

## **The complaint**

Mr P complains that Bank of Scotland plc trading as Halifax lent to him irresponsibly.

## **What happened**

Mr P has had an overdraft on his current account with Halifax since 2009. Due to the time elapsed, neither he nor Halifax has been able to show what the initial limit was, but by September 2011, it was £1,500. I can see from his statements that it increased to £2,500 at some point, before being reduced to £2,000 in July 2017. The limit was reduced to £250 in October 2021.

On 19 July 2023, Mr P complained to Halifax saying it had been irresponsible to agree such a high overdraft for him. He said his monthly income was less than the limit and he was gambling. Halifax ought to have noticed he was in financial difficulty. Mr P asked Halifax to refund charges and interest he'd paid on the account since 2009 and to add statutory interest at 8%.

Halifax looked into his complaint and issued a final response letter. It said Mr P had brought his complaint about the early lending decisions too late under the complaint handling rules set by the Financial Conduct Authority (FCA). But it said it ought to have noticed he was heavily relying on his overdraft and should have stepped in to help. It refunded all interest and charges applied to his account for the period six years before he raised his complaint; that is, from 20 July 2017. It removed the overdraft limit.

Mr P didn't accept Halifax's response, so he referred his complaint to our service. One of our investigators looked into it. While he disagreed with Halifax to the extent that he said we could consider the whole of Mr P's complaint, he felt Halifax's offer was a fair and reasonable way to resolve it.

Mr P didn't accept our investigator's view of his complaint, so as there was no agreement, it has been passed to me 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.

The first stage for us to consider in any complaint is whether or not we have the jurisdiction to investigate it. As mentioned above, Halifax said we don't have the power to look into events from more than six years before Mr P raised his complaint, but our investigator disagreed.

The rules that govern our service are set out in the Handbook of the FCA, specifically the Dispute Resolution section (DISP). DISP 2.8.2 sets out the time limits in which we have to work. The parts of the rule relevant to this case are that we cannot consider a complaint brought to the respondent business or to us more than:

- six years after the event complained of; or (if later)
- three years from the date on which the complainant became aware (or ought reasonably to have become aware) of their cause for complaint, unless
- in the view of the Ombudsman, the failure to comply with the time limits was as a result of exceptional circumstances; or
- the respondent business consents (Halifax has not consented).

Mr P raised his complaint on 19 July 2023. It is clear that the overdraft has been in place since at least 2009, and Mr P has been paying charges and interest since then. So the decisions to agree his overdraft and many of the charges he complained about took place more than six years before he complained.

I also need to consider the three-year part of the rule. That is, I need to consider when Mr P became aware (or ought reasonably to have become aware) of his cause for complaint about the decision to grant his overdraft and the interest and charges he paid. When we say “cause for complaint” we mean the complainant became aware, or ought reasonably to have become aware, of the following:

- a problem;
- that they have suffered or may have suffered a loss; and
- that someone else is responsible for this problem (and who that someone is).

A complainant doesn't have to know that something has definitely gone wrong. They just ought reasonably to have been aware of a cause for complaint for the time limits to start.

Mr P tells us he has been battling a gambling addiction – which the NHS describes as a “*pathological addiction*” – for much of the period he’s complained about. He said he couldn’t properly consider his financial situation and didn’t have the ability to manage his finances as a result of his addiction. He says he only became aware in July 2023 that Halifax “*did in fact have a duty of care*” towards him, which led to this complaint.

I have thought carefully about the circumstances here. I consider that Mr P would have been aware of a problem – that he was relying on his overdraft and struggling financially – and that he was suffering a loss through interest and charges at the time. I accept that Mr P only became aware that Halifax may be at least partly to blame for that in July 2023.

But I also need to consider when he *ought reasonably to have become aware* of his cause for complaint. As I’ve already said he would have been aware of a problem and his losses, I need to think about when he ought reasonably to have become aware Halifax was at least partly to blame. It will have been evident to Mr P that the charges and interest being applied on a monthly basis will have been making things more difficult and preventing him from repaying the facility. As Halifax was applying those costs, I think he ought reasonably to have thought that Halifax were at least partly to blame for the situation.

