

The complaint

Mr C has complained that Bank of Scotland plc trading as Halifax acted irresponsibly when it allowed him to continue using his overdraft when it had become unaffordable for him.

Background

Mr C held a current account with Halifax which had an overdraft facility on it. Between May 2017 and November 2019, when the account was eventually closed, Mr C increased and decreased the overdraft limit multiple times. He has explained that throughout this period he was struggling with a compulsive gambling problem and had become reliant on his overdraft facility to help pay for his everyday expenses as a result of this. Mr C has said that Halifax should have realised that he was becoming financially vulnerable and done more to help him during this time. He's asked that it refund all the interest and charges linked to the overdraft facility and pay him compensation for the lack of support offered.

Halifax has said that at the time the account was open and the overdraft facility active, it was unaware that Mr C was experiencing financial difficulties. It accepts that Mr C would regularly increase and decrease his overdraft limit, but says the limit never increased beyond an amount the bank believed was affordable for him. It has also said that while Mr C was using his overdraft facility he also had some savings with the bank, so it doesn't think there were clear signs that he was becoming overly reliant on credit or that it should have offered him additional support. As it didn't think the facility was unaffordable it didn't uphold his complaint.

Unhappy with Halifax's response Mr C brought his complaint to our service. One of our investigators looked into it already. He found that while there was evidence of compulsive gambling on the account Mr C was effectively moving funds around between various accounts enough to mask the issues he was experiencing. And while he agreed that the limit on the facility was changed frequently, that in and of itself, wasn't enough to indicate Mr C was becoming financially vulnerable. So, he was unable to say that Halifax had missed clear signs that Mr C may have needed additional help or that the overdraft facility was inappropriate for him and didn't uphold the complaint.

Mr C disagreed with the investigator's findings. He said that while there may have been some savings in his account this was the result of inheritance following a family bereavement and not evidence of his ability to actively save his own money during this time. He also pointed out that this money was quickly lost on gambling. He repeated the fact that for a prolonged period his account was continuously overdrawn, and the bank had never queried this with him. AS Mr C didn't accept the investigator's findings and asked for an ombudsman to review his complaint again and so it's been passed to me for consideration.

My findings

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

Having done so I agree with the outcome reached by our investigator and won't be upholding Mr C's complaint. I know this will come as a disappointment for him, I've set out my reasons below. I also want to acknowledge that I've summarised the events of the complaint. But I want to assure both parties that I've reviewed everything on file. And if I don't comment on something, it's not because I haven't considered it. It's because I've concentrated on what I think are the key issues. Our powers allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts.

There are two elements to Mr C's complaint, the first being whether or not it was ever appropriate for Halifax to have provided him with the overdraft facility, the second being whether or not the bank should have queried how he was using the facility once he had access to it. This includes the frequent limit increases and decreases as well as those periods of time where Mr C's account remained consistently overdrawn. I will consider these issues individually.

The lending decision

The starting date for Mr C's complaint is May 2017, by which time the overdraft limit on his account was £300. Between that date and November 2019 when the account was eventually closed the limit on the facility was increased and decreased multiple times, ranging between the lowest limit of £150 and highest of £1,850.

Halifax has said that when Mr C applied for his overdraft it asked him to complete an income and expenditure form and check his credit file to understand what his existing overall level of indebtedness was and how he was managing his active credit accounts. Having done that it was satisfied that the facility would be affordable for him. His credit file showed no signs of stress, he was managing his existing credit commitments well with no arrears, defaults or county court judgements and there was no evidence of high-cost credit borrowing. So, it didn't think that allowing Mr C access to an overdraft facility would be problematic for him.

Having reviewed the checks done by the bank at this time I agree that there was nothing to indicate the facility would be unaffordable for Mr C. It's important to clarify there are no specific checks that lenders are required to do to check affordability before providing credit; rather the regulator has only asked that proportionate checks do take place rather than being prescriptive in what those checks should be. So, it's not unusual for lenders to ask people to complete an income and expenditure form and then check their credit file rating in the first instance. Depending on what those results show a lender may consider doing additional checks to ensure the lending is appropriate. But in Mr C's case I don't think there was anything in the initial checks done by Halifax to indicate that additional, more thorough, checks were needed. And so, I can't say the bank was wrong to approve the overdraft facility in 2017 and so I can't uphold this part of Mr C's complaint.

Should the bank have realised Mr C was becoming financially vulnerable

Mr C has queried how his account could remain overdrawn for a prolonged period of time without Halifax contacting him to discuss how he was managing his finances. In addition, he has asked why no one from the bank questioned why he kept increasing and decreasing the limit on his overdraft as he believes this was a clear sign that he was struggling to control his spending.

I understand why Mr C believes that Halifax missed indicators that he wasn't in full control of his spending during this period. I've reviewed the frequency at which he was requesting limit changes, both increasing and decreasing the amount available to him, and agree Mr C did make multiple requests in quick succession over a nearly two-year period. So, I can understand why Mr C wonders why no one from the bank queried why he was so regularly

requesting limit changes.

I think the most likely answer is that Halifax would have approved Mr C to an upper limit, and that so long as the requests he was making, when he was increasing the limit, didn't exceed that amount, the requests would have been automatically approved without Halifax completing new or additional reviews. And I can see there were multiple times over this period where Mr C made limit increase requests that were declined, likely because they were above the limit he'd been approved for.

Halifax has also pointed to the fact that Mr C did receive a large deposit into his account, which he has explained was an inheritance payment, and the larger limit increases took place after these funds had been received. Which would align with Halifax seeing that balance and concluding the limit increase was affordable because of the funds available to him.

So, despite the fact that the limit on Mr C's overdraft changed numerous times between 2017 and 2019, I can't say that it was automatically an indicator that he was struggling to manage his account or that Halifax acted irresponsibly by not querying this with him directly. People change their limits for lots of different reasons, some of which can be linked to regular monthly budgeting, and without any other signs of stress on the account I can't safely conclude Halifax should have immediately assumed these requests were linked to financial vulnerability.

Mr C has also raised concerns that for periods of time he struggled to get out of his overdraft and bring his account back into credit. I've reviewed all of the monthly bank statements attached to Mr C's account during this time and agree there were periods where he remained consistently overdrawn. In particular between November 2017 and March 2018 Mr C's account remained overdrawn without going back into credit. However, by the summer of 2018 Mr C was properly managing his overdraft again and, while he was still using it each month, he was bringing his account back into credit regularly.

This continued to be the pattern until early 2019 when it seems there was another spike of over reliance on the facility, but again this didn't continue for a prolonged period and Mr C returned to using the overdraft regularly but also regularly bringing his account back into credit.

All of which means that while I do think there were periods of time where Mr C may have begun to show signs of financial difficulty, these never lasted long enough for me to say Halifax should have queried what was going on. And looking at Mr C's other accounts with Halifax I do agree he was actively saving money during this time as well.

None of which is to say that I don't accept Mr C's testimony that this was a very difficult time for him or that his compulsive gambling resulted in him experiencing financial harm. But I have to decide whether or not I think Halifax failed in its obligations to properly review any lending applications he made or offer support where it was clearly needed. And having reviewed his accounts I can't reasonably say that happened because although Mr C had periods of time where he was struggling he did bring his account back into credit, which would have stopped it from being flagged as a potentially vulnerable account. And that means I can't say Halifax failed to act on clear signs of prolonged financial distress and so I can't uphold Mr C's complaint on that basis.

My final decision

Therefore, for the reasons set out above, I don't uphold Mr C's complaint against Bank of Scotland plc trading as Halifax.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 24 May 2024.

Karen Hanlon
Ombudsman