

Complaint

Mr M has complained about the overdraft charges Bank of Scotland plc (trading as “Halifax”) applied to his current accounts.

Mr M is being represented in his complaint by a claims management company (“CMC”).

The CMC has said the charges applied to Mr M’s accounts were unfair as there was a failure to take account his patterns of reliance on debt and hardcore borrowing. In the CMC’s view, there was no proper consideration of the longer-term impact of the borrowing on him.

Background

Halifax provided Mr M with two overdrafts. He was given an overdraft limit of £1,800.00 on account A and a limit of £400 on account B. Mr M entered into discussions with a debt management company in August 2023 and the balances on both of Mr M’s accounts were sold to a third-party debt purchaser in May 2024.

Mr M’s complaint was looked at by one of our investigators. She thought that Halifax hadn’t acted unfairly or unreasonably and so didn’t recommend that the complaint be upheld in respect of either overdraft.

The CMC, on Mr M’s behalf, disagreed with the investigator and asked for an ombudsman’s decision.

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 carefully considered everything provided, including the responses to my provisional decision, I’m still not upholding Mr M’s complaint. I’ll explain why in a little more detail.

Before I go any further, as this essentially boils down to a complaint that Mr M was unfairly charged by being allowed to continue using his overdrafts, I want to be clear in saying that I haven’t considered whether the various amounts Halifax charged were fair and reasonable, or proportionate in comparison to the costs of the service provided. Ultimately how much a bank charges for services is a commercial decision. And it isn’t something for me to get involved with.

That said, while I’m not looking at Halifax’s charging structure per se, it won’t have acted fairly and reasonably towards Mr M if it applied this interest, fees and charges to Mr M’s account in circumstances where it was aware, or it ought fairly and reasonably to have been aware Mr M was experiencing financial difficulty. So I’ve considered whether there was an instance, or there were instances, where Halifax didn’t treat Mr M fairly and reasonably.

In other words, I’ve considered whether there were periods where Halifax continued charging Mr M even though it ought to have instead stepped in and taken corrective

measures on the overdraft as it knew, or it ought to have realised, that he was in financial difficulty.

Having looked through Mr M's account statements throughout the period concerned, I can't see that Halifax ought to have unilaterally taken corrective measures in relation to Mr M's overdraft prior to when it began the process of doing so in September 2023.

I accept that Mr M used his overdrafts. The CMC's arguments appear to suggest that this in itself means that Mr M was experiencing financial difficulty and therefore the complaint should be upheld. But I think that it is far too simplistic to say that it automatically follows that a customer was in financial difficulty simply because they were using a financial product that they were entitled to use.

Equally, while the CMC says it does not matter what a customer was spending the funds from the overdraft on and has provided a decision from another ombudsman as somehow backing up its argument as being fact rather than opinion, I disagree with this argument.

I accept that the rules, guidance and industry codes of practice all suggest that prolonged and repeated overdraft usage can be an indication of financial difficulty. This is not the same as saying that prolonged and repeated overdraft usage by a customer will always mean that they are as a matter of fact in financial difficulty.

So I think it's important to look at overall circumstances of a customer's overdraft usage as part of considering their overall financial position. And, in this case, I've considered Mr M's incomings and outgoings as well as any overdrawn balances and thought about whether it was possible for him to have stopped using his overdrafts, based on this.

I think that if Mr M was locked into paying charges in circumstances where there was no reasonable prospect of him exiting his overdraft then his facility would have been unsustainable for him. So I've carefully considered whether this was the case. The first thing for me to say is that Mr M was in receipt of a salary into account A that was sufficient to clear the overdraft on both of his accounts within a reasonable period of time.

Furthermore, I'm satisfied that Mr M's case isn't one where the borrower was permanently in their overdraft. There were periods where Mr M was in credit, indeed on account A the amount of Mr M's salary meant that he saw a credit balance every month. Although I do accept that there were times where Mr M would have met the criteria of someone who displayed a pattern of repeat use of their overdraft. For the avoidance of doubt, I accept that there is a section of CONC which relates to this.

