

The complaint

Miss C complains that Bank of Scotland trading as Halifax has treated her unfairly by giving her an overdraft on her account. Miss C also says the charges and fees on the overdraft have led to financial hardship.

What happened

Halifax granted Miss C an overdraft facility on her account in December 2015 for £3,000. From what I can see the credit limit on her overdraft was never increased.

When Miss C complained to Halifax, it said she'd raised part of her complaint too late. It responded to the parts of her complaint it thought had been raised in time but didn't uphold her complaint. Miss C referred her complaint to the Financial Ombudsman Service where it was looked at by one of our investigators.

Our investigator sought and received consent from Miss C to only consider the use of the overdraft facility from 2018. This meant Miss C's complaint about initially granting the overdraft in 2015 and its use prior to 2018 fall away.

Our investigator looked into the overdraft use from 2018 and thought Halifax shouldn't have continued charging Miss C interest on the overdraft from February 2019 as it was clear she wasn't reducing her debt. Our investigator said Halifax should have stepped in to assist Miss C with her debt.

Halifax didn't agree with the investigator's conclusions. It reiterated that Miss C received credit into the account that would have allowed her to repay the overdraft within a reasonable time, but she chose to spend the money in a different way. It also said Miss C's essential expenses were within her income and the use of the overdraft is due to how Miss C chose to use the account rather than financial difficulties.

As the complaint hasn't been resolved, it has been passed to me – an ombudsman to make a 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.

Halifax will be familiar with all the rules, regulations and industry codes of practice we consider when looking at whether a bank treated a customer fairly and reasonably when lending an overdraft and applying overdraft charges.

As stated above Miss C has consented to the Financial Ombudsman considering her complaint about the overdraft from 2018 onwards and this where my decision is focussed.

To understand how Miss C used the account and whether Halifax has acted fairly, I've considered Miss C's bank statements, this includes statements from both accounts she holds with Bank of Scotland and an external account she held with another provider.

From what I can see, by the start of 2018, Miss C was overdrawn on her account, and this continued for most of 2018. I've thought about what Halifax would have seen when it reviewed her account in February 2019. Halifax has only provided copies of Miss C's account from the start of 2018; I haven't seen what Miss C's account usage was prior to this time.

But from what I've seen, Miss C didn't maintain a sustained credit balance on her account for most of the period. The other account (which isn't part of this complaint) she held with Bank of Scotland was also in overdraft for most of the relevant period.

Halifax has said Miss C received a lump sum payment which she could have used to reduce her overdraft. This service has asked Miss C about the lump sum payment she received from the sale of a property, and she has said she had other credit which she prioritised repaying due to the interest rates on those credit facilities. I can see large payments made to other credit providers around that time. Miss C also explained she had to move houses and any extra sums left from the lump sum payment was used for that. I can see those payments didn't stay in any of the bank accounts I've seen for Miss C.

I've thought about the transactions on Miss C's external account Halifax has referred to and she ended every month on that account in her overdraft and so there weren't any spare funds available to Miss C from that account. The fact Miss C couldn't reduce her overdraft balance with the lump sum suggests she was struggling financially as she had to stay in debt with Halifax to repay debts elsewhere and cover her living costs.

Halifax has said Miss C had a regular income and there were sufficient funds for her to cover her essential living costs and maintain a balance on the account. I can see Miss C had a regular income and a large number of transactions on a monthly basis were overdraft fees so even if she did have enough, which I'm not satisfied she did, the overdraft fees were taking up her income. Miss C was also continuing to pay other credit providers as well.

Halifax likely had access to her other account within its group and it would have seen that the transactions on that account are largely for payments of her living costs by way of direct debits and at the end of each month, she still ended up in her overdraft.

I think taking the full picture here, Halifax could reasonably have concluded from its review in February 2019 that Miss C was struggling financially and should have stepped in. I don't think it was fair or reasonable for Halifax Miss C's usage of the overdraft and the associated fees and charges to continue the way they did.

Halifax has referenced payments into Miss C's account in 2020. These payments into the account were after the review that should have prompted Halifax to take action – at the time of the review in 2019, Halifax wouldn't have known about future credits to Miss C's and so I wouldn't expect it to have taken that into account at its review in 2019. I think what it would have seen in February 2019 was concerning and that should have resulted to it taking action. As stated above, Miss C started 2018 in her overdraft balance of more than £2,300 and it's likely that she was in a sustained overdraft before January 2018 – Halifax would likely have seen that on its review date in 2018 as well.

Based on the information I've seen; Halifax should have stepped in to support Miss C in February 2019 when it carried out its review.

Putting things right

To put things right for Miss C, Halifax should:

- Rework Miss C's account to remove the effect of all interest, fees and charges from February 2019 onwards.

AND

- If an outstanding balance remains on the overdraft once these adjustments have been made Halifax should arrange a suitable repayment plan, Miss C is encouraged to get in contact with and cooperate with Halifax to reach a suitable agreement for this. If it considers it appropriate to record negative information on Miss C's credit file, it should reflect what would have been recorded had it started the process of taking corrective action on the overdraft in February 2019. Halifax can also reduce Miss C's overdraft limit by the amount of any refund if it considers it appropriate to do so, as long as doing so wouldn't leave her over her limit.
- If the effect of removing all interest, fees and charges results in there no longer being an outstanding balance, then any extra should be treated as overpayments and returned to Miss C along with 8% simple interest† on the overpayments from the date they were made (if they were) until the date of settlement. If no outstanding balance remains after all adjustments have been made, then Halifax should remove any adverse information from Miss C's credit file. Halifax can also reduce Miss C's overdraft limit by the amount of refund if it considers it appropriate to do so.

† HM Revenue & Customs requires Halifax to take off tax from this interest. Halifax must give Miss C a certificate showing how much tax it has taken off if she asks for one.

My final decision

For the reasons given above, I uphold Miss C's complaint in part and direct Bank of Scotland Plc trading as Halifax to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept or reject my decision before 4 November 2024.

Oyetola Oduola
Ombudsman