



Complaint

Mr and Mrs W have complained about the overdraft charges Bank of Scotland plc (trading as "Halifax") applied to their current account.

They've effectively said the charges were unfair and kept them in an overdrawn balance on the account for an extended period of time.

Background

Mr and Mrs W successfully applied for an overdraft of £500 in June 2002. This limit was changed up and down on a few occasions until it reached £2,000.00 in October 2021.

In August 2023, Mr and Mrs W complained saying that they were allowed to continue using the overdraft in a way that was unsustainable and which caused them continued financial difficulty. Halifax initially agreed to £883.21 in interest, fees and charges that were added to the account from October 2021 onwards.

When Mr and Mrs W's complaint was referred to our service, Halifax agreed to refund all of the interest, fees and charges added to the overdraft from June 2017 onwards. It also agreed to pay a further £50 in distress and inconvenience. However, it told us that we couldn't consider whether it acted fairly and reasonably when adding any of the interest, fees and charges that it added before June 2017, as it thought that Mr and Mrs W's complained about these charges too late.

One of our investigators reviewed what Mr and Mrs W and Halifax had told us. He reached the conclusion that we could look at the entire period Mr and Mrs W had their overdraft for, but he wasn't persuaded that Halifax had acted unfairly towards Mr and Mrs W prior to June 2017. So he thought that what Halifax had already done to put things right for Mr and Mrs W was fair and reasonable and didn't think that it needed to do anything more.

Mr and Mrs W disagreed and asked for an ombudsman to look at their complaint.

My findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Basis for my consideration of this complaint

There are time limits for referring a complaint to the Financial Ombudsman Service. Halifax has argued that Mr and Mrs W's complaint about the charges applied prior to June 2017 was made too late, because Mr and Mrs W complained more than six years after the charges in question were applied on the overdraft, as well as more than three years after they ought reasonably to have been aware of their cause to make this complaint.

Our investigator explained why it was reasonable to interpret the complaint as being one alleging that the lending relationship between Mr and Mrs W and Halifax was unfair to

Mr and Mrs W as described in s140A of the Consumer Credit Act 1974 ("CCA"). He also explained why this complaint about an allegedly unfair lending relationship had been made in time.

Having carefully considered everything, I'm satisfied that what Halifax has already done to put things right for Mr and Mrs W is fair and reasonable in all the circumstances. Given the reasons for this, I'm satisfied that whether Mr and Mrs W's complaint about the charges applied before June 2017 was made in time or not has no impact on that outcome.

I'm also in agreement with the investigator that Mr and Mrs W's complaint should be considered more broadly than just the individual charges or lending decisions. I consider this to be the case as Mr and Mrs W have not only complained about the circumstances behind the application of the individual charges, but also the fact Halifax's failure to act during the periods they allege it ought to have seen they were experiencing difficulty caused ongoing hardship.

I'm therefore satisfied that Mr and Mrs W's complaint can therefore reasonably be interpreted as a complaint that the lending relationship between themselves and Halifax was unfair to them. I acknowledge the possibility that Halifax may still disagree that we are able to look at Mr and Mrs W's complaint about the charges applied before June 2017, but given the outcome I have reached, I do not consider it necessary to make any further comment or reach any findings on these matters.

In deciding what is fair and reasonable in all the circumstances of Mr and Mrs W's case, I am required to take relevant law into account. As, for the reasons I've explained above, I'm satisfied that Mr and Mrs W's complaint can be reasonably interpreted as being about that their lending relationship with Halifax was unfair to them, relevant law in this case includes s140A, s140B and s140C of the CCA.

S140A says that a court may make an order under s140B if it determines that the relationship between the creditor (Halifax) and the debtor (Mr and Mrs W), arising out of a credit agreement is unfair to the debtor because of one or more of the following, having regard to all matters it thinks relevant:

- any of the terms of the agreement;
- the way in which the creditor has exercised or enforced any of their rights under the agreement;
- any other thing done or not done by or on behalf of the creditor.

Case law shows that a court assesses whether a relationship is unfair at the date of the hearing, or if the credit relationship ended before then, at the date it ended. That assessment has to be performed having regard to the whole history of the relationship. S140B sets out the types of orders a court can make where a credit relationship is found to be unfair – these are wide powers, including reducing the amount owed or requiring a refund, or to do or not do any particular thing.

Given Mr and Mrs W's complaint, I therefore need to think about whether Halifax's actions in allowing Mr and Mrs W to use their overdraft in the way that it did, resulted in the lending relationship between Mr and Mrs W and Halifax being unfair to Mr and Mrs W, such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove any such unfairness.

Mr and Mrs W's relationship with Halifax is therefore likely to be unfair if Halifax allowed Mr and Mrs W to continue using their overdraft in circumstances where it ought reasonably

to have realised that the facility had become unsustainable or otherwise harmful for them. And if this was the case, Halifax didn't then somehow remove the unfairness this created.

