

## The complaint

Miss H complains Bank of Scotland plc (trading as Halifax) lent to her irresponsibly when it increased her overdraft limit. She also considers it treated her unfairly when it continued applying charges and interest, while she was in financial difficulty.

## What happened

I issued my provisional decision on this complaint on 30 November 2021. I provisionally upheld the complaint and set out what Halifax needed to do to put things right. And I invited both parties to let me have any final comments. A copy of my provisional decision is below.

### ***“What happened***

*Miss H held an account with Halifax with an overdraft limit – over the years the limit was increased over 20 times. Rather than list each increase here, I have set out some of the increases:*

- March 2014 - £800
- August 2014- £1,000
- August 2016 - £1,200
- December 2016 - £1,550
- July 2017 - £1,800
- July 2017 - £1990
- August 2017 £2,340
- August 2017 – £2,440

*In December 2019, Miss H contacted Halifax about her overdraft – she complained that the lending she’d been given wasn’t affordable and had contributed to her financial difficulties. Miss H felt Halifax ought to have been aware that it wasn’t appropriate to lend to her from the information on her account. She said her actual income and expenditure didn’t justify the lending and she was struggling to manage.*

*She wanted Halifax to address her complaint and offer her some assistance – she asked it to freeze charges and interest to stop the situation on her account from getting any worse. Halifax issued a response on 29 April 2020. In summary, it was satisfied it had lent responsibly, explaining it had used the details Miss H had given about her income and then used a credit scoring system to confirm the lending was affordable. However, it said it would pay £146.72 to cover the charges that had been applied to the account since it had received her complaint on 19 December 2019.*

*Halifax had issued a formal demand for the overdraft in March 2020 and suggested Miss H contact its collections team to discuss repayment options.*

*Miss H didn’t accept Halifax’s decision. She reiterated the lending was unaffordable and added that she’d been writing to it since December 2019, pursuing her complaint and asking for assistance. However, she hadn’t got a response for several months and instead Halifax continued to charge her, demanded repayment of the overdraft, recorded a default and sold*

*the debt to a new business. I shall refer to the new business as 'P'. As Miss H didn't think this was fair she referred her complaint to us.*

*Our adjudicator investigated and issued two assessments. The first assessment said Halifax ought to have realised Miss H was experiencing financial difficulty by November 2016 and it shouldn't have increased her overdraft lending from that point. The adjudicator later reconsidered the complaint and said Halifax ought to have realised there was a problem much sooner, from 14 August 2014, when it had increased her overdraft limit to £800. The adjudicator recommended Halifax needed to rework Miss H's account so that any charges, interest and fees applied as a result of the overdraft limit being above £310 from 14 August 2014 were removed. He also said that if no debt remained after the account was reworked Halifax should remove the default it had recorded on the credit file.*

*Miss H said that while she was prepared to accept the second assessment, she was concerned P had also recorded a default – she wanted Halifax to tell P to remove this. Halifax didn't accept the second assessment but said that it would like to make Miss H an offer in line with the adjudicator's first assessment but with some differences. I've set out a summary of this below:*

- It was unable to use a calculation or use a tool to calculate refunds of any fees and charges above the £900 limit. It wished to offer to refund all fees and charges relating to the overdraft, that were charged from November 2019, irrelevant of the balance.*
- The refund would be £2,964.28 and this figure was more than if it re-worked the account.*
- This figure would result in the debt with P being settled in full, and surplus funds returned to Miss H.*
- Miss H already had an overdraft limit in place before November 2016. In its view there was no guarantee Miss H would have been able to repay the overdraft debt that was outstanding at that point (£800), considering Miss H's financial difficulties (even if it had offered her treatment strategy to support her). It couldn't be certain a default wouldn't have occurred even if it hadn't lent to her further after the 30 November 2016. Considering this, it wouldn't remove the default, but it would backdate it to 30 November 2016.*
- It said that although it understood Miss H has two defaults showing on her credit file, only one default should be 'live', which was P's. And any financial organisation viewing her credit file would know there's only one default for the debt.*
- It had responded to Miss H's complaints, sending three final response letters (20 April 2020, 4 August 2020 and 23 October 2020). So, it wouldn't be offering any further compensation beyond the refund set out above.*
- It wished to clear up any misunderstanding that may have arisen with the adjudicator's assessments. Miss H's overdraft was increased to £800 in March 2014 and not August 2014. This is supported by the information on her account statements.*

*The offer was put to Miss H and was rejected. Miss H believes Halifax treated her unfairly and what it's proposed doesn't go far enough in putting things right. So, I will now make a decision.*

### ***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.*

#### ***Overdraft lending***

*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 lending and applying overdraft charges. So, I don't consider it necessary to set all of this out in this decision. But it's worth commenting that in offering to go back as far as November 2016, I think Halifax has to a point recognised its lending wasn't affordable. But I don't think this date is the correct point from which it needs to put things right. Having carefully considered everything provided, I'm intending to find that Halifax acted unfairly when it continued charging overdraft interest and associated fees after it increased the overdraft limit to £800 in March 2014. I don't think the additional lending was appropriate in Miss H's circumstances and I'll explain why.*

