

## **Complaint**

Miss T has essentially complained that Bank of Scotland Plc (trading as “Halifax”) unfairly continued applying charges to her overdraft even when it was clear that she was in financial difficulty and failing to see a credit balance for an extended period.

## **Background**

Halifax initially provided Miss T with an overdraft of £250 in March 2020. In April 2021, the limit was increased to £500 and then in May 2021 the limit was increased to £900.

One of our investigators looked at this complaint and eventually reached the conclusion that Halifax should have realised that Miss T’s overdraft had become unsustainable for her by March 2022. So she thought that it shouldn’t have continued offering the overdraft on the same terms or added the charges that it did from this point onwards.

Halifax didn’t agree with the investigator’s assessment. As Halifax didn’t agree with the investigator’s assessment the complaint was passed to an ombudsman for a final decision, as per the next stage of our dispute resolution process.

## **My findings**

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 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 in this decision.

Having considered everything provided, I think Halifax acted unfairly when it continued adding interest and associated fees and charges to Miss T’s overdraft from March 2022. By this point, it was evident that Miss T’s overdraft had become unsustainable for her and that continuing to provide it was likely to cause significant adverse consequences.

I say this because while Halifax may have determined that Miss T had a monthly disposable income of £357 when it granted the limit increase, in March 2021, by the time the account was reviewed in March 2022 it was clear that it had barely seen a credit balance for an extended period of time. Furthermore, Miss T’s statements show that she was what is known as hardcore borrowing.

I’m mindful that it could be argued that at £900, Miss T had a relatively low overdraft limit. However, a relatively low limit can still prove to be unaffordable or a struggle to manage. I say this especially as Halifax was aware that Miss T had a County Court Judgment (“CCJ”) recorded against her at the time that the overdraft had been granted to her and the limit was first increased. It’s also fair to say that Miss T had returned direct debits and had payments to credit cards with lenders that were not in the non-prime sector.

Furthermore, Miss T was also, as a matter of fact, showing herself as being unable to clear the balance on the overdraft within a reasonable period of time. So notwithstanding the fact that Miss T's limit was relatively low and what Halifax's income and expenditure assessment showed, Miss T's actions and circumstances showed that she wasn't sustainably repaying her overdraft.

I can also see that Halifax has referred to individual transactions on Miss T's account and commented over what these may or may not have been for. However, Halifax ought to have taken steps to question what was going on at the time of the March 2022 review and not wait until Miss T complained to do so.

I've also noted that Halifax has referred to the fact that at times Miss T had funds in a savings account. Having reviewed these statements, it's clear that Miss T wasn't choosing to use her overdraft while sitting a pot of funds that would have clearly taken her out of her permanently out of her overdraft.

Indeed, it seems to me that Miss T was using the savings account as a way of trying to budget. But any funds she transferred into this account soon made their way back to her current account and were dispersed in the same way. So I don't think that the funds in the savings account were indicative of Miss T managing well, or being in a position where she was choosing to operate her overdraft unsustainably.

In reaching my conclusions, I've thought about the fact that Halifax sent Miss T letters about her overdraft usage. But the issue here isn't that Halifax didn't see what was going on. It's that it failed to take appropriate action. I don't think that the letters that Halifax sent changes this.

Indeed, if I take Halifax's argument to its logical conclusion here, it is that it did identify that Miss T's overdraft usage had become a problem and that it acted fairly and reasonably towards Miss T because it had sent her a number of letters. However, because Miss T didn't respond to the letters it was reasonable to continue allowing Miss T to use her overdraft in the same way.

This is despite the fact that Miss T hadn't provided any indication that she'd be able to clear the persistent debt she was in and so Halifax's actions (and Miss T's continued usage of overdraft in the same way) were never likely to remedy the situation. Arguably Miss T's account usage was proving that she was not going to remedy the situation without help.

