

## **Complaint**

Mrs C is unhappy with what Bank of Scotland Plc (trading as “Halifax”) has agreed to do to put things right after she complained about having unfairly been provided with an overdraft.

## **Background**

In November 2017, Halifax provided Mrs C with an overdraft that had a limit of £1,500.00. Halifax has already agreed it shouldn't have allowed Mrs C to continue using the overdraft from November 2018 onwards and says that it would have agreed to refund all the interest, fees and charges it added to Mrs C's account.

However, as no interest was ever added to Mrs C's overdraft, on account of it being a student overdraft, there was no interest to refund in this instance. Furthermore, as a result of it being more than six years since it ought to have taken corrective action on the overdraft, it does not propose to record any adverse information with credit reference agencies as a result of removing the overdraft at this stage.

Mrs C remained unhappy with Halifax's proposal and referred her complaint to our service. Our investigators subsequently considered Mrs C's complaint and thought that Halifax hadn't acted unfairly when agreeing to provide the overdraft. As this was the case, she thought what Halifax had agreed to do to put things right was fair and reasonable in all of the circumstances of the case.

Mrs C 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, I think that what Halifax has already agreed to do to put things right for Mrs C is fair and reasonable in all the circumstances of her complaint. I'll explain why I think this is the case.

It might help for me to start by explaining that where a business accepts (or we decide) it did something wrong, we'd expect the business to put the consumer in the position they would be in if that wrong hadn't taken place. And in an ideal world, this would mean us expecting a business to put a consumer in the position they'd now be in if what has been complained about hadn't happened. However, in cases concerning irresponsible lending that's simply not possible as the funds that shouldn't have been advanced were lent. As the lent funds will have been used and spent it's effectively too late to wind things back.

In these circumstances, we have to look at some other way of asking a business to put things right in a fair and reasonable manner and bearing in mind what is practically possible. Where a business provided a credit that was unaffordable for a borrower, we'd typically expect it to put the consumer in the position they'd be in now if they hadn't paid any interest and charges on that credit.

This would see the customer repay the funds that they borrowed and had the use of, but we'd normally expect the lender to ensure that the consumer paid no interest and charges. This usually balances the fact that lender shouldn't have lent to the consumer against them having benefitted from the decision – in terms of having funds they wouldn't have had and having spent funds which, in many cases, they may well have known they were unlikely to be able to repay.

In this case, Halifax has agreed to ensure that Mrs C is in the position where she paid no interest, fees and charges from November 2018. However, as it didn't add any interest, fees or charges to Mrs C's overdraft prior to this, what this actually means is that Mrs C will be in the position she would be in had no interest and charges been added to the account from the outset. This will limit the amount that Mrs C has to repay to the amount that she spent.

Therefore, while I accept that Halifax's final response and our investigator's assessment may have confused matters, what has happened here means that Mrs C will be in the position we'd typically expect Halifax to place her in, had it upheld her complaint that she shouldn't have been given the overdraft in the first place. This is despite the fact that Halifax believes it acted unfairly from November 2018, rather than at the outset.

That said, we do look at each case individually and on its own particular merits. And while we have a general approach to how we might tell a lender to put things right where it provided credit it shouldn't have (such as here), we can and will tell it to do something different and/or something more if there's a strong reason to say that's what would be fair and reasonable to do in the circumstances of that individual case.

Mrs C believes that Halifax should do more she wants evidence that Halifax complied with lending practices and relevant legislation. In the first instance, for the reasons I've explained, this wouldn't change the fact that Mrs C is already in the position she would be had her complaint been upheld.

In any event, in order to reassure Mrs C it may help for me to explain that while she has said that the overdraft was provided to her at a time where she was a student had no set income, the rules do permit a lender to lend to a customer on the basis of expected future income. Indeed, Mrs C wasn't required to pay any interest or charges for some time, provided that she kept within her overdraft limit, precisely because she was expected to be in employment by the time she was required to repay what she owed.

In these circumstances, it's difficult for me to agree that agreeing this overdraft was wholly unreasonable given it was interest free and therefore a far better alternative to any other alternative sources of credit Mrs C is likely to have had available. This is particularly bearing in mind the extended period she'd have to repay what she could owe and that she could do so when she did have an income. So I don't think that Halifax did act contrary to the regulations and legislation in the way that Mrs C believes.

I've also thought about the fact that Mrs C may feel that Halifax won't be held to account for any irresponsible lending and that having a balance to repay might not address any wrong that occurred. However, I think it would help for me to explain that it isn't for this service to punish Halifax. As I've explained, any direction to put things right would need to address Mrs C's loss. And it wouldn't be fair and me to require Halifax to go further than I would expect a lender who lent irresponsibly to, simply because there aren't any interest, fees and charges for it to refund in this instance.

Finally, Halifax also proposes to backdate any adverse information that it may have recorded as a result of taking action to correct Mrs C's overdraft usage, to when it ought to have taken

such action. This is also in line with approach to putting things right on an irresponsible lending complaint where the customer is expected to repay an outstanding balance.

Nonetheless, as Halifax ought to have taken action on Mrs C's account, more than six years ago, this effectively means that it will not be recording any adverse information against Mrs C even though it is now removing the overdraft. Given the circumstances here, I consider this to be fair and reasonable.

In reaching my conclusions, I've also considered whether the lending relationship between Halifax and Mrs C might have been unfair to Mrs C under section 140A of the Consumer Credit Act 1974 ("CCA"). However, I'm satisfied that what Halifax has already agreed to do to put things right for Mrs C's complaint as a whole, is fair and reasonable in all the circumstances of this case and I'm not requiring it to do anything further. I'm also not persuaded that section 140A CCA or anything else would, given the facts of this complaint, lead to a different outcome in respect of this.

I appreciate that my findings here will be very disappointing for Mrs C – especially as she's left with a debt. I do appreciate her strength of feeling on this matter. But Halifax has said that it is prepared to exercise forbearance and due consideration in line with its regulatory obligations and set up an affordable payment plan with Mrs C. I would encourage Mrs C to contact and co-operate with Halifax for this to be done with her input. Furthermore, Mrs C may be able to complain to us – subject to any jurisdiction concerns – should she be unhappy with Halifax's actions in relation to how it collects the outstanding overdraft balance.

Overall and having considered everything, I'm satisfied that what Halifax has agreed to do is fair and reasonable in all the circumstances and I'm not upholding Mrs C's complaint. I hope that Mrs C will understand the reasons for my decision and that she'll at least feel her concerns have been listened to.

### **My final decision**

For the reasons I've explained, I'm satisfied that what Bank of Scotland Plc has already agreed to do to put things right for Mrs C is fair and reasonable in the circumstances of her complaint. And I'm not requiring it to do anything further, or upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 27 May 2025.

Jeshen Narayanan  
**Ombudsman**