

Complaint

Mr and Mrs J have complained that Bank of Scotland plc (trading as “Halifax”) continued to allow them to use their overdraft over an extended period, even when they were in financial difficulty.

Background

We’ve previously explained to the parties why we are unable to consider matters in relation to Mr and Mrs J’s overdraft prior to January 2018. As this is the case, this decision is only focusing on matters from January 2018 onwards.

Halifax renewed Mr and Mrs J’s overdraft limit of £4,000.00 in April 2018. In February 2024, Mr and Mrs J complained that Halifax continued allowing them to use their overdraft in the same way and charged them for doing so, despite it being clear that the overdraft had become unsustainable for them.

One of our investigators looked at Mr and Mrs J’s complaint and thought that Halifax ought reasonably to have realised that Mr and Mrs J’s overdraft had become demonstrably unsustainable for them by April 2018.

As a result, the investigator upheld Mr and Mrs J’s complaint and said that Halifax needed to refund all the interest, fees and charges it added to their account from April 2018 onwards.

Halifax disagreed with the investigator’s view and so the complaint was passed to an ombudsman for review.

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’m upholding Mr and Mrs J’s complaint. I’ll explain why this is the case in a little more detail.

Halifax will be familiar with all the rules, regulations and good industry practice we consider when looking at whether a bank treated a customer fairly and reasonably when applying overdraft charges. So I don’t consider it necessary to set all of this out here.

Having carefully considered everything provided, I think Halifax acted unfairly when it continued charging overdraft interest, fees and any associated charges on Mr and Mrs J’s facility from April 2018. By this point, Mr and Mrs J’s account hadn’t really seen a credit balance for an extended period of time and their account statements show that they had been, what is known as, hardcore borrowing.

In response to our investigator’s assessment, Halifax has calculated a retrospective income and expenditure assessment. It says that this shows Mr and Mrs J were not experiencing difficulty and instead were consciously choosing to use their overdraft for extended periods.

I've thought about what Halifax has said. However, the credits that could be classified as income going into the account weren't especially high. I don't think that the credits are obviously commensurate with an overdraft limit of £4,000.00. Furthermore, I'm not persuaded that there is an excessive amount of non-essential spending on the account as Halifax appears to be suggesting.

Indeed, it's not really for me to get into whether Mr and Mrs J non-essential spend, was as Halifax has said, too high. This is especially after the overdraft was renewed even after Mr and Mrs J had complained that the increased charges for the overdraft was making it difficult for them to repay what they owed, in November 2017. In my view, this means that Halifax was already on notice that repaying the overdraft might have been difficult for them.

In these circumstances, I'm not necessarily persuaded that it was fair and reasonable for Halifax to conclude that Mr and Mrs J were in a healthy financial position. This not even taking into account what Mr and Mrs J may have been paying as a result of any other credit facilities, or what their respective credit files would show their debt position was.

Furthermore, I'm also mindful that further down the line Mr and Mrs J's account balance was made to look better than it actually was by credits which Mr and Mrs J were unlikely to be able to count upon continuing to receive going forward. Having contacted Mr and Mrs J it is my understanding that Mr J was diagnosed with an illness in 2017 and this resulted in him having to retire on medical grounds.

Mr J went on to register as disabled and had to make a number of adjustments. In order to meet the costs of these adjustments, Mr and Mrs J's account subsequently received equity release and pension payments. These payments were used to pay for medical adaptations to Mr and Mrs J's property and a vehicle for Mr J to be able to travel. I understand that Mr and Mrs J even had to downsize their home in order to make the necessary adjustments.

Bearing in mind that at the time of the renewal¹, Halifax needed to be satisfied that Mr and Mrs J could repay the overdraft out of income or savings and without realising assets, which equity release payments and pension drawdowns are, I don't think that Halifax could reasonably regard these credits as a sustainable way of repaying this overdraft.

I appreciate that Halifax may not have known about all of this. But given the concerns that Mr and Mrs J had already raised in November 2017, I do think that it was that it was necessary for Halifax to have done more to find out about Mr and Mrs J's ability to repay the overdraft, before renewing it in April 2018. I think that if Halifax had done this, or queried whether the payments it has highlighted were available to repay the overdraft, as I'm satisfied that it would have been fair and reasonable to do at this stage, this would have seen it learn about Mr and Mrs J's actual position.

Indeed, it's fair to say that the actual credits Mr and Mrs J received that could be classed as income were lower than their overdraft limit. Furthermore, while I've seen what Halifax has said about Mr and Mrs J not wanting to go ahead with any of the options proposed in January 2022, presumably because they were worried about adverse credit information being recorded against them, I don't think that this in itself means that it was fair and reasonable to continue providing the overdraft on the same terms.

¹ In April 2018, the rules in relation to creditworthiness assessment were contained in CONC 5.2. This section of CONC was subsequently replaced by CONC 5.2A in November 2018.

