

The complaint

Mr N has complained that Bank of Scotland plc trading as Halifax ("Halifax") provided him with an overdraft irresponsibly and allowed him to go over his overdraft limit when he was in financial difficulty.

What happened

Mr N had a £500 overdraft facility with Halifax. Mr N got in touch with Halifax on 12 October 2022 and informed it he had lost his job and was having financial difficulties and wanted to put a plan in place to pay back his overdraft. At the time Mr N was over his overdraft limit and had an outstanding balance of around £1,000. Halifax advised him that it needed to talk to its support team but as Mr N couldn't stay on the line it put a 30 day hold in place on fees to allow Mr N some breathing space and to review his budget.

Following this on 31 October Mr N used his debit card and withdrew £1,100 from three different ATM machines. He repeated this on 14 November withdrawing a further £1,250 bringing the outstanding balance on his account to £3,606.

A few days after this Mr N got in touch with Halifax to discuss his overdraft and put a payment plan in place and disclosed that he was struggling with gambling and his mental health. Mr N confirmed he had the support of family and friends and that they were assisting him financially but that there wasn't any money left at the end of the month. This being the case Halifax explained that it wasn't able to set up a payment plan as it wasn't affordable. The only option was a nil temp plan where Mr N was able to make payments every month if affordable and then contact Halifax and agree a payment plan for the remaining balance at the end of this. Mr N agreed to a three' month nil temp plan and a further hold on fees was put in place.

Mr N then complained to Halifax about irresponsible lending on his overdraft and that it allowed him to go over his arranged limit. He was also unhappy that he wasn't offered a repayment plan.

Halifax upheld Mr N's complaint and refunded all overdraft interest, fees and charges applied to it from the date Mr N was provided it on 16 July 2018 totalling £474.61. Halifax said had it completed a manual review at the time of application it would've seen evidence of gambling in the build up to the application and wouldn't have agreed the overdraft. Halifax also compensated Mr N £100 as an apology.

Halifax explained that if an ATM is offline when used by a customer that it isn't contacted prior to the transactions and that this is the reason Mr N was able to go over his limit. If Mr N wasn't able to clear the outstanding balance of his account within a reasonable period of time with the support of its CFA team it may look to close his account. This would allow him to repay the balance over a longer period but may mean a default marker is applied to his credit file. If this happened Halifax would backdate the default marker to July 2018.

Mr N was unhappy with this and brought his complaint to this service. Mr N wants Halifax to wipe the balance of his overdraft.

One of our adjudicators looked into Mr N's complaint and thought that what Halifax had already done was a fair way to settle his complaint and didn't think it needed to do anything more.

Mr N disagreed and has now asked that his complaint be progressed 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.

Having carefully considered everything, I think that what Halifax has already agreed to do to put things right for Mr N 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. But for complaints about funds which shouldn't have been provided this isn't straight forward as the funds were provided and, in most cases – such as here, have long since been spent.

So we look to try and find some other way to put things right. And 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.

In this case, Halifax has agreed it made an error by providing Mr N with an overdraft when there was evidence of gambling in the lead up to his overdraft application. Halifax has already done what I'd expect it to do to put things right – as outlined above. Mr N was 'refunded' all of the interest, fees and charges caused by the overdraft facility.

Furthermore, Halifax put in place an interest and fee free three month' plan and wishes to work with Mr N to set up an affordable repayment plan for the remainder of the overdraft following this. And Halifax has compensated Mr N £100 for its mistake. All of this is in-line with what I'd recommend.

Mr N is unhappy with this, he wants his overdraft written off. He says when the hold was put in place his card should've been blocked and that allowing transactions to go through has caused severe financial difficulty.

I thought about what Mr N has said and what he's said is a reason for upholding his complaint rather than a reason for departing from our normal approach to putting things right in cases such as his. Mr N never asked for a block to be put in place and in the months leading up to Mr N withdrawing the funds in question there was no evidence of significant gambling on his statements, nor did Mr N make Halifax aware of his gambling struggles.

Despite knowing that he was already over his overdraft limit Mr N made the decision to withdraw as much money as he could using a multiple of ATM machines, on two occasions, before he got in touch with Halifax again about his overdraft.

Mr N chose to make use of the funds. I don't know what Mr N spent the money on, but he had the use of the funds and I don't see why he shouldn't have to pay it back. What Mr N is left with to repay are the funds which he requested, so I think it's perfectly fair and reasonable to expect Mr N to repay these funds. And I don't think that Mr N's unhappiness at having a balance to repay on his overdraft, even after his complaint has been upheld, is in itself a compelling reason for me to depart from our usual approach here.

Bearing in mind all of this, I'm satisfied that what Halifax has already agreed to do to put things right for Mr N is fair and reasonable in all the circumstances of his case and I'm not requiring it to do anything more.

My final decision

For the reasons I've explained, I'm satisfied that what Bank of Scotland plc has already done to put things right for Mr N is fair and reasonable in the circumstances of this case. So I'm not requiring it to do any more.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 13 October 2023.

Caroline Davies
Ombudsman