

The complaint

Mr D complains that Bank of Scotland trading as Halifax has treated him unfairly by giving him an overdraft on his account.

What happened

Halifax granted Mr D an overdraft facility on his account in October 2018 for £500. The overdraft facility's credit limit was increased several times until it reached £4,500. It was then reduced to £3,720.

Mr D complained to Halifax through a third-party representative, about his access to credit over a prolonged period and how it has been detrimental. Halifax said it hadn't done anything wrong. It said it fully reviewed Mr D's applications and how he used the facility and there was nothing to suggest Mr D couldn't afford the credit he was given.

Mr D's representative referred his complaint to the Financial Ombudsman Service where it was looked at by one of our investigators. Our investigator thought that Halifax didn't treat Mr D unfairly when it initially granted the overdraft facility, but it should have stepped in to act in July 2021 when it ought to have been aware Mr D's income had substantially reduced and he was likely reliant on the overdraft facility.

Halifax didn't agree. It noted Mr D had received a large number of credits into his account around the time the review would have been conducted. It said Mr D could have used those to reduce his overdraft but chose not to.

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

I've considered Mr D's circumstances at the time the overdraft was initially granted and the subsequent credit limit increases and there's nothing within his circumstances that I can see from his bank statements that suggest he couldn't afford these. At the time Mr D had a regular income that could cover his living costs and credit commitments.

On that basis, I don't think Halifax was wrong to lend the overdraft facility or increase the credit limits as it did.

Halifax would also know it has a responsibility to monitor Mr D's use of the facility and I can see that it had an annual review of his overdraft. When Mr D reduced his overdraft limit in

2021, Halifax says it postponed to annual review of his overdraft because of Mr D's action. Although this suggests that a review didn't take place for the year as it ought, Halifax has further gone on to suggest it monitored Mr D's account despite the postponed review date, it says it sent letters to Mr D informing him to contact it, should he require assistance with managing his debt.

Either way, Halifax was expected to monitor Mr D's use of the facility and proactively take steps to assist Mr D where needed.

So, I think 1 July 2021, Halifax should have stepped to freeze interest and charges and work with Mr D to reduce his debt. I say this because by this point, it was clear Mr D had a drastically reduced income compared to other review cycles. From what I can see, he had an income that was around £1,100 to £1,200 for several months before.

I can also see that he hadn't been able to maintain a sustained credit on the account for several months and his living expenses were being paid with the overdraft facility. I can also see he was making payments to friends/family with the reference loan, which suggests he was borrowing from Halifax to repay debt elsewhere.

Halifax has referenced large deposits Mr D received into his account in April and June 2021. Mr D has confirmed that these credits weren't for his use as they belonged to his limited company and a third party. I can see that within a brief time of the deposits into his account, he transferred them out, as such he couldn't have used those funds to reduce/repay his overdraft.

I think it was clear by 1 July 2021, that Mr D's circumstances had changed, and he was reliant on credit, meant for short term use, over a prolonged period. Halifax's letters asking Mr D to contact it if he needed help wasn't sufficient action in this instance. Halifax continued to unfairly charge Mr D interest and fees on the overdraft when it should have seen he was in an unsustainable financial position.

Putting things right

To put things right for Mr D, Halifax should:

- Rework Mr D's current overdraft balance so that all interest, fees and charges applied to it from 1 July 2021 onwards are removed.

AND

- If an outstanding balance remains on the overdraft once these adjustments have been made Halifax should arrange a suitable repayment plan, Mr D 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 Mr D's credit file, it should reflect what would have been recorded had it started the process of taking corrective action on the overdraft in July 2021. Halifax can also reduce Mr D'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 him over his limit.

OR

- 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 Mr D 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 Mr D's credit file. Halifax can also reduce Mr D'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 Mr D a certificate showing how much tax it has taken off if he asks for one.

Did Halifax act unfairly or unreasonably in some other way?

I've also considered whether Halifax acted unfairly or unreasonably in some other way, including whether the relationship might have been unfair under s.140A of the Consumer Credit Act 1974. I haven't seen anything that leads me to think Halifax acted unfairly or unreasonably in some other way.

I'm satisfied the redress I have directed above results in fair compensation for Mr D in the circumstances of his 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 given above, I uphold Mr D'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 Mr D to accept or reject my decision before 8 October 2024.

Oyetola Oduola
Ombudsman