling in comparison to the income Mr N had declared wasn’t concerning. It also said the level of gambling on the account was decreasing between each of the overdraft increase applications.

As Halifax remain in disagreement, the case has been passed to me to decide.

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.

We’ve set out our approach to unaffordable/irresponsible lending complaints on our website – including the key relevant rules, guidance, good industry practice and law. I’ve considered this approach while deciding Mr N’s complaint.

Before approving any overdraft applications, Halifax needed to make sure it didn’t lend irresponsibly. This means it needed to carry out proportionate checks to satisfy itself that Mr N could afford to repay the amount it was lending. A proportionate check is dependent on

a number of factors including – but not limited to – Mr N’s particular circumstances (e.g. his financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount / type / cost of credit he was looking to obtain. In this case, as Mr N was being provided with an overdraft, which is a revolving credit facility, Halifax needed to be satisfied that Mr N could afford to repay what he was being lent within a reasonable period of time.

In November 2018, Halifax approved an application made by Mr N to increase the overdraft limit to £600. Before lending to Mr N, Halifax obtained details of Mr N’s income and expenditure. It has sent our service a copy of the information it obtained. Having reviewed the information, this information in itself doesn’t suggest that an overdraft amount of £600 was unaffordable for Mr N.

However, Halifax would have known how Mr N was managing his account at this stage. And given Halifax ought to have been aware of Mr N’s account management, I would have reasonably expected it to have taken this into account when deciding whether to lend to Mr N. I’ve looked at Mr N’s bank statements to get an idea of his account management and having done so, I don’t think it was fair for Halifax to approve an overdraft limit increase in November 2018. I’ll explain why.

Between July 2018 and November 2018, Mr N’s bank statements primarily show overdraft fees being charged and transactions to multiple gambling companies. Mr N’s account also didn’t have a salary being paid into it during these months, although transfers were paid in from another account he held. But when payments were paid into the account, more often than not, the money that was transferred in was immediately spent on gambling. In addition, Mr N’s account only held a nominal positive balance for one day in July 2018 and one day in August 2018. At the time Halifax agreed to the overdraft increase in November 2018, Mr N hadn’t had a credit balance on his account since early August 2018. This suggests to me that Mr N was having difficulty managing his money. And so I don’t think it was fair for Halifax to approve the overdraft limit increase in November 2018, as it’s there was a clear evidence to show that he was unlikely to be able to repay the additional funds without borrowing further or experiencing significant adverse consequences.

Following this, Mr N made applications to increase his overdraft limit to £1,500 in December 2019 and £2,500 in January 2020. Given there was around a year between these overdraft limit increases being approved and the previous application, I’ve looked at whether it was fair for Halifax to approve these applications, as Mr N’s circumstances may have improved. However, having done so, I also think Halifax acted unfairly when it approved both these applications. I’ll explain why.

Before approving both these applications, Halifax obtained details of Mr N’s income and expenditure. It has sent our service a copy of the information it obtained. Having reviewed this information, it shows that Mr N’s income had broadly stayed the same since November 2018, but his expenditure had increased by around 25%. Mr N’s statements clearly show he was making use of his overdraft and he consistently remained in it. Given that Mr N hadn’t had a credit balance on his account since August 2018 and Halifax had access to this information, I can’t see how Halifax reasonably concluded he’d been able to repay additional funds, when he’d already proved he was unable to repay what he already owed within a reasonable period of time.

The following month, Halifax agreed to increase Mr N’s overdraft by a further £1,000. Again it obtained details of Mr N’s income and expenditure. For this application, Mr N declared that his income had increased by £100 from the previous month, but he also said his expenditure had decreased by 45%. This included his expenditure for his living costs decreasing by nearly 50%. I think difference in the income and expenditure alone here should have prompted Halifax to do further checks. I’ve also looked through Mr N’s bank statements from the time and can see that he was consistently using his overdraft and by this point, he hadn’t had a credit balance on the account for around 17 months.

I think Mr N's use of his account between November 2018 and January 2020 demonstrated he wasn't using his overdraft facility as it was intended. Instead he was using the account, more often than not, to make gambling transactions. Halifax has said Mr N's use of the account to fund gambling transactions was reducing. And I agree in some months there were no gambling transactions, such as in September 2019. But between October 2019 and December 2019, the bank statements show evidence of gambling. In December 2019, the gambling was around 70% of Mr N's declared income. So I'm not satisfied Mr N's bank statement showed he was spending less on gambling or that he had some other method of repaying the facility going forward. In addition, Mr N's account didn't have a fixed income paid into it and Halifax didn't verify Mr N's income at any point whilst lending to him.

So having considered all of this, I don't think Halifax carried out reasonable checks at the time of each of the lending applications. I think reasonable and proportionate checks, in November 2018, would more likely than not have shown that Mr N wasn't in a position to repay what he already owed, let alone additional funds. So Halifax shouldn't have provided Mr N with an overdraft at all from this point onwards and I don't think it's fair for Halifax to have charged any interest or associated fees to the account from November 2018 onwards.

Overall, I'm not satisfied the information available to Halifax suggested that Mr N would be able to repay what he borrowed, within a reasonable amount of time when it approved the overdraft limit increases.

Putting things right

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

- Reworking Mr N's current overdraft balance so that all interest, fees and charges applied to it after the overdraft was increased in November 2018 are removed.

AND

- If an outstanding balance remains on the overdraft once these adjustments have been made Halifax should contact Mr N to arrange a suitable repayment plan, Mr N is encouraged to get in contact with and cooperate with Halifax to reach a suitable agreement. If it considers it appropriate to record negative information on Mr N's credit file, Halifax should reflect what would have been recorded had it started the process of taking corrective action on the overdraft in November 2018. Halifax can also reduce overdraft limit by the amount of refund if it considers it appropriate to do so, as long as doing so wouldn't leave Mr N over his limit.

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 N 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 N's credit file. Halifax can also reduce Mr N's overdraft limit by the amount of refund if it considers it appropriate to do so.

† HM Revenue & Customs requires Bank of Scotland plc trading as Halifax to take off tax from this interest. Halifax must give Mr N 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 N's complaint. Bank of Scotland plc trading as Halifax 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 N to accept or reject my decision before 17 May 2022.

Sonia Ahmed
Ombudsman