

The complaint

Mr R complains that Bank of Scotland plc trading as Halifax acted irresponsibly by providing him with an overdraft facility and increasing his limit. He complains that Halifax failed to conduct appropriate assessments of his overdraft facility and unfairly continued applying charges when he was in financial difficulty.

Mr R wants Halifax to refund all interest and charges applied to his overdraft along with compensatory interest, and for any adverse information to be removed from his credit file and compensation for the distress and inconvenience he has been caused.

What happened

Halifax provided Mr R with a £250 overdraft facility in July 2019. This was increased on eight occasions over a two-month period resulting in a £1,350 limit in September 2019. Mr R said that Halifax didn't take into account his reliance on debt and that appropriate assessments weren't carried out. He said he had remained at the upper limit of his overdraft for a prolonged period and incurred significant interest as a result. He said the overdraft had become hardcore borrowing and that adequate checks would have shown this.

Halifax issued a response to Mr R's complaint dated 3 April 2024. It didn't accept that the overdraft had been provided irresponsibly. It reviewed the activity on Mr R's account at each renewal date and said that in the months leading up to that he had enough money, after his essential spending, to clear the overdraft within a reasonable amount of time.

Mr R wasn't satisfied with Halifax's response and referred his complaint to this service.

Our investigator didn't think that Halifax had acted fairly when it continued to charge overdraft fees from 2 September 2019, when it increased Mr R's overdraft limit to £1,350. She noted that by this time Mr R hadn't maintained a credit balance for an extended period. She said the limit increase to £1,350 meant Mr R's overdraft facility limit was the same as his monthly income and so his monthly salary wouldn't be enough to clear the overdraft and leave him money for essential bills and living costs. She recommended that Mr R's account be reworked so that all interest, fees and charges applied to it from 2 September 2019 onwards were removed.

Halifax didn't agree with our investigator's view. It said that Mr R applied for an overdraft on 19 July 2019 and that every overdraft is set up with an annual review so his next review would be on 18 July 2020. It said this was the first date it would be expected to intervene if the overdraft was being used inappropriately. It said that the usage of the overdraft prior to 2 September 2019 was not a reason to decline a further application as this needed to be based on affordability and that the time between 19 July and 2 September 2019 was too short to get a picture of Mr R's financial situation. Halifax explained it considered 12 months a reasonable timeframe to repay an overdraft and it didn't base its decision on whether the monthly salary was more or less than the overdraft limit. It reviewed Mr R's bank statements and said that Mr R was using his overdraft by choice rather than being in financial difficulty.

Our investigator considered Halifax's response, but this didn't change her view. Halifax then

provided a further response stating that there are many reasons why an overdraft might be used and that the sole /only purpose isn't short term / emergency use. It said the overdraft was an open-ended facility and that it needed to consider whether this could be repaid in a reasonable amount of time rather than in one go. It noted that Mr R's bank statements showed he was using the overdraft for non-essential spending and cash withdrawals which weren't indications of financial difficulty.

As a resolution hasn't been agreed, this complaint was passed to me an ombudsman to issue a decision.

My provisional conclusions

I issued a provisional decision on this complaint the details of which are set out below.

Mr R was provided with an overdraft on 19 July 2019. The limit was initially set at £250 but this was increased on two occasions in July to £750. At this time Mr R had said his monthly income was between £900 and £1,200 and he had no mortgage or rent commitments. I have looked at Mr R's bank statements for the months leading up to July 2019 and these show that Mr R was managing his account well and there were no obvious signs of financial difficulty such as returned payments and Mr R was receiving regular payments into the account. Therefore, I do not find that Halifax was wrong to provide him with an overdraft.

I have then considered the limit provided. The initial overdraft limit provided was £250 which was immediately increased to £500 and then to £750. Looking through Mr R's bank account statements these support the income figure he provided to Halifax of between £900 and £1,200. Mr R's bank statements do not show any housing costs or other substantial commitments, but he was spending on general living costs. Taking this all into account, I do not find I have enough to say that the provision of a £750 overdraft in July 2019 was irresponsible.

