

## **The complaint**

Mr and Ms B have complained that they have been living in overdraft for years and incurring substantial fees. They say Bank of Scotland plc trading as Halifax ("Halifax") should have stepped in sooner and ought to have known they were suffering from financial difficulties.

## **What happened**

Mr and Ms B complained to Halifax about the charges applied to their account when it ought to have known they were suffering from financial difficulties. Halifax says all charges were applied correctly in line with the terms and conditions of the account. It says as soon as Mr and Ms B informed it they were suffering financially it stepped in to help them by putting a hold on fees for 30 days then stopping fees permanently after a payment proposal was offered as well as offering payment of £100 as a gesture of goodwill.

Mr and Ms B were dis-satisfied and brought their complaint to this service.

An adjudicator looked at this complaint and thought that Halifax should have stopped charging overdraft fees from January 2017 as by this point it was clear Mr and Ms B were in financial difficulty as they hadn't seen or maintained a credit balance for an extended period of time.

Halifax disagreed with our adjudicator's view – it says there wasn't enough to alert it of financial difficulty before Mr and Ms B got in contact in March 2021. So it has asked for an ombudsman's decision.

## **Why I can't look at charges applied before July 2016**

The rules applying to this service say that, I can't look at a complaint made more than six years after the event being complained about – or (if later) more than three years after the complainant was aware, or ought reasonably to have been aware, of cause for complaint. This is Dispute Resolution rule 2.8.2R(2) – which can be found online in the Financial Conduct Authority's handbook.

Mr and Ms B raised their complaint in July 2021. Six years before they raised their complaint is July 2016. And as the charges for use of the overdraft would've been notified to Mr and Ms B at the time they were being applied, I think they ought to have known enough to decide whether they were unfair or causing financial difficulty. So, I don't think that three years from when Mr and Ms B ought to be reasonably aware they had reason to complain provides them with a longer period than the six year rule. So, I will only be looking at charges applied from July 2016.

## **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 and Ms B's overdraft from January 2017. By this point, it ought to have been clear that Mr and Ms B were in no position to sustainably repay what they owed within a reasonable period of time.

By this point, Mr and Ms B were hardcore borrowing. In other words they hadn't seen or maintained a credit balance for an extended period of time. Halifax's own literature suggests that overdrafts are for unforeseen emergency borrowing not prolonged day-to-day expenditure.

I accept that Mr and Ms B did manage to bring their account into credit at times when a salary was received. But they didn't maintain a credit balance and I can see that Mr and Ms B were using their overdraft to pay monthly household bills and credit cards and within weeks would be back at the top of their overdraft limit. This can also be said for the other account they held with Halifax – when it did receive funds the funds were predominantly used to pay household bills and credit cards.

So I think that Mr and Ms B's overdraft usage should have prompted Halifax to have realised that Mr and Ms B weren't using their overdraft as intended and shouldn't have continued offering it on the same terms. As Halifax didn't react to Mr and Ms B's overdraft usage until March 2021 and instead continued charging in the same way, I think it failed to act fairly and reasonably.

Mr and Ms B ended up paying additional interest, fees and charges on their overdraft and this ended up exacerbating difficulties they already had in trying to clear it. So I think that Halifax didn't treat Mr and Ms B fairly and they 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 and Ms B's complaint for Halifax to put things right by:

- Reworking Mr and Ms B's current overdraft balance so that all interest, fees and charges applied to it from January 2017 are removed.

AND

- If an outstanding balance remains on the overdraft once these adjustments have been made Halifax should contact Mr and Ms B to arrange a suitable repayment plan. If it considers it appropriate to record negative information on Mr and Ms B's credit file, Halifax should reflect what would have been recorded had it started the process of taking corrective action on the overdraft in January 2017. 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 and Ms B over their 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 and Ms 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 and Ms B's credit file. Halifax can also reduce Mr and Ms B's overdraft limit by the amount of refund if it considers it appropriate to do so.

† HM Revenue & Customs requires Halifax to take off tax from this interest. Halifax must give Mr and Ms 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 uphold Mr and Ms B's complaint against Bank of Scotland plc and instruct it to put this right as outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B and Ms B to accept or reject my decision before 5 April 2022.

Caroline Davies  
**Ombudsman**