

The complaint

Miss M is being represented by solicitors. She's complaining about Bank of Scotland plc trading as Halifax because she says it lent irresponsibly by allowing her to retain an overdraft facility that she used extensively over a prolonged period and resulted in her incurring a significant amount of charges.

What happened

Miss M had a current account with Halifax. In October 2017, following her application, she was granted an overdraft facility of £250. At various points after this, the limit was increased until it reached £1,700 in January 2022.

After the complaint was referred to me, I issued my provisional decision setting out why I thought it should be partly upheld. My reasons were as follows:

An overdraft is a form of running credit that's repayable on demand. This means a bank can ask its customer to repay the full balance at any time. Overdrafts can be an expensive form of credit and are intended primarily for short-term emergency borrowing needs. They're not intended to be an appropriate means of long-term borrowing. As an overdraft is a form of lending, banks are required to ensure they don't lend irresponsibly.

Before offering Miss M an overdraft facility in 2017 and subsequently increasing the limit, Halifax was required to carry out appropriate checks to ensure the repayments were affordable and sustainable. To decide whether this requirement was met, the key questions I need to consider in respect of each lending decision are:

- Did Halifax complete reasonable and proportionate checks to establish Miss M would be able to repay the credit in a sustainable way?*
- If so, was the decision to lend fair and reasonable?*
- If not, what would reasonable and proportionate checks have discovered, and would the decision to lend have been fair and reasonable in light of that information?*

Halifax has provided details of the checks it completed before approving the overdraft initially and on the subsequent occasions when it approved an increased limit. It's also provided a full history of the account from 2017. Up to and including the point at which the limit was increased in September 2018, I'm satisfied Halifax made fair reasonable lending decisions in respect of the overdraft. The limits approved were relatively low and Miss M's use of the overdraft and general account conduct didn't show any obvious signs of financial hardship or that she wasn't managing the facility well. In fact, the account history shows she barely used the overdraft at all before June 2018.

But Halifax's responsibility to ensure lending was affordable went beyond simply carrying out appropriate checks at the outset and each time Miss M applied to increase the limit. It also had a responsibility to monitor and review the overdraft facility to ensure it remained affordable and that the debt could be repaid within a reasonable period of time.

The rules doesn't prescribe a specific timeframe when reviews should be carried out. But most lenders' terms and conditions state an overdraft facility will be reviewed annually and I think this is a reasonable approach that I consider to be good industry practice. Halifax has confirmed that the first such review after September 2018 was carried out in August 2019.

As there was no set repayment period, the starting point for this review should have been the conduct of Miss M's account. Halifax should have sought to establish whether there were any signs of financial difficulty and whether the facility was affordable and if it was responsible to continue offering it.

The account history provided shows that from June 2018 to August 2019 it was almost continually overdrawn, often by an amount close to the agreed limit. I note Halifax's view that much of the spending was on non-essential items. But I don't think this changes the fact that Ms M wasn't managing the facility well and wasn't using it for emergency short-term borrowing as intended. Recent guidance from the FCA says a customer who becomes or remains overdrawn every month over a 12-month period is likely to be at risk of financial difficulty and I think that was the case here. Miss M wasn't managing her account well at this time and appears to have become reliant on the overdraft. I think Halifax should have taken the initiative and removed the overdraft facility following the August 2019 review.

In summary, I think the evidence shows Halifax made reasonable decisions to approve the overdraft initially and to increase the limit up to September 2018. But following the August 2019 review, I think it should have concluded it was no longer responsible to continue offering the facility to Miss M and removed it at that point. It's for this reason that I'm currently proposing to partly uphold Miss M's complaint.

Both parties accepted my provisional decision and made no further comment. In addition to settling the complaint as I've suggested, and to assist Miss M further, Halifax also confirmed it will place a lending block on her profile for 12 months to ensure she's unable to apply for any further borrowing from the bank during that time.

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.

As neither party has made any further submissions in response to my provisional decision, my findings haven't changed from those I set out previously.

Putting things right

The principal aim of any award I make must be to return Miss M to the position she'd now be in but for the errors or inappropriate actions of Halifax. But that's not entirely possible here as the lending provided can't be undone.

Because I don't think Halifax should have continued lending to Miss M after August 2019, I don't think it's fair for her to pay interest or charges on the amount borrowed after this date.

But she has had use of the money that was lent, so I think it's fair she repays the amount borrowed (without the addition of interest or charges).

To put things right, I Halifax should now take the following steps:

- Rework the account to remove all interest, fees, charges (not already refunded) that have been applied since the review in August 2019.
- If the effect of removing all interest, fees and charges results in there no longer being an outstanding balance on the overdraft, then any extra should be treated as overpayments and returned to Miss M, with the addition of simple interest at 8% per year from the date of each payment to the date of settlement.
- Or, if an outstanding balance remains on the overdraft after the reworking, Halifax should arrange an affordable payment plan with Miss M for the shortfall.
- Remove any adverse information recorded on Miss M's credit file after August 2019 relating to this overdraft, once any outstanding balance has been repaid.

If Halifax no longer owns the debt, it should liaise with whoever does to ensure any payments Miss M has made since moving the account are factored into the calculation of the compensation that's due or the balance that remains outstanding.

In reviewing this complaint, I've also considered whether the relationship might have been unfair under Section 140A of the Consumer Credit Act 1974. However, I'm satisfied the redress I have directed above results in fair compensation for Miss M in the circumstances of her complaint. I'm satisfied, based on what I've seen, that no additional award would be appropriate in this case.

My final decision

For the reasons I've explained, I'm partly upholding Miss M's complaint. Subject to her acceptance, Bank of Scotland plc trading as Halifax should now put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 27 September 2024.

James Biles
Ombudsman