Mr R continued to increase his overdraft limit to £900 on 9 August, £1,000 on 12 August and £1,050 and £1,100 on 22 August 2019. Halifax was required to ensure that the increases would be affordable for Mr R. Mr R had been making use of the overdraft provided in July and while his income reduced this at times, he wasn't clearing the overdraft. However, given the short time period involved, I do not find this is enough to say that further increases in the limit shouldn't have happened. Instead, I have considered whether these appeared affordable for Mr R. While Halifax has noted Mr R saying his monthly income was £1,400 as he had declared a monthly income in July of £900 to £1,200, I don't think the increased income figure should have been used without further checks. Having looked at Mr R's bank statements the previous monthly income figure of £900 to £1,200 appeared reasonable. Considering Mr R's limited commitments, I do not find I can say that Halifax was wrong to increase the overdraft limit to £1,100.

Mr R continued to request overdraft limit increases. Given he had increased the overdraft limit on six occasions in just over a month, I think that further increases shouldn't have been provided until more time had passed to assess Mr R's overdraft usage. I say this because the overdraft limit was now around the level of his monthly income, and he had remained in the overdraft since it was provided. Mr R was increasing his indebtedness each time his overdraft limit increased suggesting a dependency on this. Given this I do not find it responsible of Halifax to have increased Mr R's overdraft further in September 2019 to £1,200 and then £1,350. Therefore, I am upholding this complaint in respect to the overdraft limit being increased beyond £1,100.

I have then considered whether Halifax acted fairly by continuing to provide Mr R with an overdraft on the same terms. I note Halifax's comment that the review of Mr R's overdraft

usage would have taken place after a year. It is generally accepted that a bank should review a customer's overdraft usage on an annual basis and so I have considered what Halifax would have identified in July 2020.

Having looked through Mr R's account statements he remained at the upper end of his overdraft limit throughout the year. His income wasn't clearing his overdraft, and he hadn't had a credit balance for an extended period. I think this shows that the overdraft had become hardcore debt. I note Halifax's comments about there being different uses for an overdraft and that it considered the ability to clear an overdraft over a 12-month period, but an overdraft is meant for short-term borrowing and it is clear from Mr R's statements that he was reliant on the borrowing and had been throughout the year. Therefore, I do not find Halifax acted fairly when it continued adding interest and associated fees and charges to Mr R's overdraft from July 2020. By this point, it was evident that Mr R's overdraft had become unsustainable for him and that continuing to provide it was likely to cause significant adverse consequences.

I can see that Halifax sent letters to Mr R about his overdraft usage but the mere fact that it felt the need to send letters meant that it recognised that there was a problem with Mr R's overdraft usage.

Taking everything into consideration, I am upholding this complaint. I do not find that the overdraft limit should have been increased beyond the £1,100 limit applied on 22 August 2019. I then find that the overdraft shouldn't have continued on the same terms from 18 July 2020 (the first annual review date).

I've also considered whether Halifax acted unfairly or unreasonably in some other way given what Mr R has complained about, including whether its relationship with Mr R might have been viewed as unfair by a court under s.140A Consumer Credit Act 1974. However, I'm satisfied the redress I have directed results in fair compensation for Mr R 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.

Halifax responded to my provisional decision. It noted my comment about Mr R's statements showing he was managing his account in the months leading up to July 2019 and after the overdraft limit increase to £750. It said Mr R wasn't paying any housing costs or substantial commitments. It noted that Mr R wasn't clearing his overdraft but didn't agree that it had become hardcore debt. It said that Mr R was paying two direct debits and that his other spending was discretionary. It said the Mr R's banks statements didn't show signs of financial difficulties. It said that reviewing Mr R's statements beyond 2020 showed his essential spending reduced and stopped in 2023, but his behaviour remained the same. Halifax said it monitored customers' accounts to assess whether there were signs of actual or potential financial difficulties or whether there was repeat usage of the overdraft. Based on the guidance it wrote to Mr R about his repeat use.

