

## **The complaint**

Mr C complains that Bank of Scotland Plc trading as Halifax lent irresponsibly to him when it agreed a £250 overdraft and subsequent limit increases.

## **What happened**

In April 2019 Halifax agreed a £250 overdraft limit on Mr C's current account. Halifax then went on to agree the following limit increases:

- June 2019 increase to £500
- June 2019 increase to £1,000 (this was the following day after the increase to £500)
- October 2019 increase to £2,500
- December 2019 increase to £3,000

Together with his representatives, Mr C argued that the initial overdraft limit and subsequent limit increases shouldn't have been given. Mr C has said that he became reliant on his overdraft which should only have been used as a short-term solution. In addition, he has argued that Halifax failed to assess whether he would be able to sustainably repay the overdraft limit increases.

Halifax considered the complaint but disagreed. It argued that it did lend responsibly to Mr C at the time of each increase. It also said that during each review period for the overdraft Halifax reviewed Mr C's circumstances. It determined Mr C had regular credits coming into the account, that he paid his direct debits and that given the level of discretionary spending he was not showing signs of financial difficulty.

Unhappy with Halifax's response, Mr C referred his complaint to our service. One of our investigators considered the complaint. They felt that the initial overdraft limit and all subsequent increases were responsibly lent and affordable for Mr C, with the exception of the December 2019 increase to £3,000. They didn't agree the final limit increase was affordable for Mr C. They also felt that at the point of the first review (around a year after the first overdraft was given in April 2019) it should have been clear to Halifax that Mr C was displaying signs of financial difficulty and wasn't relying on his overdraft as a short-term solution. So they upheld the complaint in part.

Halifax accepted the investigator's opinion and agreed to pay compensation in line with their recommendation. Mr C and his representatives didn't accept the investigator's opinion, but haven't provided reasons for why they disagree.

As an agreement hasn't been reached the complaint has been passed to me to consider.

## **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.

As explained above, Halifax has accepted the investigator's opinion. I therefore don't need to consider the December 2019 overdraft limit increase to £3,000 or the on-going monitoring of

the account from the first year onwards, as Halifax has already agreed to pay compensation in line with our approach from these points onwards.

In this decision I will therefore only be considering the granting of the initial overdraft limit and three subsequent limit increases. I will also consider if there was an earlier point I think Halifax should have reviewed Mr C's account and taken steps to support him.

We've explained how we handle complaints about unaffordable and irresponsible lending on our website. I have used this approach to help me decide Mr C's complaint.

Halifax needed to make sure it lent responsibly to Mr C. It therefore needed to complete sufficient checks to determine if Mr C could afford to sustainably repay the lending. Our website sets out our approach to what we typically think when deciding if a lender's checks were proportionate. There is no set list of checks a lender should do, but there is guidance on the types of checks a lender could complete. However, these checks needed to be proportionate when considering things like the amount and term of the lending, what the lender already knew about the consumer, etc.

Generally, we think that earlier in a lending relationship it would be reasonable for a lender's checks to be less extensive. However, we might expect a lender to do more, for example, if a borrower's income was low or the amount lent was high.

Before agreeing the overdraft and subsequent limit increases Halifax has said it asked Mr C for his net monthly income, housing costs and other major commitments. It also gathered details of his regular financial commitments by completing credit searches.

In relation to the initial limit increase April 2019 it's not clear what Mr C declared as net income. However, given around two months after this in June 2019 he declared a net monthly income of £2,400, I think it's reasonable that he would have declared similar income and outgoings at the time of the initial application. His income declarations increased to £2,800 from the October 2019 increase.

Turning to the results of the credit search, the earliest information Halifax can provide is from September 2019. Although the results are limited, they show Mr C had one default listed which was around 26 months old by the time of the October 2019 application.

Taking everything into consideration, I think these checks were proportionate. I think that Halifax had gained a reasonable understanding of Mr C's income and expenditure, and it had independently verified some of the information provided by completing a credit search. So I think it completed sufficient checks before deciding whether or not to agree the initial limit and subsequent increases still in dispute.

However, I still need to consider whether or not Halifax made fair lending decisions as a result of the information gathered. Turning to the information the checks revealed, Mr C declared a net monthly income of £2,400 in June 2019, increasing to £2,800 by October 2019 and taking into consideration his estimated expenditure, including credit commitments, Halifax's calculations still suggested Mr C had sufficient disposable income to comfortably afford the limits given.

