

## **The complaint and background**

Mr D complained to Bank of Scotland plc (trading as Halifax) about the charges that had been applied to his account for using his overdraft, he said that he had been experiencing financial difficulties since 2017 and that Halifax had not done enough to help him.

Halifax didn't uphold the complaint, it said any charges had been applied fairly and noted that it had offered Mr D the assistance of its money management team as well as doing some refunds and temporarily suspending charges and interest. As Mr D was dissatisfied with Halifax's response, he referred the complaint to our service.

Mr D's complaint was considered by one of our adjudicators. He explained that he felt Halifax should have realised Mr D might be struggling financially by March 2017 and so recommended that it refund all charges and interest applied from that point onwards. Halifax disagreed so the case was passed to an ombudsman.

I issued my provisional decision on this case on 26 May 2022, setting out what I thought Halifax needed to do to resolve this complaint. Mr D responded with further comments about his circumstances since 2017, Halifax responded with further comments around why it thinks Mr D's account did not show signs of financial difficulties.

## **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.

In my provisional decision I explained the following:

*“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.*

*Based on what I've seen so far, I don't think that Halifax was wrong to continue applying charges and interest throughout 2017 and early 2018, but by October 2018 I think Halifax should have taken proactive steps to stop Mr D's situation from deteriorating further. I'll explain my reasons for this decision.*

*Mr D has a current account with Halifax with an arranged overdraft facility of £2600, this overdraft facility was reviewed yearly in February. So if Halifax was to identify any financial difficulties, and then step in to offer help to Mr D, I would expect this to happen around the time of each overdraft review, unless there was a specific incident at another time in the year which I think should have alerted Halifax to any difficulties.*

*Mr D says that in 2017 he began to experience a period of financial difficulty. And I can see that throughout 2017 and early 2018 Mr D's account was consistently overdrawn, without any periods where it maintained a credit balance. This is something that could be an indicator of financial difficulty. But I also have to acknowledge that throughout this period Mr D's account was regularly receiving significant credits – often over £4,000 per month –*

*and saw regular spending on what appeared to be 'non-essential' items, for example at pubs and restaurants, as well as overseas transactions. All this means that I don't think there was enough to flag to Halifax when it reviewed his overdraft facility in February 2017 or in February 2018 that Mr D might be struggling financially or need help managing his account.*

*However, in July 2018 Mr D made contact with Halifax to say that he was now struggling financially, and this was echoed in a significant reduction in the credits coming into his account. At this time Halifax went through Mr D's income and expenditure with him and identified a significant deficit – his essential expenditure was far in excess of his income. Halifax says that it suggested that Mr D close his account and move the balance to the bank's recoveries department, but that Mr D declined this as he didn't want his credit file affected. At this time Halifax also suspended fees and charges on Mr D's account to give him some breathing space. When that fee-free period ended, Halifax says it wrote to Mr D about his account but received no response.*

*I think that offering advice and suspending fees and charges for a period of time was an appropriate temporary measure and so I'm satisfied that Halifax did act fairly and reasonably when Mr D initially got in contact to say he was struggling. But I've also considered the conduct of Mr D's account after this temporary measure expired. I've done this because even though Mr D might have refused longer-term assistance and not proactively contacted Halifax after the charges began to be applied again, I don't think it would have been fair and reasonable for Halifax not to have imposed a longer-term solution on Mr D's overdraft had his account conduct indicated continued financial difficulty.*

*In this case, the fee-free period on Mr D's account came to an end in October 2018, and I think a cursory look at Mr D's statements at that time would have shown that Mr D had made no progress in reducing his overdraft limit in the time since he'd first contacted Halifax about his difficulties. By this time Mr D was still hardcore borrowing – he hadn't seen or maintained a credit balance for an extended period of time – and was still earning a significantly reduced income, he was also seeing payments being returned because there were not enough funds to cover them. So I think that Mr D's overdraft usage should have prompted Halifax to have realised that he was still struggling financial and so might have trouble paying his overdraft back in a sustainable way, and so it shouldn't have continued offering it on the same terms.*

*I acknowledge that Mr D did go on to temporarily clear his overdraft at a later date after apparently being given some money by a family member, but I don't think that has any bearing on the fact that Halifax should have taken steps to deal with the clear issues in how Mr D's account was being managed in 2018. Especially as Mr D would have paid significant amounts of interest, fees and charges for the privilege of being allowed to defer dealing with his problem debt.*

*As Halifax didn't react to Mr D's overdraft usage and instead continued charging in the same way, I think it failed to act fairly and reasonably. Mr D ended up paying additional interest, fees and charges on his overdraft and this ended up exacerbating difficulties he already had in trying to clear it. So I think that Halifax didn't treat Mr D fairly and that he lost out because of what Halifax did wrong. And this means that it should put things right"*

*I appreciate Mr D taking the time to provide some further comments following my provisional decision, and I would like to reassure him that I have carefully considered all he has told us about the difficult circumstances he's experienced since 2017. I've also thought about what he's said about how difficult he found it getting help from Halifax. But I remain satisfied that prior to October 2018 there weren't clear signs of financial difficulty on Mr D's account that should have flagged to Halifax that he needed help.*

I also appreciate Halifax's additional comments, but having thought about all that Halifax has said, my position on this complaint remains unchanged. Halifax has noted that when Mr D contacted it in July 2018, although there had been some reduction in the credits to the account, he was still receiving significant credits. Halifax also says that this suggests the figure of £1,000 for income Mr D gave when he completed the income and expenditure form was incorrect as the credits to his account between July and August 2018 were much higher than that.

But looking at Mr D's account statements I don't agree with what Halifax has said. Yes, in that three month period Mr D did receive around £9,000 into his account, but the bulk of that was in June, before Mr D told Halifax that he was now experiencing financial difficulties. And in July, August and September 2018 his income – meaning what he actually earned from working or benefits, and excluding what appear to be ad-hoc payments into his account from his father – was around £1,000 per month. And in October his only income seems to have been around £700 in cash that he deposited into his account.

And, as explained in my provisional decision, it is at this point – in October 2018 – that I think Halifax should have stepped in. Mr D hadn't seen or maintained a credit balance for at least two years, had seen a significant reduction in income, had told Halifax that his personal circumstances at that time meant he was experiencing financial difficulties, and had shown no improvement in his financial situation over the three months since he had first told Halifax of his difficulties. I acknowledge that there was some 'inessential spending' on the account, but I don't think that was enough, in light of everything else going on with the account, to say that Mr D wasn't experiencing financial difficulties.

So while I acknowledge Halifax's comments here, nothing it has said changes my decision that Mr D has been treated unfairly. And I remain satisfied that it is fair to direct Halifax to resolve this complaint by taking the steps set out below.

### **Putting things right**

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

- Reworking Mr D's current overdraft balance so that all interest, fees and charges applied to it from October 2018 are removed.

AND

- If an outstanding balance remains on the overdraft once these adjustments have been made Halifax should contact Mr D to arrange a suitable repayment plan, Mr D 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 D's credit file, Halifax should reflect what would have been recorded had it started the process of taking corrective action on the overdraft in October 2018. Halifax can also reduce Mr D's overdraft limit by the amount of refund if it considers it appropriate to do so, as long as doing so wouldn't leave Mr D 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 D 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 D's credit file. Halifax can also reduce Mr D'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 D a certificate showing how much tax it has taken off if he asks for one.

### **My final decision**

For the reasons I've explained, I uphold Mr D's complaint in part, and direct Bank Of Scotland plc (trading as Halifax) to 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 D to accept or reject my decision before 28 July 2022.

Sophie Mitchell  
**Ombudsman**