

The complaint

Ms C complains that she has found her overdraft charges too much to cope with for the past couple of years - the overdraft was approved for her by Bank of Scotland plc (Halifax).

What happened

Ms C complained through an on-line complaint handling website in June 2021 saying in February 2020: *'I have taken [sic] overdraft out with Halifax for many years but over the last two years or so feel I have been paying a lot on fees more than 30 a month with has had an effect on my financial difficulties'*

Halifax responded in July 2021 saying it had reviewed the fees applied over the six years before Ms C had made the complaint and found that they had been applied correctly. And as a goodwill gesture it refunded £100 of daily overdraft fees to Ms C. And it offered Ms C additional help to assist her with the overdraft.

Ms C referred her complaint to the Financial Ombudsman and one of our adjudicators thought that Halifax should rework Ms C's account to remove all the overdraft interest and charges from 5 April 2016. That was an overdraft review date and the history of the account from April 2015 to April 2016 was such that our adjudicator felt Ms C was not maintaining a credit balance, had been taking additional loans as well as going over her overdraft limit sometimes. She felt that as Halifax failed to react to Ms C's overdraft usage then it acted unfairly and unreasonably.

Halifax responded and disagreed. It pointed out some factors which are summarised here:

- the overdraft in 2016 was £300.00 which her credits exceeded every month
- large credits were seen from different sources on a regular basis throughout the years on the account
- there were long periods of credit balances seen on the account since 2016 which shows the customer was able to re-pay any overdraft within a short period of time
- the debit card transactions did not indicate financial difficulties
- any failed payments showed this was down to account management rather than the unaffordability to pay these.

Our adjudicator responded to say that while the overdraft may have been affordable it was not sustainable because of the way it was being managed, so our adjudicator endorsed her first view.

The unresolved complaint was passed to me to decide. I issued a provisional decision on 29 April 2022 and that is duplicated here in smaller type to differentiate it.

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.

I am issuing a provisional decision as I do not agree entirely with the outcome arrived at by our adjudicator.

Firstly, we have received very little information or evidence from Ms C, but what I have read she seems clear that she was complaining about the last two years from around February 2020 only. And so, I disagree that the adjudicator was expected to review the account for six years. That seems unfair and unreasonable on Halifax. Where the consumer is specific in a complaint then I think it's reasonable for the review period to be that period about which the consumer is complaining and not any additional years.

Secondly, I accept several of Halifax's submissions that many reasons for the overdraft either being in use or sometimes exceeding the limit was due to poor account management and not necessarily financial hardship. For instance, I have seen several occasions (from 2015 onwards) when Ms C received some money either from a job or her student loan and transferred it to her savings account leaving the next transaction on the account to take her into her overdraft. And I've seen that large expenditure items on some non-essential items have pushed her over or close to her overdraft limit.

And reviewing her savings accounts, sometimes Ms C had several hundred pounds in there when she was in overdraft on her main account which strikes me as poor account management. And on other occasions I have seen that she has chosen to pay large repayments to her credit card which transaction also took her over deeper into her overdraft or close to the overdraft limit. This strikes me as a person using the overdraft funds as money to spend rather than a debt she owed.

But things changed as the years went by. Ms C's overdraft limit changed and her use of it altered. A review date was scheduled for 23 April 2020. After carefully considered everything provided, I'm intending to find that Halifax acted unfairly when it continued charging overdraft interest and associated fees after it renewed Ms C's overdraft in April 2020. By this point, it ought to have been clear that Ms C was in no position to sustainably repay what she owed within a reasonable period.

And I say this because by this point, Halifax ought to have realised that Ms C's use of her overdraft was unsustainable. Ms C's statements showed significant gambling and I can see that she repeatedly was taking payday loans and/or other high-cost borrowing. In 2019 and early 2020 the high level of purchasing for the National Lottery escalated to more significant purchases using on-line betting and gaming sites from around April 2020. And this became a significant expenditure on the account from then.

In these circumstances, Halifax ought to have realised at the April 2020 overdraft review from the transactions on the account leading up to that date that Ms C was at a significant risk of being unable to repay what they already owed. So, Halifax should have stopped providing the overdraft on the same terms and treated Ms C with forbearance rather than charge even more interest, fees and charges on the overdraft. Therefore, I have provisionally decided that I uphold Ms C's complaint from the 23 April 2020 and for different and additional reasons to those used by our adjudicator.

I gave time to both parties to respond to that provisional decision and the reply date was set as 13 May 2022.

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.

Since my provisional decision was issued Halifax has responded to say that it agrees with it and it will refund all fees from 1 April 2020. At present, Halifax has explained, that this would bring the debit balance on the account into credit so it would remove the overdraft (£400.00) at the same time and pay a simple 8% on the credit balance only. Halifax has said that Ms C's credit file will be '*checked ...and any impact will be removed.*'

Our adjudicator wrote to Ms C with this acceptance of the provisional decision, reminding her of the reply date which was to be by 13 May 2022. No response has been received from Ms C.

In the interests of resolving the complaint then I have issued my final determination. My provisional findings are repeated here and form part of the final decision. I see no reason to come to a different conclusion and I uphold Ms C's complaint in part.

Putting things right

Having thought about everything, I think that it would be fair and reasonable in all the circumstances of Ms C's complaint for Halifax to put things right by reworking Ms C's current overdraft balance so that all interest, fees and charges applied to it after the renewal/review date in April 2020 are removed. I note that Halifax has agreed to do this already.

AND

- if an outstanding balance remains on the overdraft once these adjustments have been made Halifax should contact Ms C to arrange a suitable repayment plan, Ms C 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 Ms C's credit file, Halifax should reflect what would have been recorded had it started the process of taking corrective action on the overdraft in April 2020.

Halifax can also reduce Ms C's overdraft limit by the amount of refund if it considers it appropriate to do so, if doing so wouldn't leave Ms C 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 Ms C 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 Ms C's credit file. Halifax can also reduce Ms C'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. It must give Ms C a certificate showing how much tax it has taken off if she asks for one.

My final decision

My final decision is that I uphold Ms C's complaint in part and I direct that Bank of Scotland plc (Halifax) does as I have outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms C to accept or reject my decision before 10 June 2022.

Rachael Williams
Ombudsman