

## The complaint

Miss S complains about the overdraft charges on her two current accounts with Bank of Scotland plc, trading as Halifax.

## What happened

Miss S has two current accounts with Halifax.<sup>1</sup> One of those has an arranged overdraft limit of £6,200, and the other originally had an arranged overdraft of £3,000, which was reduced to £2,550 in October 2018. She says that at first, the monthly overdraft fees were affordable, at £30. But then they were increased to £100 a month, and she complains that she could no longer afford them.

In April 2023, Miss S wrote to Halifax about both accounts, and said that she had been in financial difficulty since 2017. She said she had had to borrow from her family, and she had been caused anxiety. She asked Halifax to refund all of her overdraft fees and interest since 2017. Halifax replied to say that the fees had been correctly charged, and so it would not refund them. Being dissatisfied with that response, Ms S brought this complaint to our service in June 2023.

Our investigator upheld this complaint. She said that Miss S's bank statements showed that she had been in persistent debt, and that Halifax should have realised that when it had annually reviewed her overdraft facilities. She pointed out that overdrafts are not a suitable vehicle for long-term borrowing. Miss S had spent nearly £41,000 on gambling and gaming websites just in the three months from February to April 2018, sometimes with several high value transactions in a single day, and her balances had persistently been at her overdraft limits. So she recommended that Halifax refund all of the overdraft fees and overdraft interest incurred since 1 April 2018 to date, and if the refunds brought the accounts into credit then Halifax should treat the new balances as representing overpayments and pay interest on them.

Halifax did not agree with our investigator's analysis of the accounts. It argued that the investigator had failed to take into account several large payments into one of the accounts which added up to thousands of pounds (not including her gambling winnings). Her essential bills had amounted to far less than her usual monthly income (again, not counting her winnings). Miss S had also made large cash withdrawals, and had transferred large sums into a third current account she had with another bank (I will call this "the third party account"). She had not failed to pay her essential bills, nor had any payments been returned due to insufficient funds, nor had she requested any overdraft limit increases. There was also evidence of high spending on non-essential items. All of this, Halifax said, strongly suggested that Miss S had not really been in financial difficulty, but had just failed to manage her overdrafts.

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<sup>1</sup> Miss S also has a savings account, two ISAs and two loan accounts with Halifax, as well as accounts with third parties. This complaint is only about the two Halifax current accounts, but I will occasionally need to mention some of these other accounts too.

Halifax added that Miss S had never got in touch to say that she was in financial difficulty until she raised this complaint. It said that its Money Management Team had proactively contacted Miss S in January 2018 about her overdraft tariff, and that it had sent her several messages about her overdraft usage (to encourage her to reduce her overdraft balances) in relation to both accounts in 2021, 2022 and 2023. It had reduced one of the overdraft limits in 2018. Both of her Halifax accounts were now in credit, but Miss S has still not reduced their overdraft limits.

The investigator did not change her mind. She maintained that the statements showed that Miss S had been struggling to manage her finances, and that Halifax should have noticed and stepped in. Halifax asked for an ombudsman's decision.

I wrote a provisional decision which read as follows.

### **What I've provisionally 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 will begin with the current account with the £6,200 overdraft limit; I will call this "the £6,200 account."

I have seen bank statements for the period 2017 to 2023. They show that the balance of that account was almost always near the overdraft limit until April 2019, when the entire overdraft was cleared (using money transferred from the other Halifax account). But that did not last, as within two weeks the account was overdrawn again by over £5,600, due to the money being transferred back to the account it had come from.

The same thing happened in May and June 2020, August and September 2020, October 2021 and November 2021, January 2022, June and December 2022. But the rest of the time, Miss S was using almost the entire overdraft limit. This stopped in early 2023, when the account balance was brought into credit and this time it mostly stayed there (sometimes with a high balance).

During the period when this account was persistently overdrawn, it does not appear to have been used for purchases. The transactions consist mainly of transfers back and forth between the two Halifax accounts, overdraft fees, and transfers to the third party account. However, there were 108 transfers to the third party account. Some of those were for small amounts, but they were usually for three- and four-figure sums. So I asked Miss S to provide her bank statements for the third party account, and she kindly provided them from as far back as possible, which was March 2018.

The third party account had an overdraft limit of £5,000. It appears to have been permanently overdrawn until 2023, usually by over £4,000, although large sums were going into and out of the account each month. I have not reviewed this account in detail because Halifax was not responsible for it and did not have knowledge of how it was being used; I only wanted to see what was happening to the money which was leaving the £6,200 account. It does not appear that it was being used to pay for essential goods and services. (There are some large transfers to another account with the same bank, but I have not asked to see the statements for that account, as that is too far removed from Halifax.)

