

The complaint

Mr L, who is represented by a third party, complains that Bank of Scotland plc, trading as Halifax ('Halifax') irresponsibly provided him with an overdraft he couldn't afford to repay sustainably.

What happened

In July 2006 Halifax agreed to provide Mr L with an initial overdraft facility of £1,000. The overdraft was reduced to £600 in July 2009 but then the limit went on to be increased to £800 in June 2018. Between then and August 2023 there were 48 changes to the overdraft limit, including 11 decreases.

Mr L, who started his complaint with Halifax in August 2023, says Halifax acted unfairly and irresponsibly in providing him with the overdraft facility and the increases to it that followed later. He also says that Halifax ought to have seen that Mr L became over-dependant on his overdraft and that this had a long-term impact on his overall financial situation.

Halifax said it had followed its correct procedures in providing the overdraft facility and the increases that followed. Halifax also said that part of Mr L's complaint had been made too late. This was because, applying our time limit rules, the decision to provide the overdraft and all the later decisions about the level of overdraft credit being made available to Mr L, were decisions that were made more than six years before Mr L started his complaint. Halifax also said that because of the three-year part of the time limit rule, Mr L was or ought to have been aware of it being unaffordable for him by November 2019 when it made him aware of how much the overdraft was costing him. So he ought to have complained within three years of that date.

Our investigator agreed that Mr L had brought part of his complaint too late under the time limit rules. This was because the decision to provide the overdraft facility and any increases to the overdraft before June 2018 had been made more than six years before the complaint had been raised. But any limit increases, together with interest and charges applied, within six years of the complaint being raised would be within the six-year part of our time limit rules. Our investigator also thought, applying the three-year part of the rule, that Mr L needed to have raised his complaint by August 2022, but hadn't done so.

However, our investigator also thought Mr L's complaint could be interpreted as being about an unfair credit relationship as described in Section 140A of the Consumer Credit Act 1974 (s140), which is in time under the rules. But, having looked into the merits of the complaint, he couldn't find sufficient evidence or information to make an uphold finding.

As Mr L didn't agree, his complaint has been passed to me for a final 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.

There are time limits for referring a complaint to the Financial Ombudsman Service, and Halifax has suggested that part of this complaint was referred to us too late because the decision to lend took place more than six years ago, as did the incurring of some of the overdraft charges and interest. Our investigator explained why it was reasonable to interpret the complaint as being about an unfair relationship as described in Section 140A of the Consumer Credit Act 1974, and why this complaint about an allegedly unfair lending relationship had therefore been referred to us in time. Our investigator has also said – and I agree – that Mr L hasn't raised any exceptional circumstances that apply to this complaint that would explain why the complaint has been made too late – and nor have I seen anything to show or suggest that such circumstances apply to the specific circumstances of this complaint from my own review of the file.

Seeing as I've decided not to uphold Mr L's complaint and given the reasons for this (which I'll go on to explain), whether Mr L referred his complaint about the overdraft lending decisions that happened more than six years ago in time or not has no impact on that outcome. Like our investigator, I think Mr L's complaint should be considered more broadly than just the decisions to grant overdraft credit, seeing as he has complained not just about those decisions but also the impact they've had on him over the course of his relationship with Halifax. Mr L's complaint in this respect can therefore reasonably be interpreted as a complaint about the fairness of his relationship with Halifax.

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

S.140A says that a court may make an order under s.140B if it determines that the relationship between the creditor (Halifax) and the debtor (Mr L), 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.

S.140B 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 what Mr L has complained about, I therefore need to think about whether Halifax's decision to provide Mr L with overdraft credit or other actions in relation to how it monitored his overdraft use created unfairness in the relationship between him and Halifax, such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove that unfairness.

Mr L's relationship with Halifax is therefore likely to be unfair if it didn't carry out proportionate affordability checks that might have shown the provision of overdraft credit to

be irresponsible or unaffordable, and if it didn't remove that unfairness if the overdraft went on to become unsustainable or otherwise harmful.

When assessing affordability, there wasn't a set list of checks that Halifax needed to complete. But they still needed to be borrower focussed and proportionate to things like the type of lending, its cost (such as interest, fees and charges) and Mr L's level of reliance on it plus – and importantly - how long it would take him to sustainably pay it off.