*I think by this point, it ought to have been clear that Miss H was in no position to sustainably repay what she already owed within a reasonable period of time. She had an overdraft limit of £300 and was consistently in the limit (at the top end) in the months leading up to the £800 limit being assigned to her. I think this pattern suggested she was relying heavily on borrowing to get by and Halifax ought to have taken steps to verify Miss H's income and financial situation before assigning the £800 limit. I say this because the new limit was almost three times her existing limit and more than her monthly income when averaged out. This information would have been available to Halifax.*

*The account was hardly ever in credit and on the rare occasion it went into credit, it would be overdrawn again almost immediately. In the months leading up to the increase, the account had gone over the authorised limit several times, resulting in unplanned overdraft fees (December, January, February and March). So, I think it was clear that increasing Miss H's limit would cause her harm and she'd struggle to manage any additional lending. Indeed, on taking the additional lending, Miss H then exceeded the new limit the same month and incurred charges.*

*Having thought about everything, I think that Halifax didn't treat Miss H fairly and she lost out because of what Halifax did wrong. And this means that it should put things right – I'll say more about this below.*

#### *Default*

*I note Halifax has declined to remove its default. But given that I have found that any lending above £300 wasn't appropriate and a refund of charges and interest would result in completely repaying what Miss H owes P and leave a surplus, I can't see any reasonable basis for keeping the default on her credit file.*

*I know Miss H still has the issue of the default which P has recorded. I can't direct Halifax to require P to remove it, as it's not party to this complaint – P is a separate entity. However, there's nothing stopping Miss H from approaching P with the information that Halifax has been asked to remove its default.*

#### *Customer service*

*Miss H doesn't think Halifax has treated her unfairly. She's provided copies of correspondence she sent to Halifax in December 2019 and the emails chasing a response. I note that in some of these chasers Miss H explains she's lost her job due to depression and so there was no income coming in to maintain the account. The outstanding balance on her account was in excess of £2,500. Faced with these letters I think Halifax ought to have been proactive and got its financial difficulties team to contact Miss H. But I note that Miss H also said in some of her correspondence that she didn't want to contact the bank's collections team until she considered her complaint resolved.*

*I can understand Miss H felt frustrated particularly when she hadn't had a response to her complaint, but it is the case that Halifax would have needed to undertake an income and expenditure assessment, in order to see what help it could give her to assist with any*

*immediate pressure she was under. But even if it had contacted her, I can't be sure Miss H would have engaged. I also note that by the time Halifax did respond it paid the charges covering the period December 2019 to April 2020 (when it responded to the complaint) thereby addressing any direct financial loss during these months. So, overall I don't propose to award any compensation for this particular aspect.*

### **Putting things right**

*In this case, I intend to ask Halifax to do the following to resolve this complaint – I think this is fair:*

- 1. Rework Miss H account so that all interest, fees and charges applied in respect of the overdraft increase above the original £300 limit since March 2014 are refunded.*
- 2. Use the refund to clear the debt with P.*
- 3. If there's a residual balance after P has been paid (it's anticipated there will be), pay this to Miss H along with 8% simple annual interest from the date the account was closed to the date of settlement.*
- 4. Remove any adverse information from Miss H's credit file in connection with the overdraft limit above £300, including the default it recorded.*

### **My provisional decision**

*My provisional decision is that I intend to uphold this complaint and order Bank of Scotland plc to resolve this complaint in accordance with what I have set out in the "putting things right" section above."*

Halifax responded to say that it had nothing further to add in response to my provisional decision. Miss H responded to say that she accepted my provisional decision but on the customer service aspect she wished it to be noted that she had approached Halifax once before for help, but it had reinstated charges and interest after a month. And she was afraid to engage with it after she'd complained, as it could be construed as her accepting the whole debt that had arisen.

### **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.

Given both parties have accepted my provisional decision I see no basis to depart from it. Halifax didn't treat Miss H fairly and I have explained why she lost out because of what it did wrong. It's only right it should put things right and I've set out what it needs to do to resolve the complaint.

I hope Miss H can now move on from this.

### **My final decision**

My final decision is that I uphold this complaint and require Bank of Scotland Plc to:

1. Rework Miss H account so that all interest, fees and charges applied in respect of the overdraft increase above the original £300 limit since March 2014 are refunded.
2. Use the refund to clear the debt with P.
3. If there's a residual balance after P has been paid, pay this to Miss H along with 8% simple annual interest from the date the account was closed to the date of settlement.

4. Remove any adverse information from Miss H's credit file in connection with the overdraft limit above £300, including the default it recorded.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H to accept or reject my decision before 11 January 2022.

Sarita Taylor  
**Ombudsman**