Turning to the credit search results, although I only have extracts of the results from September 2019 onwards, this doesn't show Mr C had recent problems managing his money. Whilst it shows one default, this was over two years prior to the time of the October 2019 application. And so would have still been historic at the time of the initial overdraft application. In addition, although I don't have credit search results in relation to the April and two June applications, had there been recent adverse information showing, it would most likely have been reflected in the September 2019 results. So I'm satisfied the evidence

suggests the earlier credit searches were unlikely to have indicated Mr C had recent problems managing his finances.

I have noted that after the 28 June 2019 overdraft limit increase to £1,000 up to the 6 October 2019 increase to £2,500, Mr C begins to use his overdraft more consistently and is largely overdrawn during this period. However, within this time, I can see regular deposits into the account and these amounts are largely consistent with the income declarations Mr C made. I am also mindful that this is a relatively short period of time and as explained above, Mr C didn't have recent adverse information on his credit file at the time of this application. In addition, his repayments for unsecured credit commitments (taken from his credit file) had only increased from £82 per month to £98 and so they were relatively low and broadly consistent. So all other indicators suggested he was managing his finances well.

Taking everything into consideration, I think Halifax made fair lending decisions before agreeing the initial overdraft limit and all subsequent limit increases (up to and including the increase to £2,500). I think the checks Halifax completed were proportionate and demonstrated Mr C could have afforded to sustainably repay the borrowing. As explained above, I have some concerns about Mr C's overdraft usage in the months leading up to the £2,500 limit increase. However, I think that overall when weighing up all the information Halifax had available, that it did also make a fair lending decision in relation to this limit increase.

I've also considered whether Halifax acted unfairly in any other way. Halifax has agreed it should have taken steps to support Mr C further at the time of the first account review and so has agreed to refund all interest, fees and charges (plus pay interest where applicable) from the first review point onwards. (This was a year after the initial overdraft limit was given in April 2019.)

I've looked at the account usage leading up to the December 2019 overdraft increase, as arguably Halifax should have considered this before agreeing the December 2019 limit increase. Whilst there is heavy overdraft usage, there are also points where the balance has been cleared (albeit by Mr C taking out two loans) and Mr C's income is still going into the account. On balance, I don't think it was reasonable to expect Halifax to have taken proactive steps at this point. And I've not seen enough from how Mr C was managing the account after this time to suggest Halifax should have stepped in and completed an earlier review prior to when it completed the first annual review.

I've also considered whether the relationship might have been unfair under s.140A of the Consumer Credit Act 1974 (which Mr C's representative has argued.) However, I'm satisfied the redress I have directed above results in fair compensation for Mr C in the circumstances of his complaint. I'm satisfied, based on what I've seen, that no additional award would be appropriate in this case.

So to summarise, I think Halifax made fair lending decisions in relation to the initial overdraft limit and subsequent limit increases up to (and including) the October 2019 increase. I also don't think there was an earlier point prior to the first annual review where Halifax should have taken proactive steps to support Mr C with his overdraft usage.

### **Putting things right**

To put things right Halifax should pay the redress set out in the investigator's opinion which it has already agreed to. For the avoidance of doubt, this was in relation to the December 2019 overdraft increase and the first account review of April 2020. So Halifax should:

- Re-work Mr C's current overdraft balance so that any additional interest, fees and

charges applied as a result of the overdraft limit increase from 16 December 2019 onwards are removed. This means that from 16 December 2019 onwards interest can only be charged on the first £2,500 of any overdrawn balance.

AND

- Re-work Mr C's current overdraft balance so that all interest, fees and charges applied to it from April 2020 onwards are removed.

AND

- If an outstanding balance remains on the overdraft once these adjustments have been made, Halifax should contact Mr C to arrange a suitable repayment plan for this. If it considers it appropriate to record negative information on Mr C's credit file, it should backdate this to 16 December 2019 (the date the overdraft limit was increased to £3,000).

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 Mr C, 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 the adjustments have been made, then Halifax should remove any adverse information from Mr C's credit file.\*

\*HM Revenue & Customs requires Halifax to take off tax from this interest. They must give Mr C a certificate showing how much tax it's taken off if he asks for one.

### **My final decision**

For the reasons explained, I uphold this complaint in part and require Bank of Scotland (trading as Halifax) to put things right in the way I've explained above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 19 June 2025.

Claire Lisle  
**Ombudsman**