

Complaint

Mr E has complained about an overdraft and subsequent limit increases Bank of Scotland Plc (trading as “Halifax”) provided to him. He says the overdraft and subsequent limit increases were unaffordable and shouldn’t have been provided.

He’s also complained that Halifax failed to monitor his overdraft usage and take appropriate action even when it was clear he was experiencing difficulty.

Background

Halifax initially provided Mr E with an overdraft with a limit of £300, this was increased to £750 in December 2011, £900 in January 2012, £1,600.00 in June 2012 and finally £2,000.00 in January 2013.

One of our investigators reviewed what Mr E and Halifax had told us. And she thought Halifax hadn’t done anything wrong or treated Mr E unfairly. So she didn’t recommend that Mr E’s complaint be upheld. Mr E disagreed and asked for an ombudsman to look at his complaint.

My provisional decision of 14 December 2022

I issued a provisional decision – on 14 December 2022 - setting out why I intended to uphold Mr E’s complaint. I won’t copy that decision in full, but I will instead provide a summary of my findings.

I started by explaining that we’ve explained how we handle complaints about unaffordable and irresponsible lending on our website. And I also explained that Halifax would 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.

I then went on to state that Halifax needed to make sure that it didn’t lend irresponsibly. In practice, what this means is Halifax needed to carry out proportionate checks to be able to understand whether Mr E could afford to repay before advancing any credit.

I explained that our website sets out what we typically think about when deciding whether a lender’s checks were proportionate. Generally, we think it’s reasonable for a lender’s checks to be less thorough – in terms of how much information it gathers and what it does to verify it – in the early stages of a lending relationship.

But we might think it needed to do more if, for example, a borrower’s income was low or the amount lent was high. And the longer the lending relationship goes on, the greater the risk of it becoming unsustainable and the borrower experiencing financial difficulty. So we’d expect a lender to be able to show that it didn’t continue to lend to a customer irresponsibly.

Halifax said it agreed to Mr E’s initial overdraft application and his limit increases after it obtained information on his income and expenditure and carried out a credit search. On the

other hand, Mr E said the overdraft was unaffordable and was provided to him while he was in a debt management plan.

I carefully thought about what Mr E and Halifax had said.

I started this section of my provisional decision by stating that Halifax did have some information, at least about Mr E's income as a result of his salary being paid into his account, when deciding whether to lend to him. And it was fair to say that Mr E did have a salary which would, in normal circumstances, be enough to suggest that he could afford to repay the overdraft limit increases he was given.

However, I was mindful of the particular circumstances here and the fact that our investigator's assessment relied on a number of facts that appeared to be inaccurate.

Firstly, our investigator said that she couldn't say that Halifax ought reasonably to have known that Mr E was in a debt management plan. But having looked at Mr E's account statements, I could clearly see a monthly payment of £70 being made to a debt management company at the beginning of each month. So I was satisfied that Halifax ought to have been aware that Mr E was in a debt management plan.

Our investigator's assessment also stated that Mr E was always within his overdraft limit. But Mr E's account statements also showed unplanned overdraft fees, which are only ever paid where a customer exceeds their overdraft limit.

That said, and notwithstanding what I had highlighted, I wasn't too concerned about the decision to provide the overdraft in the first place and the decisions to increase the limit to £750 and then £900. I said this because while Mr E was still in a debt management plan at this time and he was spending periods with an overdrawn balance, the credits going into his account ensured that he spent reasonable periods of time in credit.

However, I was concerned about what happened during the course of 2012. Mr E started to exceed his limit. And the number of transactions being made to betting companies was increasing. While I was prepared to give Halifax the benefit of the doubt for the June 2012 increase to £1,600.00 because Mr E's account received a reasonably large influx of funds around this time, I did think that the decision to increase Mr E's limit to £2,000.00, in January 2013, wasn't fair and reasonable.