I have dealt with another complaint for Mr P against another business which he’d brought more than six years after the finance had been taken. In that case I found that he raised it within three years of when he ought reasonably to have become aware of his cause for complaint. But that complaint was about a different type of product and there was no particular event or activity which I felt ought to have prompted him to raise it. That is different in this complaint as the charges and interest he complains of were being applied separately, monthly as well as being brought to his attention through statements and annual notices.

I acknowledge what Mr P says about his addiction, but he was able to go about his day-to-day business such as work and contacting financial institutions. I don’t think I can reasonably

conclude that there were exceptional circumstances that prevented him from bringing his complaint sooner.

However, our investigator has also taken Mr P's complaint as being about the fairness of his relationship with Halifax. For the avoidance of doubt, I agree with our investigator that we have the power to look at the complaint on this basis. I think this complaint can reasonably be considered as being about an unfair relationship as Mr P said Halifax ought to have identified his financial difficulties sooner and, indeed, the bank has acknowledged it ought to have offered him more support. I acknowledge Halifax doesn't agree we can look at the early part of this complaint, but as I think it has done enough to resolve it, I don't intend to comment on this further.

In deciding what is fair and reasonable I am required to take relevant law into account. Because Mr P's complaint can be reasonably interpreted as being about the fairness of his relationship with Halifax, relevant law in this case includes Section 140A-C of the Consumer Credit Act 1974.

Section 140A says that a court may make an order under Section 140B if it determines that the relationship between the creditor (Halifax) and the debtor (Mr P), 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 his 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. However, just because there may have been unfairness in a debtor's relationship with a creditor doesn't automatically mean it would be fair to refund all of the interest and charges on the account from when that unfairness began.

In *Smith v Royal Bank of Scotland Plc* [2023], the Supreme Court pointed out that remedies for unfair relationships are in the court's discretion and the court may deny a remedy where the claimant had knowledge of the facts relevant to their claim, but substantially delayed making the claim. There is no fixed period of delay that brings this principle into play, but the Supreme Court approved the District Judge's comment in the case that a court would be slow to remedy unfairness in a situation where the claimant delayed more than six years after knowing the facts.

So when deciding a fair and reasonable outcome to Mr P's complaint and fair redress, it's important for me to take this into account as relevant law. We consider that a complainant would have knowledge of the facts that caused any unfairness when they became aware of a problem and that they were suffering a loss. So, where we think a consumer had knowledge of the facts, our approach to cases of this nature is for the business to refund to them, the charges and interest they've paid for six years before they raised their complaint.

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 the consumer, along with 8% simple interest on the overpayments from the date they were made until the date of settlement.

Mr P had knowledge of the facts as he knew there was a problem because he was

struggling financially, and he knew he was suffering a loss as Halifax continued to charge him. But he didn't do anything about this until he complained on 19 July 2023, so I think it's right that any refund of interest and charges should be limited to the six year period prior to Mr P raising his complaint.

Halifax has refunded the interest and charges Mr P paid on his account for six years prior to his complaint being raised. It hadn't however mentioned whether or not it had included statutory interest at 8% in its calculation.

I've been in touch with Halifax and it told me it hadn't added interest on any overpayments, but agreed it should have. Halifax has now credited a further £582.47 to Mr P's account in respect of this. This sum includes statutory interest for not having applied it at the time of the refund (if it had done so, interest would have amounted to £462.05).

Halifax has now compensated Mr P in line with what I would award even if I found unfairness to have begun longer ago than the refund covers.

I realise my decision will come as a disappointment to Mr P. But for the reasons I've set out above, I think what Halifax has done is a fair way to settle the matter and is in line with our approach to this type of complaint.

### **My final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 31 March 2025.

Richard Hale  
**Ombudsman**