

The complaint

Mr N has complained that Bank of Scotland plc trading as Halifax ("Halifax") acted irresponsibly by increasing his overdraft limit without conducting a proper affordability assessment.

What happened

Mr N has complained about unaffordable lending relating to overdraft increases. He says a proper assessment would have shown he couldn't afford to repay his overdraft. Halifax didn't uphold the complaint. It said all charges were correctly applied in line with the terms and conditions of the account. And as Mr N was dis-satisfied he referred the complaint to our service.

Mr N's complaint was considered by one of our adjudicators. They thought that Halifax ought to have realised that Mr N's overdraft was unsustainable by 4 November 2016 and that Halifax shouldn't have allowed any further overdraft increases from this point onwards.

Halifax disagrees, it says that Mr N was able to eventually clear his overdraft without its financial support department and that at the time of the 4 November 2016 overdraft increase he had a surplus income and low financial commitments. It says that gambling is a recreational activity and Mr N could've paid his overdraft off easily if he hadn't chosen to spend his money on gambling.

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 and approving increases in overdraft limits. 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 after it increased Mr N's overdraft by a further £200 to £1,600 on 4 November 2016.

In the three days leading up to this increase Halifax had already agreed £1,200 worth of increases and a cursory look at Mr N's account statements show increasing amounts of gambling in the months leading up to this and very little – if any – other transactions. So I think it could be reasonably concluded that this is what the additional funds from the requested limit increases were for and I think this means that Halifax ought to have realised Mr N was in no position to sustainably repay what he already owed within a reasonable period of time, let alone increased amounts.

It makes no difference that Mr N eventually was able to eventually pay off his overdraft, as this couldn't have been known at the time of the 4 November 2016 increase and Mr N wasn't using his overdraft as intended and Halifax shouldn't have continued offering it on the same terms. Halifax's own literature suggests that overdrafts are for unforeseen emergency borrowing.

So, having carefully thought about everything, I'm satisfied that Halifax should not have agreed to increase Mr N's overdraft limit and instead treated Mr N with forbearance. As Halifax didn't react to Mr N's overdraft usage and instead continued charging in the same way, I think it failed to act fairly and reasonably. 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 N's complaint for Halifax to put things right by:

- Re-working Mr N's current overdraft balance so that any additional interest, fees and charges applied as a result of the overdraft limit increases from 4 November 2016 onwards are removed. This means that from 4 November onwards interest can only be charged on the first £1,400 of any overdrawn balance.

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 for this. If it considers it appropriate to record negative information on Mr N credit file, it should backdate this to 4 November 2016.

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. †

† HM Revenue & Customs requires Halifax to take off tax from this interest. Halifax must give Mr N a certificate showing how much tax it's taken off if he asks for one.

My final decision

For the reasons I've explained, I'm upholding Mr N'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 N to accept or reject my decision before 23 March 2022.

Caroline Davies
Ombudsman