

The complaint

Mr C complains that Bank of Scotland plc, trading as Halifax, charged him too much in interest on his overdraft during the pandemic months. Mr C has explained that he was in financial difficulties.

What happened

Mr C had an account with Halifax. It was an Ultimate Reward Current account and in January 2020 he had an overdraft facility of £750. This was not used from then until September 2020 as Mr C was in credit for that period.

Mr C's complaint sits against the backdrop of the national lockdown due to the Covid 19 pandemic and the measures the Financial Conduct Authority (FCA) introduced for all regulated firms offering bank accounts and overdrafts to action for their customers. I will address all this in the main part of my decision.

Mr C complained to Halifax in March 2022 about the charges he was receiving for the overdraft and although he had been given some charge free periods (either from application of the FCA guidance for concessions for the first £500 overdraft amount, or from having received refunds from Halifax for some of those charges) still Mr C felt that more should have been done and more overdraft charges should be refunded to him.

One of our adjudicators looked at the complaint and came to a view on several of Mr C's points:

- The bank's decision to change its overdraft charging structure was a commercial decision and one it was entitled to do. So, she could not look at that part
- Our adjudicator looked at whether Halifax had treated Mr C fairly and reasonably when it applied the charges to the account
- Reviewing his bank account details and transactions our adjudicator did not think that it showed signs of financial difficulty
- Our adjudicator referred to the recorded call between Mr C and Halifax on 9 September 2020 and heard that Mr C had sought advice from Halifax on that day
- Mr C had been given the charge free period for the first £500 of his overdraft
- And Halifax had refunded him £98.48 of charges for the period 10 December 2021 to 22 March 2022
- Halifax froze his interest on the overdraft until 26 April 2022
- For distress and inconvenience Halifax had offered Mr C £20 which related to the wait he had experienced on a call and the difficulty he had getting through to Halifax.
- Our adjudicator's view was that these were fair and reasonable and she did not uphold Mr C's complaint.

Mr C's response to our adjudicator's view was to refer to the Covid 19 pandemic and the lockdowns. His view was that the institutions knew of the forthcoming pandemic and fraudulently '*decided to make money out of the general public*'. Mr C considered

that an *'entirely unacceptable'* idea.

I make it clear at this stage that I do not intend to investigate the theories surrounding any conspiracies Mr C holds in relation to the pandemic or the lockdown measures. These I consider to be personal views of Mr C's and not ones the Financial Ombudsman Service would be expected to investigate. I plan to stick to the financial facts and the FCA regulations.

The unresolved complaint was passed to me to decide. I issued a provisional decision on 10 October 2022 in which I gave reasons why I planned to uphold Mr C's complaint.

I thought Mr C ought to have all his overdraft fees and charges refunded to him from the 9 September 2020 telephone call. And I considered that £20 for the poor customer service was too low and I said I planned to award Mr C £50.

Both Mr C and Halifax responded and Halifax had done what I asked which was to correct any factual information I had pieced together from the information I had at the time of doing the first provisional decision. It sent some corrected information to me and I was grateful for that.

How did each party respond to my first provisional decision?

Halifax said that it had placed a freeze on Mr C's account charges during the time for the complaint to be resolved.

Mr C was not content and said that he wanted a lot more compensation including refunds from March 2020 and 8% compound daily interest. And Mr C wanted compensation for Halifax staff not considering his mental health issues and he claimed *'loss of earnings time effort and life issues. I want a lot more money and compensation.'*

Halifax has sent us more documents and has corrected the table I had set out in my first provisional decision – using the information I had at the time – and so the corrected schedule showing Mr C's overdraft limit history is set out here. These are the facts I am proceeding on.

| Date | Overdraft limit |
|---------------------------------|------------------------|
| 26 April 2018 | Increased to £500 |
| 11 November 2019 | Increased to £750 |
| 22 April 2020 | Increased to £1,500 |
| Between 22 and 28 February 2021 | Reduced to £630 |
| 28 February 2021 | Declined to £1,200 |
| 17 March 2021 | Increased to £1,000 |

I was grateful for the new information from Halifax however the information I used when compiling my first provisional decision was a little confusing as part of the information I had received from Halifax originally had been sent a table showing that on 24 February 2021 the overdraft limit was *'pending'* at £630.

This did not completely fit with the more recent information sent to me. In Halifax's original letter to us in May 2022 – it said that Mr C's overdraft limit had *'been decreased to £1,000'* in February 2021 whereas one set of records shows me that the overdraft limit was *'pending'* at £630 in February 2021 and then *'increased'* to £1,000 in March 2021.

I do concede that I mistakenly thought that Mr C's overdraft limit was increased to £1,500 in

April 2022 and that does make a difference to the outcome. It appears that it was maintained at the £1,000 overdraft limit from March 2021.

