

The complaint

Miss B has complained that Bank of Scotland plc trading as Halifax (“Halifax”) acted irresponsibly by increasing her overdraft limit and continuing to apply charges to her account when it should have realised her finances had gotten worse and she was no longer able to clear her overdraft.

What happened

In March 2016 Miss B held a bank account with Halifax with an overdraft limit of £450. This was increased to £650 in December 2016, and further increased to £700 and £750 January and February 2017 and then £1,050 in March 2017 following which her overdraft limit continued increasing until it reached £4,020.

Miss B complained to Halifax about this and Halifax issued its final response in October 2022 agreeing that it shouldn't have agreed any further overdraft applications from 22 August 2017. Halifax agreed to refund all interest and overdraft fees charged since 22 August 2017 amounting to £6,543.10 which included £294.10 interest and £70 compensation for any upset caused. Halifax partially applied the refund to settle Miss B's outstanding overdraft debt and paid the remainder to another of her accounts.

Miss B was dis-satisfied with this and brought her complaint to this service. Miss B's complaint was considered by one of our adjudicators. They said they were unable to look at all of Miss B's complaint points as the complaint points relating to the closure of Miss B's account and repayment plans offered had already been considered as part of an earlier complaint in March 2022 and had been brought by Miss B to this service too late. They agreed that Halifax shouldn't have agreed further lending from August 2017 but as Halifax had already refunded fees and charges from this point – in line with our approach - that Halifax didn't need to do anything more.

Miss B disagreed. She is unhappy that Halifax applied the refund to her outstanding overdraft balance and thinks that her overdraft balance should've been written off. She doesn't believe the £70 compensation is enough considering the stress and anxiety the lending has caused her and has asked for an ombudsman's decision.

I issued my provisional decision on 2 May 2023. In my provisional decision, I explained why I was proposing to uphold Miss B's complaint.

I invited both parties to let me have any further submissions before I reached a final decision. Miss B has provided further information but overall it does not add anything new to what has already been considered. While Halifax has confirmed it will settle the complaint in-line with my provisional decision which amounts to paying Miss B a further £183 plus 8% interest.

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 said that:

“To be clear my decision only addresses Miss B’s complaint point regarding the affordability of the overdraft lending. I am unable to look at the previous complaint points Miss B raised because Halifax have already provided an answer to these and Miss B failed to bring these complaint points to our service within six months of Halifax’s final response letter.

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 making lending decisions and applying overdraft charges. So I don’t consider it necessary to set all of this out in this decision.

I’ve considered whether there were instances where Halifax didn’t treat Miss B fairly and reasonably. And from March 2016 up until March 2017 (when Miss B’s overdraft limit was increased from £750 to £1,050) I don’t think that Halifax did treat Miss B unfairly or unreasonably. I say this because having looked at Miss B’s statements I’m not persuaded that Miss B’s overdraft limit was unaffordable for her or that she was experiencing financial difficulties. Miss B was receiving a regular salary of around £1,400 and was able to bring the overdraft down before once again going on to use her overdraft to make debit card transactions, money transfers and cash withdrawals.

I accept Miss B didn’t maintain a credit balance for more than a month at a time, but I think this was overall due to Miss B’s spending habits rather than severe financial hardship. And while I’m not seeking to make retrospective value judgements over Miss B expenditure, nonetheless there are significant amounts of non-committed, non-contractual and discretionary transactions – in particular regular spending on retail, fast food and leisure activities.

So, in these circumstances I don’t think that it was unreasonable for Halifax to proceed with adding the interest, fees and charges it did in light of how Miss B’s account was being used.

However, I don’t think Halifax should’ve agreed to increase Miss B’s overdraft limit by £300 – from £750 to £1,020 in March 2017. And I think it acted unfairly when it continued charging overdraft interest and associated fees from this point.

I say this because the statements show in the months leading up to this increase Miss B spent a lot more time at the top of her limit and rarely saw a credit balance. The statements show that Miss B was able to reduce her overdraft when credits came into her account, but almost as soon as the credits came in the money would go back out again. And overall Miss B’s overdraft was not reducing.

Miss B appeared to be struggling to manage her existing overdraft limit and I think that Halifax ought to have realised that increasing her limit and continuing to allow Miss B to use her overdraft in this way wasn’t in her best interests and there was a significant risk that she may not be able to pay back what she already owed within a reasonable period of time.

Halifax’s own literature suggests that overdrafts are for unforeseen emergency borrowing and as Miss B wasn’t using her overdraft as intended Halifax shouldn’t have continued offering it on the same terms.

So I'm currently minded to think that Halifax should not have agreed to increase Miss B's overdraft limit and instead treated Miss B with forbearance. As Halifax didn't react to Miss B's overdraft usage and instead increased her borrowing and continued charging in the same way, I think it failed to act fairly and reasonably. And this means that it should put things right."

Halifax has already refunded overdraft fees and charges from a few months later in August 2017. Miss B says Halifax should've written off the outstanding balance of her overdraft and not applied the refund to this. But in cases such as hers where a business increases or continued to allow a consumer to use a credit facility which it should have realised was unsustainable, we'd typically expect it to put the consumer in the position they'd be in now if they hadn't paid any further interest and charges on that credit. This means we'd normally expect a lender to refund the interest and charges added to any credit from the point the lender ought to have realised it was unsustainable. And if those interest and charges were paid also add 8% simple interest per year. And we think it is fair to apply any refunds in interest and charges to an outstanding debt. Miss B had the use and benefit of the funds and Halifax is entitled to be paid back.

So while Miss B is unhappy with this - I haven't been given a reason for departing from our normal approach to putting things right in cases such as hers."

As neither party has provided any further new evidence or arguments that I consider would change the outcome from my provisional findings, I see no reason to depart from the conclusions set out in my provisional decision. It follows that I uphold this complaint.

Putting things right

I think that it would be fair and reasonable in all the circumstances of Miss B's complaint for Halifax to put things right by:

- Re-working Miss B's current overdraft balance so that any additional interest, fees and charges applied as a result of the overdraft limit increase from March 2017 onwards are removed.

AND

- If it considers it appropriate to record negative information on Miss B's credit file, it should backdate this to March 2017.

OR

- If there is no longer an outstanding balance, then any extra should be treated as overpayments and returned to Miss 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 Miss B's credit file. †

† HM Revenue & Customs requires Halifax to take off tax from this interest. Halifax must give Miss B a certificate showing how much tax it's taken off if she asks for one.

My final decision

For the reasons I've explained, I uphold Miss B's complaint and direct Bank of Scotland plc to pay the fair compensation outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 7 June 2023.

Caroline Davies
Ombudsman