I will now turn to the other Halifax account, which I will call "the £2,550 account," which is the amount its overdraft limit was reduced to in October 2018 (from £3,000). I've seen statements from 2017 to 2023.

This account was used for normal everyday purchases. At first, Miss S did not use much of the overdraft, and the account was often in credit. In 2017, she made numerous transactions on gambling or gaming websites, but for much of that year her account balance was still healthy and there were no obvious signs that she was in financial difficulty. Indeed, in October 2017 she had more than enough money to pay off her entire overdraft balance on the £6,200 account, but she didn't. So I don't think that Halifax had any reason to think she needed help in that year.

In February 2018 her overdraft balance briefly exceeded £2,000 for the first time, but only for two days. Throughout 2018, she made reasonable use of her overdraft facility, and often brought the account back into credit. The overdraft balances were rarely more than £2,000, and never for very long. So she was not yet using her overdraft on this account for long-term borrowing. It is not obvious to me why her overdraft balance was reduced in October. There were a couple of times in December 2018 and January 2019 when she was close to the new overdraft limit, but these were very brief and she did not exceed the limit. The account was back in credit again shortly afterwards.

Apart from the missed opportunities to bring the £6,200 account into credit, I think that the account seemed to be run reasonably well in this period. And evidence of a gambling habit does not automatically mean that a bank has to infer that its customer is actually in financial difficulty, absent some indication that she is struggling. So I would not have expected Halifax to intervene in 2017 or 2018.

In the first five months of 2019, the gambling appears to have stopped. But nevertheless, the account was overdrawn almost all of that time, apart from a few days here and there. Then at the end of May, the account was brought back into credit and the gambling resumed. Throughout June, the account was mostly in credit and usually with a high balance. When the account balance was four figures, I think the bank would not have had a reason to suspect that overdraft fees of £100 a month were not affordable. (Again, this was a missed opportunity to pay off the overdraft balance in the other Halifax account.) The second half of 2019 continued in the same vein.

During the first half of 2020 the account was frequently in and out of its overdraft. There were large payments into the account (sometimes from other Halifax accounts, but also from third parties). In May, June and July, the account balance was sometimes in credit by five-figure sums, and in the second half of the year the overdraft was used much less often. There was almost no gambling at all, except for a few very modest payments (each £25 or less) to the National Lottery. I see no evidence of financial difficulty in this period. Rather, there is evidence that Miss S was paying thousands of pounds into a FTSE-listed savings and investments company; those payments add up to over £58,000 in 2020 alone.

So I conclude that on the occasions when Miss S did use her overdraft, that was not because she was really in financial difficulty. And I am quite satisfied that the overdraft fees were not unaffordable.

Miss S resumed gambling again in June 2021, although these transactions were smaller than previously, and she stopped again in November 2021. She was still paying into her savings or investments, although not as much as she did in 2020. From April to October 2021 the account was overdrawn for most of the time, although the balance rarely approached the overdraft limit. After that she used the overdraft less, and paid off the overdraft balance on the other Halifax account near the end of the year. So by the time her annual overdraft review came around, I don't think there was enough reason to make Halifax think that she was struggling.

I have gone on to review the statements for 2022 to 2023, but I don't think I need to go into as much detail here. 2022 was much the same as 2021. And in January 2023, Miss S withdrew about £33,000 from her account with the FTSE-listed company and then transferred £39,000 into her Halifax savings account. After that, the £2,550 account remained in credit for most of the time (and so did the £6,200 account too).

The only evidence I have seen that Miss S might have been having any financial difficulties at all is the fact that in February and May 2022, and in February and May 2023, she took payment holidays on one of the loan accounts she had with Halifax. However, that does not appear to have affected her current accounts, and I am still not satisfied that she could not afford the overdraft fees and interest on those accounts.

I am reinforced in that opinion by the fact that Miss S never exceeded her overdraft limits, nor asked Halifax for help with her overdraft fees before she raised this complaint, nor had any payments returned for lack of funds. I don't accept that she was persistently in debt on the £2,550 account, because that account was often in credit, and she could also afford to have cleared the overdraft on the £6,200 account and kept it in credit if she had wanted to. Although there were high value gambling transactions, those did not result in the account they were made from staying perpetually overdrawn; and there were lengthy periods when she wasn't gambling at all, when she was putting money aside in savings or investments instead.

All in all, I do not think that the overdraft fees were unaffordable; and nor did Halifax have a reason to think that they were.

So my provisional decision is that I do not intend to uphold this complaint.

### **My final decision**

Neither party responded to my provisional decision. So there is no reason for me to depart from my provisional findings, and I confirm them here.

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 13 May 2024.

Richard Wood  
**Ombudsman**