So, I decided to issue a second provisional decision so that both parties were clear on the facts and my provisional findings. That was sent to both parties on 29 November 2022.

My first provisional decision is not set out here in detail as the mixing up of the facts I used last time and the amended facts will become confusing. And so, I reviewed the whole complaint.

This second provisional decision corrects an element which I think Halifax had got wrong. It said to us recently that Mr C's account was in credit until 14 September 2022 and so Mr C did not use his overdraft until that date. But reviewing the bank statements for the account to which this overdraft complaint relates, I have seen that it was clearly in credit until September 2020 not September 2022 and so I think that the recent Halifax letter was a typing error.

And the most recent calculations for the potential refund in accordance with the first provisional decision had been calculated from the wrong start date – September 2021, whereas my first provisional decision was a refund from 9 September 2020.

Having clarified those points, for ease of reading I set out here my Second Provisional Decision dated 29 November 2022 and in smaller type to differentiate it.

My Second Provisional decision dated 29 November 2022

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

It may assist in answering many of Mr C's concerns, by giving some background information. These are much the same points I made in my first provisional decision and which I repeat here.

Following FCA consultations long before the Coronavirus pandemic, the regulated firms such as Lloyds were going to be altering the charging structure for overdrafts anyway. It was to be effective from April 2020 and hence the reason Halifax, and all other banks and building societies offering overdraft facilities, wrote to customers in or around January 2020 to prepare their customers for the changes. I can see that Halifax did write to Mr C on that subject. It was sent to his on-line banking email 'in-box', and it seems from the records Halifax sent to me that Mr C did not read it. But either way I am satisfied that the communication was sent to him. That explained the new overdraft charging structure going forward.

The bank's decision to change its overdraft charging structure was a commercial decision and one it was entitled to do and it was required to comply with the FCA rules. So, I agree with our adjudicator on this part – that's not an element we can investigate.

Following the government's intervention in relation to the national lockdown due to the coronavirus pandemic in March 2020, the FCA issued temporary Guidance relating to a whole raft of consumer credit products, overdrafts being one of them. These were updated as the months and years went by to keep up to date with the changes surrounding the Covid pandemic. They were never meant to be permanent changes. There were 'end dates' on the availability of some of the concessions available to consumers.

Temporary guidance for regulated firms such as Halifax in relation to the coronavirus pandemic and overdrafts was published in April 2020. And this included offering customers the £500 interest free overdraft for a three month period which could be extended for a further three months. So as Mr C already had an overdraft in place – although he was not

using it at the beginning of 2020 - by the time he called Halifax in September 2020 then I think that should have been offered sooner than it was offered to him which Halifax records show was not until late November 2020.

Halifax's recent email to me states that Mr C started to use his overdraft in September 2022 but, as I have explained earlier in this decision, I think that's an error in the typing as it was September 2020 that Mr C's account balance started to move into his overdraft facility. 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 those out in this decision.

The £500 FCA concessionary overdraft as part of the Covid measures

Halifax has confirmed this:

'The Bank supported the measures the Financial Conduct Authority (FCA) introduced. Indeed, he received the initial £500 overdraft interest free concession from April to July 2020. We know though during this period he did not use his overdraft facility.'

And Halifax has challenged my earlier provisional finding that the £500 interest free overdraft facility ought to have been applied when Mr C had telephoned for help on 9 September 2020. In response to that Halifax has said –

'The Bank would feel applying the £500 overdraft free concession before it was being used or clear it would be, was not the best option. This would mean the inefficient use of part of the three months available to a customer.'

But considering Halifax had already applied a £500 FCA concessionary overdraft facility from April to July 2020 when it must have known that Mr C was in credit at that time and Mr C had not requested it, I find Halifax's argument in the previous paragraph non-persuasive.

I have listened to that recorded call on 9 September 2020 and I maintain that Mr C was asking for help and at the very least the £500 overdraft facility – freely applied in April 2020 when he did not need it – could have been applied at that time. I maintain that provisional finding that the £500 overdraft interest free concession ought to have been applied from 9 September 2020. I don't think that the Halifax representative needed much more information to be able to justify that action. Instead, the Halifax representative gave him the money management team telephone number and left Mr C to arrange it. That £500 interest free time would have been a good start for Mr C.

Savings account usage

Halifax has made many submissions in relation to income and money coming into the bank account about which this complaint relates. And one element is the fact that Mr C had savings accounts. Halifax has sent to me the statements for those. The implication appears to be that Mr C had money elsewhere (in other accounts as savings) and he could have used it to assist his own overdraft position.

One account had very little in it and had reduced to a relatively small amount and on the recorded call in September 2020 Mr C had told Halifax he had been using his savings but now was down to very little.