However, even if Halifax didn't meet all of the requirements set out in CONC 5D, I wish to make it clear that I don't think that simply sending letters will mean that a lender met all of its obligations, I'd still need to consider whether Mr M lost out as a result of any potential failing.

I've also therefore considered whether Mr M's use of his overdrafts (and Halifax continuing to allow him to use it) was causing him to incur high cumulative charges that were harmful to him. And having considered matters, I'm satisfied that this isn't the case.

To explain, while I'm not seeking to make retrospective value judgements over Mr M expenditure, there are significant amounts of non-committed, non-contractual and discretionary transactions going from Mr M's accounts.

Indeed a significant proportion of Mr M's monthly spend was discretionary and given the repeat usage letters Mr M was being sent, I think that he ought to have realised that how

much he was paying for this. So I simply don't agree that Mr M was using his overdraft purely for essential spending as the CMC says.

Indeed, it's fair to say that credits going into his accounts suggested he could have cleared his overdraft within a reasonable period of time had he wished to do so. Equally, I can't see anything to indicate that the charges he was incurring for what was on the whole discretionary spending was causing him harm.

For example, I can't see that he was borrowing from unsustainable sources in order to meet these charges or that his borrowing was increasing exponentially. Mr M take out credit with other providers but this does not mean that he was reliant on credit to meet his essential expenditure. And it isn't immediately obvious to me that Mr M was borrowing from unsustainable sources – such as payday type lenders either.

It's also worth pointing out that Mr M's income actually increased in 2023 but it looks like he stopped having his salary paid into account A from June 2023 onwards. And this is around the time when he appears to have run into trouble as he contacted a debt management company soon after this.

I accept neither of these things in themselves (or when taken together) mean that Mr M wasn't experiencing difficulty. But I don't agree that Mr M was reliant on credit. He was quite comfortably able to make any essential commitments without using his overdraft. However, he was choosing to use his overdraft to make discretionary transactions and in periods where he had increased funds his discretionary expenditure increased.

Overall and having considered everything, I don't think that it was unreasonable for Halifax to have proceeded adding the charges that it did. This is particularly bearing in mind the consequences of Halifax taking corrective action, in the way that it would have done had it acted in way that the CMC is suggesting it should have, would have been disproportionate.

I say this because I don't think that it would have been proportionate for Halifax to demand that Mr M immediately repay his overdraft, in circumstances where there was a realistic prospect of Mr M clearing what he owed in a reasonable period of time prior to June 2023.

As I've explained, the position changed in June 2023 once Mr M stopped receiving his salary into account A each month. I understand that there was some dialogue about the fact that Mr M was experiencing difficulty in August 2023 and Halifax took steps to correct the usage from September 2023 onwards. But given this appears to be linked to account A no longer receiving a salary credit, I think this is the more likely cause of Mr M's difficulty, rather than Halifax's actions in allowing him to use his overdrafts up until this point.

I'm satisfied that Halifax took action within a reasonable period of time of it realising that Mr M was in a position where continuing to use his overdrafts was likely to lead him incurring high cumulative charges that would be harmful to him. And therefore that Halifax did not charge Mr M in circumstances where it ought to have realised that it was unfair to do so prior to this.

In reaching my conclusions, I've noted that the representative's letter of complaint indicates that the lending relationship between Halifax and Mr M was unfair to Mr M under section 140A of the Consumer Credit Act 1974 ("CCA").

However, I'm satisfied Halifax did not lend irresponsibly or act unfairly in allowing Mr M to use his overdrafts in the way that he did. I haven't seen anything to suggest that section 140A CCA would, given the facts of this complaint, lead to a different outcome here.

As this is the case, I'm not upholding Mr M's complaint. I appreciate that this will be very disappointing for Mr M. But I hope he'll understand the reasons for my decision and that he'll at least feel his concerns have been listened to.

My final decision

For the reasons I've explained, I'm not upholding Mr M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 9 September 2024.

Jeshen Narayanan
Ombudsman