



## **The complaint**

Miss S has complained that Bank of Scotland plc trading as (“Halifax”) acted unfairly by continuing to apply charges to her account when she was in financial difficulty.

## **What happened**

Miss S held an account with Halifax with a £250 overdraft facility. Miss S’s account was moved to collections in January 2021.

Miss S complained to Halifax that the charges applied to her account were unfair as she was struggling financially.

Halifax said all charges were applied to Miss S’s account correctly in line with the terms and conditions of the account. But Halifax agreed it could’ve done more to support Miss S and agreed to refund charges totalling £95.80 representing the period from January 2022 as this is when her account should’ve been closed. It also compensated Miss S £70 for distress and inconvenience.

Miss S was dis-satisfied with this and brought her complaint to this service.

One of our adjudicators looked at this complaint and thought that Halifax acted unfairly when it continued charging overdraft fees from January 2021 as by this point Miss S’s account had been moved to collections and she no longer had money in other account to service the overdraft and Halifax ought to have known she was in financial difficulty.

Halifax agreed to settle Miss S’s complaint in-line with our adjudicators recommendations and said it would:

- Refund all charges from when Miss S’s account went into collections on 30 January 2021 totaling £90.02.
- The refund would be used to reduce the outstanding balance of the overdraft debt of £154.20 and that Miss S would need to arrange to repay the remaining debt or await contact from its agent.
- Any negative information presently or subsequently recorded will be backdated as though the process started on 30 January 2021. This would mean the default applied would be backdated to 20 April 2021 (within the usual notice period of 3 to 6 months).

Miss S doesn’t wish to accept this and has asked for an ombudsman’s decision.

## **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.

I hope that Miss S won't take it as a discourtesy that I've condensed her complaint in the way that I have. Ours is an informal dispute resolution service, and I've concentrated on what I consider to be the crux of the complaint - that being the charges applied to Miss S's account were unfair when she says she was in financial difficulty. Our rules allow me to do that. And having carefully considered everything, I think that what Halifax has already agreed to do to put things right for Miss S is fair and reasonable in all the circumstances of this complaint. I'll explain why I think this is the case.

It might help for me to start by explaining that where a business accepts (or we decide) it did something wrong, we'd expect the business to put the consumer in the position they would be in if that wrong hadn't taken place. And in an ideal world, we'd tell a business to put a consumer in the position they'd now be in if they hadn't been given the credit they shouldn't have.

So where a business allows a consumer to use a credit facility and continues to apply charges when it should have realised the credit facility 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.

In this case I think once Miss S's account had been moved to collections it ought to have been clear she wasn't managing her overdraft and was having difficulty paying it back and with Halifax continuing to apply charges to her account it was making her financial situation worse.

Halifax has agreed to settle Miss S's complaint in-line with this finding and Miss S will be 'refunded' all of the interest, fees and charges applied to her account from when it entered collections in January 2021.

I understand Miss S is unhappy with this and wants all overdraft charges applied to her account amounting to around £400 refunded and to be compensated for the stress and anxiety she has suffered.

Halifax won't have acted fairly and reasonably towards Miss S if it applied any interest, fees and charges to Miss S's account in circumstances where it was aware, or it ought fairly and reasonably to have been aware Miss S was experiencing financial difficulty.

So I've considered whether there were instances where Halifax didn't treat Miss S fairly and reasonably. And I don't think that Halifax did treat Miss S unfairly or unreasonably before Miss S's account was moved to collections. I say this because despite writing to Miss S on a number of occasions asking if she needed assistance, Miss S never got in touch with Halifax to let it know she was having financial difficulties.

And while I sympathise with Miss S and I accept her personal circumstances may have made getting in contact with Halifax difficult - and I don't wish to trivialise what she's said - nonetheless, Miss S's bank statements alone weren't enough to suggest that Halifax ought to have realised she might have been experiencing financial difficulty prior to it transferring her account to collections.

Miss S may argue not seeing or maintaining a credit balance was in itself an indication that she was struggling. But Miss S's overdraft limit was relatively modest at £250 and the account was receiving regular credits which were enough to bring the overdraft balance right down. I also note when credits were received in, Miss S transferred the same out to another of her accounts that held at times enough to repay the overdraft had she chosen to do so.

So, in these circumstances and prior to Halifax being made aware of Miss S's personal situation, 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 S's account was being used before her account was moved to collections.

So bearing in mind all of this, I'm satisfied that what Halifax has already agreed to do to put things right for Miss S is fair and reasonable in all the circumstances of this case and I'm not requiring it to do anything more. As this is the case, it's up to Miss S to decide whether she now wishes to accept Halifax's offer.

### **My final decision**

For the reasons I've explained, I'm satisfied that what Bank of Scotland plc has already agreed to do to put things right for Miss S is fair and reasonable in the circumstances of this case.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 5 September 2023.

Caroline Davies  
**Ombudsman**