I explained that this was because despite Halifax increasing Mr E's overdraft limit to £1,600.00 in June 2012, Mr E continued to exceed his limit. And I could see that he incurred unplanned overdraft fees each month in the months leading up to the increase. I could also see that Mr E had sporadic unpaid direct debits and the number of gambling transactions being made from the account increased further. I thought that this pointed to a concerning position – especially when this was combined with the fact that Halifax ought to have realised that Mr E was already in a debt management plan.

Furthermore, while I didn't know what Halifax might have seen as a result of any credit searches it may have carried out, the information I had seen about Mr E's financial circumstances showed that his debts elsewhere were increasing. While there were the payments being made to credit cards from this account, I was also aware that Mr E took out loans too.

I thought that even if Halifax's searches didn't pick up all of this lending, bearing in mind everything else it knew, it ought to have realised that Mr E's financial position was deteriorating. And given the transactions on Mr E's account, I thought that it ought to have had some idea why this was happening too. Therefore, while the limit increase in January

2013 was relatively modest, I was satisfied that Halifax nonetheless ought to have realised that increasing Mr E's overdraft limit to almost the amount of his monthly salary wasn't fair and reasonable in the circumstances.

I was also satisfied that Halifax ought to have realised that Mr E was already in a precarious financial position at this stage. And, in these circumstances, not only should Halifax have declined Mr E's application for a limit increase to £2,000.00 but it should have taken steps to have withdrawn the overdraft facility completely.

Indeed, the information I had seen suggests that Mr E went on to develop a reliance on payday loans and other high-cost credit after his limit was increased in January 2013. So Halifax ought to have realised that Mr E was struggling to manage his overdraft and offered him assistance. And the fact that Halifax continued to allow Mr E to use his overdraft in the same way notwithstanding the annual reviews which took place and what was happening on his account, was further reason why I was satisfied that Halifax failed to act fairly and reasonably towards Mr E.

Mr E ended up paying additional interest as a result of Halifax increasing his overdraft limit and then continuing to allow him to use it even though it was unsustainable. So I was satisfied that Mr E lost out because of what Halifax did wrong and this left me intending to issue a final decision that upheld Mr E's complaint.

I then went on to set out a method of calculating compensation which I thought addressed Halifax's shortcomings and Mr E's resulting loss.

Responses to my provisional decision

Halifax confirmed that it accepted my provisional decision. It agreed to pay compensation in line with the proposed direction in my provisional decision. As the amount of compensation exceeded the outstanding balance on Mr E's overdraft, Halifax confirmed that it would remove the facility from his account too.

Mr E confirmed that he accepted my provisional decision too.

My findings

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

I thank the parties for their responses to my provisional decision. And in particular I'm pleased to see that my findings have been accepted.

As the parties have agreed with the findings I reached in my provisional decision and in it I set out in some detail why I intended to uphold Mr E's complaint, I've not been persuaded to alter my conclusions. Given I've found that Halifax ought to have taken steps to remove the overdraft from Mr E's account a number of years ago, I'm satisfied that its proposed course of action to do so once it has paid the compensation due to Mr E, is fair and reasonable in the circumstances.

So overall and having considered everything, including the parties' responses to my provisional decision, I'm still upholding Mr E's complaint. And I remain satisfied that Halifax needs to put things right.

Fair compensation – what Halifax now needs to do to put things right for Mr E

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

- Reworking Mr E's overdraft balance to ensure that from February 2013 all interest, fees and charges are refunded.

AND

- As an outstanding balance will not remain on Mr E's account once these adjustments have been made Halifax can remove Mr E's overdraft in the way that it has proposed to.

AND

- As the effect of removing all interest, fees and charges will result in there no longer being an outstanding balance, any extra should be treated as overpayments and returned to Mr E along with 8% simple interest[†] on the overpayments from the date they were made (if they were) until the date of settlement. Halifax should remove any adverse information it has recorded about this overdraft from Mr E's credit file.

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

My final decision

For the reasons set out above and in my provisional decision of 14 December 2022, I'm partially uphold Mr E'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 E to accept or reject my decision before 7 February 2023.

Jeshen Narayanan
Ombudsman