Before agreeing the overdraft, I would have expected Halifax to look into Mr L's financial situation to find out whether the facility was likely to be affordable for him as well as something he'd be able to use in a way that was both affordable and sustainable. Given the net salary he was receiving each month the initial overdraft limit of £1,000 looked to be manageable. Unfortunately, the full details of what Halifax saw at the time are no longer available. That's not surprising given the amount of time that has passed. It's likely that Halifax carried out checks with a credit reference agency and also placed some reliance on statistical information to help it to decide if the credit was likely to be affordable for Mr L. However, without having details to hand, I can't definitely say that Halifax carried out reasonable and proportionate checks at the time it agreed the overdraft facility and then again when it reduced the level of the overdraft in July 2009.

However, we know that Mr L chose to reduce his overdraft limit to £600 in July 2009. We also know that Mr L was only making use of his overdraft on an occasional basis from July 2009 all the way up to June 2018. This shows that Mr L's financial circumstances meant that he had less need to use the facility then

I've next looked at the period that's relevant to the six years before Mr L started his complaint. In June 2018, when his credit limit was increased to £800, Mr L was receiving around £1,800 in net salary each month. Mr L's bank statements in June 2018 show that, broadly speaking, he was managing his committed expenditure well. He was also using his overdraft sparingly.

From 2018 Mr L was making short term use of his overdraft facility. I would describe his use of it as sporadic. He rarely went over £600 of the facility and was able to return it to credit within a month or so.

Mr L's overdraft was increased to £1,200 in June 2020. By then his monthly net income had gone up to around £2,000 a month. Again, Mr L limited his overdraft use against a background of managing his monthly committed expenditure. There was no significant suggestion of being or getting into financial difficulties. In the run-up to the limit increase, Mr L was able to keep a credit balance in excess of £1,000 and up to as much as just under £5,000.

In January 2022 the overdraft went from £1,200 to £1,510. The overdraft levels were then adjusted on numerous occasions after that, right up to August 2023, when the overdraft limit reached £2,450. Again, having looked at Mr L's overdraft usage during this time, whilst I can see he was using it fairly regularly, he was able each time to return his account to credit. So its use was very much short term and whilst he was placing some reliance on it as a useful credit facility, I don't think this amounted to an over-reliance or significant evidence of a possible deterioration in his financial welfare. I've also seen that Mr L's salary was varied from month to month and this was reflected in his overdraft use – again, this suggests he was using it as a short-term 'buffer' rather than becoming overly reliant on it to the extent that it might be becoming unsustainable.

I appreciate that there would have been times – and it may even have been often – that Mr L may have been financially stretched and even finding himself juggling his finances for a short space of time. But an overdraft is intended as a short-term or emergency borrowing facility to be relied upon on such occasions. Mr L's income was sufficient to prevent him becoming over-reliant on his overdraft – plus Mr L chose to adjust its level. Given that Mr L was able to manage his committed expenditure and day-to-day spending without making excessive use of his overdraft, I would say he was using it in the way I would have expected. He was also still in a position where he could manage his committed monthly spending and still be able to fund various non-essential items. This suggests that he was balancing his daily outgoings with day-to-day spending sustainably, whilst using his overdraft as and when he needed to.

It also follows that there isn't enough evidence or information for me to make a finding that Halifax ought to have done more to support Mr L with his overdraft use. Mr L was also able to demonstrate the ability to manage and anticipate the extent to which he might need to use his overdraft, given that he took action to reduce it on at least 11 occasions between January 2022 and August 2023.

To summarise, I don't think Halifax acted unreasonably when it approved the initial overdraft and then continued to provide the facility with the various increases it made. I therefore don't find that Mr L's relationship with Halifax is currently unfair. It's not clear enough to me that Halifax created unfairness in its relationship with Mr L by irresponsibly giving him overdraft credit. And I don't find Halifax treated Mr L unfairly in any other way, based on what I've seen.

I acknowledge this outcome will be disappointing for Mr L. But I hope he will understand the reasons for my decision and that he will at least feel his concerns have been listened to.

My final decision

For the reasons given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 2 April 2025.

Michael Goldberg
Ombudsman