In my view, this ignores the fact that there comes a point where a lender cannot continue simply relying on a borrower not responding to letters or not wanting to discuss the situation. I have to query just how many unanswered letters it would have needed to send in order to conclude that there may have been a problem.

Furthermore, this fails to take into account that a lender should be taking steps to prevent a facility becoming unsustainable for a customer, not waiting until the problem is completely irretrievable before doing so. Indeed, Halifax would have been aware of Miss T's previous difficulties with defaulted accounts and a CCJ.

I accept that this doesn't mean that Halifax shouldn't have lent. However, it does mean that it needed to take further care to ensure that the credit it was providing didn't become problematic or unmanageable and that Miss T didn't go on to once again experience significant adverse consequences.

I also think that Halifax's argument regarding Miss T not getting in contact fails to take any account of the fact that there are many reasons why a consumer might not want to get into

discussions about their finances even though they're in a situation where they're struggling, or they may even go further and say they can and will make payment when the reality is they can't. This is particularly when they've previously had the experience of significant adverse information such as Miss T did with her CCJ.

While Miss T didn't contact Halifax, most likely because she hoping that she could avoid having to deal with things, I don't think it was reasonable for Halifax to conclude that she would be able to clear the persistent debt she was in, or that the lack of a response to its letters meant that there wasn't a problem.

In my view, all Halifax's actions here were likely to result in (in sending Miss T letters and hoping she'd eventually respond irrespective of everything else that was unfolding in front of it), was Miss T paying high amounts of interest and charges (relative to the amount she owed) for the privilege of being allowed to continue holding, what Miss T's actions suggested, was a debt that had become unsustainable.

So as far as I'm concerned Halifax's actions in allowing Miss T to continue using her overdraft and incurring further charges, when everything it had was suggesting she would struggle to be able to repay what she owed, worsened Miss T's problem rather than helped her.

For the sake of completeness, I'd also add that I've noted Halifax's argument that an overdraft isn't just for emergency short term borrowing. This isn't a point I necessarily disagree with. After all there are many reasons why a consumer may choose to use a financial product.

However, it's also fair to say that an overdraft is unsuitable for regular and prolonged usage. This is particularly the case where an account holder has already experienced adverse consequences from the use of other credit, such as Miss T here having previously had a CCJ recorded against her.

Overall and having considered Halifax's arguments, I'm satisfied that it failed to act fairly and reasonably towards Miss T by not taking corrective action in relation to her overdraft when it ought reasonably to have realised she was struggling to repay what had become a problem debt by March 2022 at the latest.

In reaching my conclusions, I've also considered whether the lending relationship between Halifax and Miss T might have been unfair to Miss T under section 140A of the Consumer Credit Act 1974.

However, I'm satisfied that what I direct Halifax to do, in the following section of this final decision, results in fair compensation for Miss T given the overall circumstances of her 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 Miss T**

Having thought about everything, I think that it would be fair and reasonable in all the circumstances of Miss T's complaint for Halifax to put things right by:

- Reworking Miss T's current overdraft balance so that all interest, fees and charges applied to it from March 2022 onwards are removed.

AND

- If an outstanding balance remains on the overdraft once these adjustments have been made Halifax should contact Miss T to arrange a suitable repayment plan, Miss T is 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 Miss T's credit file, it should reflect what would have been recorded if it had started the process of taking corrective action on the overdraft in March 2022. Halifax can also reduce Miss T's overdraft limit by the amount of refund if it considers it appropriate to do so, as long as doing so wouldn't leave her over her limit.

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 Miss T 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 Miss T's credit file. Halifax can also reduce Miss T'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 Miss T a certificate showing how much tax it has taken off if she asks for one.

### **My final decision**

For the reasons I've explained, I'm upholding Miss T's complaint. Bank of Scotland Plc should put things right in the way that I've directed it to do so above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss T to accept or reject my decision before 7 May 2025.

Jeshen Narayanan  
**Ombudsman**