Did Halifax unfairly allow Mr and Mrs W to continue using their overdraft in a way that was unsustainable or otherwise harmful for them prior to June 2017?

Before I go any further, I want to be clear in saying that I haven't considered whether the various amounts Halifax charged over the years 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 and Mrs W if it applied these interest, fees and charges to Mr and Mrs W's accounts in circumstances where it was aware, or it ought fairly and reasonably to have been aware Mr and Mrs W were experiencing financial difficulty. So I've considered whether there were instances where Halifax didn't treat Mr and Mrs W fairly and reasonably prior to June 2017.

In other words, I've considered whether there were periods where Halifax continued charging Mr and Mrs W even though it ought to have instead stepped in and taken corrective measures on the overdraft as it knew Mr and Mrs W were in financial difficulty or it ought to have realised this was the case. I've looked through the overview of Mr and Mrs W overdraft usage and their monthly balance throughout the period concerned (2002 to 2017).

Having done so, I don't think that Halifax ought reasonably to have taken unilateral corrective measures in relation to the overdraft during the period I've looked at. It's fair to say that Mr and Mrs W did use their overdraft. They might say this in itself was an indication Halifax ought to have taken action earlier than June 2017. And I know that Mr and Mrs W have referred to their usage in between December 2013 and June 2017 in particular as being problematic.

However, I think that Mr and Mrs W have referred to their use of a number of different Halifax products. As Halifax was not offering Mr and Mrs W advice on their overdraft or their overall finances, I would not expect them to considered all of their different accounts. Furthermore, as Mr and Mrs W have complained about their other Halifax products, the way that they were used will be considered as part of those complaints.

In respect of the overdraft on this joint account, I can see that Mr and Mrs W were typically operating within their overdraft limit. Furthermore, there were significant periods where Mr and Mrs W weren't using the overdraft at all. For example, in the period from July 2008 to November 2013.

Mr and Mrs W did go on to start using the overdraft again after this, but they very rarely went overdrawn by as much as £1,000.00. Indeed, I can see that this only happened on two occasions, in February 2014 and March 2014. Given Mr and Mrs W were immediately able to clear the balance in full in April 2014, it's difficult for me to agree that Mr and Mrs W were trapped into using the facility. This is particularly as the overdraft limit during this period was actually £1,7000.00.

I accept that these things in themselves (or when taken together) mean that Mr and Mrs W weren't experiencing difficulty. But there isn't anything in account balances in themselves which ought to have alerted Halifax to this during the period of time I'm looking at. I don't think that Mr and Mrs W using this overdraft, in circumstances where they were permitted to do so and where I can't see any other obvious signs of financial stress – such as the

indicators of potential financial difficulty present in CONC 1.3, means that Halifax ought reasonably to have taken unilateral action.

This is particularly the case when considering the implications that Halifax taking such action would have had on Mr and Mrs W. I say this because I don't think that it would have been proportionate for Halifax to demand that Mr and Mrs W immediately repay their overdraft as it had become demonstrably unsustainable for them, in circumstances where the available evidence suggests that there was a realistic prospect of Mr and Mrs W clearing what they owed in a reasonable period of time.

So while I've considered Mr and Mrs W comments and given particularly focus to the period between December 2013 and June 2017, as they have asked me to, I've not been persuaded that it was unfair for Halifax to have allowed them to continue using the overdraft in the way that it did.

Overall, and based on the available evidence I don't find that Mr and Mrs W's relationship with Halifax, in respect of this overdraft, is currently unfair. It's not clear enough to me that Halifax created unfairness in its relationship with Mr and Mrs W by irresponsibly lending to them initially, or in respect of the way it allowed them to use the overdraft in the period up to June 2017. Furthermore, any unfairness that may have been created by Halifax allowing Mr and Mrs W to use the overdraft after June 2017 has since been removed by it refunding all the charges applied after this. I don't find Halifax treated Mr and Mrs W unfairly in any other way either based on what I've seen.

So overall and having considered everything, while I can understand Mr and Mrs W's sentiments and appreciate why they may be unhappy, I'm nonetheless satisfied that what Halifax has already done to put things right is fair and reasonable and I'm not requiring it to do anything further. I appreciate this will be very disappointing for Mr and Mrs W. But I hope that they'll understand the reasons for my decision and that they'll at least feel their concerns have been listened to.

My final decision

For the reasons I've explained, I'm satisfied that what Halifax has already done to put things right is fair and reasonable in all the circumstances of Mr and Mrs W's complaint. I'm therefore not requiring it to do anything more or anything further.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs W to accept or reject my decision before 17 March 2025.

Jeshen Narayanan
Ombudsman