In these circumstances, I think that by April 2018, at the absolute latest, Halifax should have stopped providing the overdraft on the same terms and instead treated Mr and Mrs J with forbearance rather than adding even more interest, fees and charges on the overdraft.

I've also seen that Halifax is relying on having sent Mr and Mrs J a number of letters telling them that they were using an overdraft in a way that was expensive and that they should get in contact if they were experiencing difficulty. As I understand it, it then sent further letters and communications from 2020 onwards as a result of the regulator's repeat overdraft use rules. Halifax says that Mr and Mrs J should have reached out if they were struggling.

I've thought about what Halifax has said. In the first instance and without wishing to continue repeating myself, Halifax had already been contacted by Mr and Mrs J in November 2017. I think that the fact that Halifax felt the need to send Mr and Mrs J so many letters after this means that it recognised there was still a problem with the way that Mr and Mrs J were using their overdraft.

If I take Halifax's argument to its logical conclusion here, I see it as being that it acted fairly and reasonably towards Mr and Mrs J because it sent them letters as it had identified that their overdraft usage had become a problem. But because Mr and Mrs J didn't specifically respond to these letters it was reasonable to continue allowing them to use their overdraft in the same way, notwithstanding that it had identified their use of their overdraft as being problematic.

This is despite the fact that Mr and Mrs J hadn't provided any indication that they'd be able to clear the persistent debt they were in and they had previously told Halifax that the charges, which had been increased again in 2019, were a problem. I can't see how Halifax's actions (and Mr and Mrs J's continued usage of overdraft in the same way) was ever likely to be able to remedy the situation.

In my view, there comes a point where a lender cannot continue simply relying on a borrower not responding to letters, or not wanting adverse credit information being recorded against them, in order to justify it not taking action. This also fails to take into account that a lender should be taking steps to prevent a facility becoming unsustainable for a customer and not waiting until the problem is completely irretrievable before doing so.

In my view, all Halifax's actions here were likely to result in (in sending Mr and Mrs J letters and hoping the situation would eventually improve, irrespective of everything else that was unfolding in front of it) Mr and Mrs J paying high amounts of interest and charges (relative to the amount they owed) for the privilege of being allowed to continue holding, what the actions of Mr and Mrs J were suggesting, was a debt that had become unsustainable.

So as far as I'm concerned Halifax's actions in allowing Mr and Mrs J to continue using their overdraft and incurring further charges, when everything it had was suggesting they would struggle to be able to repay what they owed, worsened Mr and Mrs J's problem rather than helped them. This is irrespective of the fact that Mr and Mrs J may not have been in favour of a corrective solution being imposed at this time.

Overall and having considered Halifax's arguments, I'm satisfied that it failed to act fairly and reasonably towards Mr and Mrs J by not taking corrective action in relation to their overdraft when it ought reasonably to have realised they were struggling to repay what had become a problem debt by April 2018 at the latest. It follows that I'm upholding Mr and Mrs J's complaint.

In reaching my conclusions, I've also considered whether the lending relationship between Halifax and Mr and Mrs J might have been unfair to Mr and Mrs J under s140A of the Consumer Credit Act 1974.

However, I'm satisfied that what I'm directing Halifax to do results in fair compensation for Mr and Mrs J given the overall circumstances of their complaint. For the reasons I've explained, I'm also satisfied that, based on what I've seen, no additional award is appropriate in this case.

Fair compensation – what Halifax needs to do to put things right for Mr and Mrs J

Having thought about everything, I'm satisfied that it would be fair and reasonable in all the circumstances of Mr and Mrs J's complaint for Halifax to put things right by:

- Reworking Mr and Mrs J's current overdraft balance so that all interest, fees and charges added from April 2018 onwards are removed. This is to reflect the fact that Halifax ought to have realised that the overdraft had become demonstrably unsustainable for Mr and Mrs J by this stage at the latest and they should have been offered forbearance.

AND

- If an outstanding balance remains on the overdraft once the adjustments set out above have been made Halifax should contact Mr and Mrs J to arrange a suitable repayment plan. Mr and Mrs J are 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 and Mrs J's credit file, it should reflect what would have been recorded had it started the process of taking corrective action on the overdraft in April 2018. Halifax can also reduce the overdraft limit on Mr and Mrs J's account by the amount of any refund if it considers it appropriate to do so, as long as doing so wouldn't leave them over their limit.

OR

- If the effect of carrying out the above adjustments results in there no longer being an outstanding balance, then any extra should be treated as overpayments and returned to Mr and Mrs J 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 and Mrs J's credit file. Halifax can also reduce Mr and Mrs J'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 and Mrs J a certificate showing how much tax it has taken off if they ask for one.

My final decision

For the reasons I've explained, I'm upholding Mr and Mrs J's complaint. Bank of Scotland plc (trading as Halifax) should put things right in the way I've directed it to do so above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mr J to

accept or reject my decision before 27 March 2025.

Jeshen Narayanan
Ombudsman