

Complaint

Miss L has complained that Bank of Scotland Plc (trading as “Halifax”) irresponsibly provided her with an overdraft and then unfairly continued applying charges to it when it ought to have seen that she couldn’t repay what she owed.

Background

One of our adjudicators looked at this complaint and thought Halifax should have realised that Miss L’s overdraft had become unsustainable for her by November 2017 and so it shouldn’t have added the charges it did from this point onwards. Halifax disagreed with our adjudicator’s view. So the complaint was passed to an ombudsman for a final decision.

My findings

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

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 provisional decision.

Having considered everything provided, I think Halifax acted unfairly when it continued adding interest and associated fees and charges to Miss L’s overdraft from November 2017. By this point, it was evident that Miss L’s overdraft had become unsustainable for her and that continuing to provide it was likely to cause significant adverse consequences.

A cursory look at Miss L’s statements leading up to this period shows that she hadn’t seen a meaningful credit balance for an extended period of time. So she was effectively hardcore borrowing. I accept that Miss L’s overdraft was for less than the amount she earned each month. But this doesn’t change that she was proving unable to maintain a credit balance.

Furthermore, whilst I’ve noted what Halifax has said about the funds in Miss L’s other account, I can’t see that had had sufficient funds in her other account to have cleared her overdraft in the leadup to November 2017.

In reaching this conclusion, I’ve also thought about what Halifax has said about it being the case that Miss L took a few months to adjust to the changes it made in its overdraft pricing structure. Even if I were to accept that this is the case, for the avoidance of doubt I wish to make it clear that I’m not necessarily persuaded by this, I’m, in any event, satisfied that Halifax ought to have taken steps to mitigate the effect of the increase in charges and Miss L’s apparent difficulty in adjusting to this.

I think Halifax ought to have realised that Miss L was having difficulty managing her overdraft and, in these circumstances, it should have instead treated Miss L with forbearance, rather than applying a new charging structure that would lead to her paying more, even if this meant taking corrective action in relation to the facility.

All of this means that Halifax should have realised that Miss L wasn't using her overdraft as intended and as the account conduct had suggested it had become unsustainable shouldn't have continued offering it on the same terms. As Halifax didn't react to Miss L's overdraft usage and instead continued with imposing a new charging structure, I think it failed to act fairly and reasonably.

Miss L ended up paying additional interest, fees and charges on her overdraft at a time when she was already finding it difficult to manage her account. So I think that Miss L lost out because of what Halifax did wrong and that it should put things right.

I know that Miss L is unhappy that Halifax removed her overdraft after she complained. But she did say that it was unaffordable. And as I've also found that Halifax ought to have taken corrective action as it ought to have realised that the overdraft was unsustainable, albeit sometime before, it follows that I don't think that Halifax's response to Miss L's concerns was unfair and I'm not upholding this part of the complaint.

Fair compensation – what Halifax needs to do to put things right for Miss L

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

- Reworking Miss L's current overdraft balance so that all interest, fees and charges applied to it and which haven't already been refunded from November 2017 onwards are removed.

AND

- If an outstanding balance remains on the overdraft once these adjustments have been made Halifax should contact Miss L to arrange a suitable repayment plan, Miss L is encouraged to get in contact with and cooperate with Halifax to reach a suitable agreement for this. If it considers it appropriate to record negative information on Miss L's credit file, it should reflect what would have been recorded if it had started the process of taking corrective action on the overdraft in November 2017. Halifax can also reduce Miss L's overdraft limit by the amount of any refund if it considers it appropriate to do so, as long as doing so wouldn't leave her over her 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 Miss L 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 L's credit file.

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

My final decision

For the reasons I've explained, I'm upholding Miss L'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 Miss L to accept or reject my decision before 4 July 2023.

Jeshen Narayanan
Ombudsman