

## **The complaint**

Mr L complains that Bank of Scotland trading as Halifax lent irresponsibly when it approved his overdraft limit. Mr L also complains about interest, fees and charges applied to his overdraft balance over the years and that Halifax failed to identify that he was experiencing financial difficulties.

## **What happened**

The background to this complaint and my initial conclusions were set out in my provisional decision. I said:

*Mr L has held a bank account with associated overdraft of £2,000 with Halifax for several years. Halifax says the overdraft was first approved in 2012.*

*Last year, representatives acting on Mr L's behalf complained that Halifax lent irresponsibly when it approved his overdraft facility. They also complained that Halifax had failed to identify Mr L had become reliant on the overdraft facility to make ends meet and that it represented hardcore borrowing that he was unable to sustainably repay. Mr L's representatives said the overdraft was unaffordable for Mr L.*

*Halifax issued a final response on 5 March 2024. Halifax said it had only looked at Mr L's account from October 2017 onwards and the overdraft reviews that had taken place since that time. Halifax said the account showed Mr L had sufficient income to maintain his commitments and overdraft facility. Halifax didn't agree it had made a mistake or acted unfairly by continuing to provide Mr L with an overdraft.*

*An investigator at this service upheld Mr L's complaint. They thought Mr L's account use showed he'd been overdrawn for much of 2018 and that by the beginning of 2019 Halifax should've identified he wasn't in a position to afford the overdraft or repay it. The investigator asked Halifax to refund all interest, fees and charges applied to Mr L's account from January 2019 onwards and agree a repayment plan with him.*

*Halifax asked to appeal and said it strongly disagreed with the investigator's view that Mr L's account use should've led it to step in. Halifax made the point that Mr L was receiving a high income into his account, reaching £73,270 after deductions last year. Halifax provided figures that showed Mr L had between £3,175 in 2019 and £4,119 in 2023 of surplus income each month after his regular bills were covered. Halifax said the overdrawn balance on Mr L's account reflected how he used it rather than showing signs of financial difficulty. As Halifax asked to appeal, Mr L's complaint has been passed to me to make a decision.*

## **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 understand I've been reasonably brief in setting out the background above but all parties broadly agree concerning the timeline for Mr L's complaint. As our investigator has already*

*noted, in this case we're only looking at the way Halifax has treated Mr L in the six years before he complained. We're not looking at the original decision to approve Mr L's overdraft facility by Halifax due to the time limits involved.*

*Our investigator highlighted the way Mr L used his overdraft over the years. In particular, the investigator felt that Mr L's use of the overdraft facility showed he was dependent on it to make ends meet and that it was unsustainable. I agree there are cases where a consistently overdrawn balance shows a customer is experiencing financial difficulties. But I've reviewed Mr L's account use going back to 2017. And whilst I agree with the investigator's view Mr L was using it for the majority of the year, I'm not persuaded Halifax treated him unfairly or failed to pick up on signs of financial difficulty. I'll explain why.*

*Mr L's overdraft limit has stood at £2,000 since at least 2017. Mr L has been paid weekly and biweekly over the years we're looking at. Mr L's income is reasonably high. Halifax has pointed out Mr L earned £47,287 in 2019, £55,543 in 2020, £53,623 in 2021, £62,949 in 2022 and £73,270 in 2023 after deductions. So I think it's reasonable to say Mr L had a regular and reasonably high level of income being paid into his account. Halifax also provided an analysis of Mr L's outgoings for bills that were paid from the account each month. And Halifax says the majority of Mr L's income remained each month after his essential bills were paid. For instance, in 2019, Halifax says Mr L had £3,175 in surplus income on average each month, increasing to £4,119 in 2023.*

*I've reviewed Mr L's bank statements and paid particular attention to his outgoings. I'm satisfied that Mr L's regular income was more than sufficient to cover his regular bills and commitments that were being debited from his account – leaving a healthy surplus. So, as a starting point, I'm satisfied Mr L's income was more than sufficient to afford his outgoings and essential living costs each month.*

*I agree with the investigator's view that Mr L's overdraft use was high. But I think Halifax also makes a reasonable point when it says the level of spending on the account was the key factor that meant it remained overdrawn for extended periods, not financial difficulty. Of course, consumers are free to use their account as they need. But the level and nature of Mr L's account use and spending appears to have been the key factor concerning whether it remained overdrawn. And whilst I can see Mr L's account was overdrawn for significant periods (including direct debits being returned unpaid), I haven't seen anything in the way the account was used that would've suggested to Halifax Mr L was experiencing financial difficulties or unable to repay the overdraft without causing harm to him if required.*

*I think it's fair to note that from 2020 onwards there have been significant periods where Mr L has repaid the overdraft balance and remained in credit. I agree with Halifax's argument that Mr L does appear to have been in a position to repay the overdraft facility over the years and then went on to use it as required.*

*I'm very sorry to disappoint Mr L as I realise I've reached a different conclusion to the investigator. But my view is that the overdraft facility Halifax provided Mr L was reasonable and something he'd be able to sustainably repay with the risk of financial harm when considering his income and outgoings. I haven't been persuaded that Halifax treated Mr L unfairly or found grounds to tell it to issue any refunds based on the information I've seen so far.*

*I invited both parties to respond with any new points or information they wanted me to consider before I made my final decision. Halifax responded and confirmed it had nothing further to add. We didn't hear back from Mr L's representatives.*

## **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.

When bringing the complaint, Mr L's representatives explained they were concerned about the fairness of the relationship he had with Halifax in terms of Section 140A of the Consumer Credit Act 1974. I'd like to assure Mr L's representatives I took this point into account when reaching my provisional decision.

I considered whether the business acted unfairly or unreasonably in any other way including whether the relationship might have been unfair under Section 140A of the Consumer Credit Act 1974. However, for the reasons I've already given, I don't think Halifax lent irresponsibly to Mr L or otherwise treated him unfairly. I haven't seen anything to suggest that Section 140A or anything else would, given the facts of this complaint, lead to a different outcome here.

As neither party has provided new information for me to consider I see no reason to change the conclusions I reached in my provisional decision. I remain of the view that Halifax treated Mr L fairly during the years he's had an overdraft facility, for the same reasons.

## **My final decision**

My decision is that I don't uphold Mr L's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 25 July 2024.

Marco Manente  
**Ombudsman**