The other is entitled 'kids saver' and when I cross-refer this account number to other records I have seen from Halifax it seems that the 'Role/Owner' for that account is shown as 'Trustee/Yes' which suggests that the money has been allocated into that account with Mr C as Trustee for his children to keep those savings safe. So, I don't consider that money a store of cash he could use to assist himself and his own account debt. That Mr C could use other money in other accounts is not a persuasive argument by Halifax in my view. I reject the submissions where Halifax has said Mr C '...could have repaid or reduced the overdraft

usage in a reasonable period, which could have been supported by reduction in discretionary and not transferring funds to savings.'

Income into the account

I have been sent copies of Mr C's bank statements for the whole of 2020 and 2021 and up to 22 April 2022. Reviewing those bank statements, I have seen that Mr C's company of which he was director (for the key worker services he said he provided) used to pay income into the account and there were long periods when that income was missing.

Plus, I can see that income from a letting company (which Mr C mentions on that September 2020 telephone call) was for £1,200 each month and credited his account on the first day of each month. Then his mortgage on the property of just under £700, was debited on the same day. So, when that key worker income ceased then the account went deeper into overdraft. Mr C's company was dissolved on 19 October 2021.

And it's clear that by 1 June 2021, his overdraft was always bumping on the underside of his limit (at that time £1,000), it was back in credit when the £1,200 rental income was paid in and then back into debit when his mortgage when out the same day. This was happening in April 2021 but by 1 June 2021 I think it was likely Mr C was heading for a point when he'd be exceeding his overdraft.

Further, just cross-referring the details I have from Halifax's records and notes of the account, Mr C's attempts to keep his credit lines open are clear. He had a loan with Halifax, he activated a Halifax credit card in January 2021, he started to receive '*persistent debt*' letters in July 2021 demonstrating that Halifax knew he needed assistance. Mr C did obtain a fees and charges refund in December 2021. But still, it did not get better.

On 22 March 2022, using the correct protocols to record such information, Halifax recorded that Mr C had Support Needs which were required to be applied to him.

And on 4 April 2022 and 11 April 2022 the £92.88 direct debit to pay for the Halifax loan he had with them was returned. So, I can't think of a clearer indication that Mr C was in financial difficulties, when Halifax's own loan repayments were returned to the account holder.

So, my provisional decision is that I plan to uphold Mr C's complaint in that I think he ought to have all his overdraft fees and charges refunded to him from the 9 September 2020 telephone call until the end April 2022 (excepting any refunds already paid to Mr C).

And now that the bank has information on Mr C's Support Needs, then I'd expect additional support to be afforded to him going forward.

Mr C 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 C fairly and he lost out because of what Halifax did wrong. And this means that it should put things right.

The £20 offer for customer service

Halifax has admitted that this was an issue and so I do not need to have all the details surrounding that occasion when Mr C could not get through and had to wait on the telephone for a long time.

I accept that these would have been busy times for Halifax with many customers needing its assistance. But I think that £20 is too low a figure. Recently Halifax has said that it thinks it's a reasonable figure. I disagree and I plan to award £50.

Mr C's demand for more compensation

I have approached this complaint on the basis that Mr C states his overdraft charges were

unfair and he ought to have been assisted earlier. On the whole I have agreed with him and I consider a refund is due. I set this out in my first provisional decision.

Mr C has provided no basis to demand more and I see no reason to award additional compensation.

And on the 8% interest point raised by Mr C – it is not compound interest – just simple interest – and that would only be applied once Mr C's account has been re-worked (meaning recalculated) and the outstanding debt has been extinguished by the reworked figures. Then the surplus from whichsoever that date works out to be will attract 8%. Mr C can't expect to claim 8% on figures which were negative overdraft balance figures and money that he owed Halifax and had not yet paid over to it.

And as for the points raised about matters relating to his mental health and issues following from the time, then the facts are Mr C contacted Halifax on 22 March 2022, using the correct protocols to record such information and it recorded that Mr C had Support Needs which were required to be applied to him. Halifax has said that it has not had a chance to look at matters since April 2022 – see below:

'The events after March 2022 have though not been investigated by the Bank and it will support [Mr C] if he contacts it. This includes the ongoing waiving of the daily overdraft fees as already detailed. Once he has discussed his financial situation with us we can tailor the support moving forward.'

'The Bank notes you have mentioned events of April 2022 in the findings received, but these are after our final response. As such these have not been considered by the Bank. Mr C has not contacted the Bank about this period and we would advise him to speak to us about any assistance we can provide. Whilst reviewing this view the Bank have again frozen the daily overdraft interest and will continue to do this at least until this matter is closed. We would consider providing this for a period after the closure of this complaint, as long as the customer contacts us to discuss his financial status.'