Halifax acknowledged Mr R's overdraft usage but said that based on his account usage and activity there was no reason for it to intervene. It said Mr R didn't respond to its letters to discuss his financial circumstances. It said Mr R had a monthly surplus which he could have used to reduce his overdraft had he chosen to.

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 the factors we consider when looking at whether a bank treated a

customer fairly and reasonably when applying charges to an overdraft. So, I don't think it's necessary to set all of this out here.

I have taken note of Halifax's comments provided in response to my provisional decision, but these haven't changed my conclusions. As I set out in my provisional decision, I find that based on Mr R's account usage before July 2019, it wasn't unreasonable that he was provided with an overdraft facility. However, before any limit increases were applied, Halifax needed to consider whether the additional lending would be affordable for Mr R. I note the limit increases happened within a short period of time, but I do not find this means checks weren't required.

As I set out previously, I find it reasonable that an income of between £900 and £1,200 was used in the assessment of affordability for Mr R. By September 2019, Mr R had requested his overdraft limit be increased on six occasions. I think this should have raised questions about Mr R's need for the additional borrowing. At this time, Mr R's overdraft limit was around the level of his monthly income, and he had remained in the overdraft since it was provided. I think this should have raised concerns about a possible increasing dependency on the debt and so I do not find it was reasonable that Mr R's overdraft limit was increased beyond £1,100 at this time.

As explained, it is generally accepted that a bank should review a customer's overdraft usage on an annual basis and so I considered what Halifax would have identified in July 2020. I note Halifax's comment about the nature of Mr R's spending and agree he had limited direct debits leaving his account. However, his spending was on what appeared to be general living costs as well as the overdraft fees. Mr R's income was predominantly from benefits and the average of these in the months leading up to July 2020, was less than £1,000. Mr R appeared to be borrowing from family members suggesting he was reliant on debt to meet his day to day living costs. His overdraft remained close to its limit throughout the year with any income receipts only reducing the outstanding balance for short periods. I think this raises concerns about Mr R's reliance on the overdraft and suggests it had become hard core debt.

So, while I have taken onboard the comments made by Halifax in response to my provisional decision, these do not change my conclusions that Mr R's overdraft limit shouldn't have been increased beyond £1,100 and then shouldn't have been continued on the same terms after the annual review in July 2020.

Putting things right

Bank of Scotland plc trading as Halifax should:

- Re-work Mr R's current overdraft balance so that any additional interest, fees and charges applied as a result of the overdraft limit increases from 1 September 2019 are refunded. This means that from 1 September 2019 to 18 July 2020 interest can only be charged on the first £1,100 of any overdrawn balance.
- Then, re-work Mr R's current overdraft balance so that all interest, fees and charges applied to it from 18 July 2020 onwards are removed, as this is when Halifax should have stepped in to help as part of their annual review.

AND

- If an outstanding balance remains on the overdraft once these adjustments have been made Halifax should contact Mr R to arrange a suitable repayment plan for this. If it considers it appropriate to record negative information on Mr R's credit file, it

should backdate this to 1 September 2019.

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 R, 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 R's credit file.

I've considered whether Halifax acted unfairly or unreasonably in some other way given what Mr R has complained about, including whether its relationship with Mr R might have been viewed as unfair by a court under s.140A Consumer Credit Act 1974. However, I'm satisfied the redress I have directed above results in fair compensation for Mr R given the circumstances of his complaint. I'm satisfied, based on what I've seen, that no additional award would be appropriate in this case.

*HM Revenue & Customs requires Halifax to take off tax from this interest. Halifax must give Mr R a certificate showing how much tax it's taken off if he asks for one.

My final decision

My final decision is that Bank of Scotland plc trading as Halifax should take the actions set out above in resolution of this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 18 October 2024.

Jane Archer
Ombudsman