DRN-4905906

## Complaint

Mr B has complained about the overdraft charges Bank of Scotland plc (trading as "Halifax") applied to his current account. He's said the charges were unfair as there was a failure to take account his patterns of reliance on debt and hardcore borrowing. In Mr B's view, there was no proper consideration of the longer-term impact of the borrowing on him.

Mr B is being represented in his complaint by a claims management company ("CMC").

## Background

Halifax provided Mr B with an overdraft in April 2019. He was given an overdraft limit of £250. This limit was steadily increased over the course of the following two months until it reached £750 in June 2019. Mr B's overdraft limit was then increased to £1,980.00 over the course of three limit increases which took place in May 2020.

Mr B's complaint was looked at by one of our investigators. He thought that Halifax hadn't acted unfairly or unreasonably and so didn't recommend that the complaint be upheld.

The CMC, on Mr B'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 B'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 B was unfairly charged by being allowed to continue using his overdraft, 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 B if it applied this interest, fees and charges to Mr B's account in circumstances where it was aware, or it ought fairly and reasonably to have been aware Mr B was experiencing financial difficulty. So I've considered whether there was an instance, or there were instances, where Halifax didn't treat Mr B fairly and reasonably.

In other words, I've considered whether there were periods where Halifax continued charging Mr B 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 B's account statements throughout the period concerned, I can't see that Halifax ought to have unilaterally taken corrective measures in relation to Mr B's overdraft.

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

I think it's important to look at overall circumstances of a customer's overdraft usage – particular in light of what this may suggest about their overall position. So, in this case, I've considered Mr B's incomings and outgoings as well as any overdrawn balance and thought about whether it was possible for him to have stopped using his overdraft, based on this. I've also considered the content of any discussions that he had with Halifax about his financial position.

I think that if Mr B was locked into paying charges because there was no prospect of him exiting his overdraft then his facility would have been unsustainable for him. So I've once again carefully considered whether this was the case.

The first thing for me to say is that I'm satisfied that Mr B's case isn't one where the borrower was permanently in their overdraft. There were periods where Mr B was in credit – although I do accept that there were times where Mr B 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. But this, in itself, whether or not Halifax exactly followed CONC 5D doesn't on its own mean that Mr B's complaint should be upheld.

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 have seen a lender meet all of its obligations, I'd still need to consider whether Mr B lost out as a result of any potential failing. That said, I don't think that this is a case where Halifax simply sent Mr B letters telling him that he was a repeat overdraft user as the CMC appears to be suggesting.

Indeed, I note that Halifax completed an income and expenditure assessment with Mr B in February 2021. And the result of this concluded that Mr B had a disposable income of in excess of £1,100 despite having a lower income as a result of the pandemic. And Mr B immediately made a direct payment to his mortgage which supports him having surplus funds.

Furthermore there was additional contact with Mr B in September 2021. During this conversation he confirmed that he had now secured new employment. Finally I'm aware that a further income and expenditure assessment was carried out with Mr B in February 2024. This showed that he had an income of £5,000.00 and a monthly disposable income of £2,800.00, which would have allowed him to clear his overdraft in one go let alone a reasonable period of time.

So having considered all of this, I don't think that it's fair to say that Halifax did just simply rely on sending Mr B letters. I'm satisfied that further steps were taken to assess his situation (although this may not have been as a direct result of his overdraft usage) and in these circumstances, it's difficult for me to agree that it doing even more would have persuaded Mr B to alter the way that he was using his overdraft.

I've also considered whether Mr B's use of his overdraft (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 B expenditure, nonetheless I can't see much in the way of living expenses going out of his account, which suggests this wasn't the reason for him using this overdraft. Furthermore, there are also significant amounts of non-committed, non-contractual and discretionary transactions going from Mr B's account. So I don't agree that Mr B was using his overdraft purely for essential spending.

Indeed, it's fair to say that the vast majority of Mr B's expenditure was discretionary and the credits going into his account suggested he could have cleared his overdraft within a reasonable period of time had he wished to do so. The description used for some of the payments into his account suggests that he was lending money to others too.

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.

I accept neither of these things in themselves (or when taken together) mean that Mr B wasn't experiencing difficulty. But I don't agree that Mr B 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 B immediately repay his overdraft, in circumstances where there was a realistic prospect of Mr B clearing what he owed in a reasonable period of time. Indeed given what the income and expenditure assessments carried out showed, there's even an argument for saying that there were periods where Mr B could have cleared the balance in one go had he wished to do so.

I'm therefore satisfied that Halifax did not charge Mr B in circumstances where it ought to have realised that it was unfair to do so.

In reaching my conclusion, I've noted that the representative's letter of complaint indicates that the lending relationship between Halifax and Mr B was unfair to Mr B under s140A of the Consumer Credit Act 1974 ("CCA").

However, I'm satisfied Halifax did not act unfairly in allowing Mr B to use his overdraft in the way that he did. And I've not been presented with anything and neither have I seen anything else, which leads me to think that the facts and circumstances of this particular case mean it is likely that a court would conclude that the relationship between Halifax and Mr B was unfair to Mr B under s140A of the CCA.

As this is the case, I'm not upholding Mr B's complaint. I appreciate that this will be very disappointing for Mr B. 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 B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 26 August 2024.

Jeshen Narayanan
**Ombudsman**