And so, for matters from 1 April 2022 in relation to Mr C's mental health and how he alleges Halifax has treated him, it seems that the best way forward is for Mr C to contact the bank again. It is correct that the FRL from Halifax was for events up to end of March 2022.

I have included the financial issues for the period to end of April 2022 as I have been sent bank statements for April 2022 and I have seen that refunds of fees and charges have already been made.

Fair compensation – what I am planning to ask Halifax to do to put things right for Mr C

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

- Reworking Mr C's current overdraft balance so that all interest, fees and charges applied to it from 9 September 2020 are removed up to end March 2022. And this needs to take account of the refunds and interest free periods Mr C has already had from Halifax

AND

- If an outstanding balance remains on the overdraft once these adjustments have been made Halifax should contact Mr C to arrange a suitable repayment plan, Mr 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 Mr C's credit file, Halifax should reflect what would have been recorded had it started the process of taking corrective action on the overdraft on 9 September 2020.

- Halifax can reduce Mr C'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 C over the 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 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 Mr C's credit file. Halifax can also reduce Mr C's overdraft limit by the amount of refund if it considers it appropriate to do so.

AND

Halifax needs to pay to Mr C £50 for the inconvenience and the lack of customer service as referred to in the main body of the provisional decision.

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

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.

How did each party respond to the second provisional decision?

Halifax corrected or disagreed with some of the points in my second provisional decision. As two provisional decisions had already been issued, I do not set them out here but they have been noted.

And the reason I do not go into further detail is that Halifax has sought to resolve the complaint by offering to do as I had set out in my second provisional decision and Mr C has accepted it in principle save for one detail which I have finalised here.

And so at this stage I consider that that getting to the resolution is what's needed. The terms Halifax has set out to resolve the complaint and which dovetail with my second provisional decision planned outcome are here:

- Halifax invites Mr C to contact the bank to discuss his present situation so that it can support him.

Halifax has said that it will:

- Rework Mr C's current overdraft balance so that all interest, fees, and charges applied to it from 9 September 2020 up to when they were suppressed on 18 October 2022, considering those already refunded, are removed from his account. This is more than requested in the revised provisional decision and will mean a refund of £400.14 of such overdraft interest.
- This refund would mean, as of 7 December 2022 (the date Halifax have put forward these resolution terms) an outstanding balance would remain as Mr C's account was £780.81 overdrawn. The Bank will though on payment of the refund:

o Reduce Mr C's overdraft limit from £1,000.00 to £600.00 immediately.

o Provide the overdraft fee free for a further 30 days from the date of settlement, at which point daily overdraft interest will be payable for any overdraft usage.

- Halifax was unaware of any negative information recorded on Mr C's credit file relating to this account and so no corrective action needed on that
- Pay Mr C £50 for the inconvenience caused in this matter.

Mr C received these resolution terms and responded to say that he agreed to this in principle save that he wanted his overdraft to remain at £1,000. Halifax has replied to say no. And on this last point I agree with Halifax that it should be free to assess what it considers the correct overdraft limit for Mr C following the complaint and looking to the future. I have since seen that Mr C has accepted this overdraft reduction. So it seems both sides are in agreement.

In the circumstances I endorse the resolution terms as set out above as they are in line with a fair and reasonable outcome set out in my second provisional decision.

Putting things right

Halifax has said that it will:

- Rework Mr C's current overdraft balance so that all interest, fees, and charges applied to it from 9 September 2020 up to when they were suppressed on 18 October 2022, considering those already refunded, are removed from his account.

It may be that some fresh calculations need to be carried out depending on when and if Mr C accepts this final determination.

- This refund would mean, as of 7 December 2022 (the date Halifax have put forward these resolution terms) an outstanding balance would remain as Mr C's account was £780.81 overdrawn. This figure might alter a little if any recalculations are needed.

The Bank, on payment of the refund, will:

o Reduce Mr C's overdraft limit from £1,000.00 to £600.00 immediately.

o Provide the overdraft fee free for a further 30 days from the date of settlement, at which point daily overdraft interest will be payable for any overdraft usage.

- Halifax was unaware of any negative information recorded on Mr C's credit file relating to this account and so no corrective action needed on that is needed but if it transpires there was some adverse payment information about this account on Mr C's credit file, Halifax is to amend it.
- Pay Mr C £50 for the inconvenience caused in this matter.

It seems that the usual additional about HM Revenue & Customs requiring Halifax to take off tax from any interest may not be relevant. But if it is - Halifax must give Mr C a certificate showing how much tax it has taken off if he asks for one.

My final decision

My final decision is that I uphold Mr C's complaint in part and I endorse the resolution terms

set out above. Bank of Scotland plc trading as Halifax needs to do as it has offered and as set out in the 'putting things right' part of the decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 9 January 2023.

Rachael Williams
Ombudsman