DRN-5398237

The complaint

Mr O complains Bank of Scotland plc trading as Halifax provided him with an unaffordable overdraft facility.

Mr O is represented by a professional representative, but for ease I'll refer to all submissions as though they are his own.

What happened

Halifax provided Mr O with an overdraft facility on the following terms:

Date	Existing Limit	Increase	New Limit
April 2020	£0	£200	£200
May 2020	£200	£300	£500
November 2020	£500	£200	£700
January 2021	£700	£100	£800
April 2021	£800	£200	£1,000

Mr O complained to Halifax in November 2023 about his overdraft facility. He said it was unaffordable and that had Halifax completed reasonable and proportionate checks it would have identified the lending was unaffordable for him. Mr O also says he experienced financial difficulties, and that Halifax shouldn't have continued to provide the facility on the same terms.

Halifax didn't uphold Mr O's complaint and he brought it to our service for review.

Our Investigator upheld the complaint and Halifax asked for an ombudsman's review. I recently issued a provisional decision where I set out, with reasons, my initial thoughts on this case and what I was intending to decide.

The below is an extract from my provisional decision:

"*We've set out our approach to complaints about irresponsible and unaffordable lending as well as the key rules, regulations and what we consider to be good industry practice on our website.*

At the time Halifax provided Mr O with the original overdraft limit and limit increases, it needed to take reasonable steps to ensure they were affordable and sustainable for Mr O. There isn't a set list of checks Halifax needed to conduct, but we'd expect the checks to be proportionate to the terms of lending being provided. In practice this means we generally consider a lender's checks need to be less detailed at the early stages of a lending relationship – in terms of the information it obtains and looks to verify to reach its decisions. But the longer the lending relationship exists, or if the level of lending is relatively high, or the borrower's income is relatively low, for example, then there's a higher risk of the lending being unaffordable or unsustainable; so, we'd expect more detailed checks from the lender for it to be able to evidence it didn't lend to a customer irresponsibly.

I've used this approach to help me decide this complaint and I've set out my findings below under separate headings for ease.

The original limit and limit increases in 2020

The original limit and the limit increase in May 2020 are for relatively modest values. At this point I'd have expected Halifax to have reviewed Mr O's management of his account, and management of the existing limits when they were in place, to look to obtain an understanding of his financial situation.

Although Mr O was paid weekly as a minimum he generally received around £1,400 in each of the months leading up to each increase in 2020; although in a number of months this was considerably more, as much as around £1,800. Having reviewed the evidenced non-discretionary expenditure going through the account, such as payments towards utilities, phone subscriptions, internet/tv package, food, transport, and Mr O's existing credit commitments, he's left with a reasonable level of disposable income, generally over £500, in each of the months.

Our investigator pointed out that Mr O's balance rarely saw a credit position across the 12 months leading up to the limit increase in November 2020. Having reviewed the statements I can't agree that this was the case. Generally speaking, Mr O's balance fluctuates between a credit and debit position. The fact that Mr O is paid on a weekly basis, and given how he manages his account, it does sit in a debit position more than a credit position. But, as I've found above, I think Halifax would reasonably have concluded Mr O had a level of disposable income left each month, which he would have been able to use to repay the overdraft either in full or in part within a reasonable period of time.

There's also no evidence to suggest Halifax ought reasonably to have considered Mr O was experiencing financial difficulties at any of the affordability reviews in 2020. I say this because apart from using the overdraft facility, there was no evidence of him going above the agreed limit, having direct debits or other payments returned, or receiving credits from other lenders to supplement his income, as an example.

As such I'm satisfied Halifax's checks would more likely than not have suggested these limits appeared sustainably affordable for Mr O, and that the facility could have been repaid or reduced over a reasonable period of time. It therefore follows I don't consider Halifax made unfair lending decisions in 2020.

The limit increases in 2021

On a similar basis to that which I've set out above, I don't consider Halifax made unfair lending decisions when increasing Mr O's overdraft limit to £800 and £1,000 in 2021.

My review of Mr O's account in the months leading up to these lending decisions shows that Mr O's income and non-discretionary expenditure largely remained consistent to that in 2020. And in each of the months leading up to these limit increases the evidence within the statements shows Mr O again generally had in excess of £500 disposable income each month. Mr O continued to use the facility each month, and to a higher level of utilisation within the first few months of 2021. However, the facility was being managed well; and I don't consider there were any other signs of financial difficulty, like those I've set out above, that ought reasonably to have caused Halifax concern.

So, while the overdraft limit was ultimately increased to £1,000 in April 2021, I consider Mr O could have repaid the facility within a reasonable period of time, given the disposable income *that appears evident from his statements, and as such I don't find Halifax made unfair lending decisions when providing these increases in 2021.*

Halifax's obligations when monitoring the facility on an ongoing basis

Halifax has an obligation to continue to monitor Mr O's overdraft facility, ensuring it remains sustainably affordable for him.

The relevant rules are set out in the Consumer Credit Sourcebook (CONC), within the Financial Conduct Authority (FCA) Handbook, details of which can be found online.

I've considered CONC provisions 5D and 6.7 when thinking about Halifax's ongoing obligations and in continuing to provide Mr O with the facility on the same terms.

These rules state that a lender must review and periodically monitor its customers use of an overdraft facility; identifying as early as possible patterns of repeat use, and identifying customers whose use suggests actual or potential financial difficulties.

This includes, but isn't limited to, communicating with the customer, and if after a reasonable period of time the pattern continues and the customer hasn't engaged, the business must look to take reasonable steps to set out suitable alternative options; or consider whether to continue offering the overdraft facility on the same terms, as long as this doesn't cause the customer financial hardship. Examples of financial difficulties can include, but aren't limited to, an upward trend in a customer's use of the overdraft facility, the number of days of use per month, the value of the borrowing, and incidences of refused payments, especially if there is a rise in the number or frequency of these over time.

Halifax's last limit increase and therefore last lending decision was in April 2021, so, I've considered it's review and renewal of the facility ought reasonably to have taken place in or around April 2022. In order to decide whether I consider Halifax acted reasonably by continuing to provide Mr O the facility on the same terms in April 2022, I've reviewed the management of the account across the previous 12 months.

Halifax has said it did identify Mr O as being a repeat usage customer as per the rules under CONC 5D.2.1R (2) (b), however that it didn't consider Mr O was showing signs of actual or potential financial difficulties. It's said it intervened when it reasonably identified Mr O was a repeat usage customer in August 2021, and took appropriate action in line with the regulations by engaging with Mr O.

I've carefully considered Halifax's arguments; having done so I'm not persuaded it did act reasonably when continuing to provide Mr O with the facility on the same terms from April 2022, and adding interest and charges to Mr O's account from this point in time.

I say this because there were signs of repeat use across the whole 12-month period, as Halifax had identified; but, more worryingly, there were also signs of actual financial difficulties.

Across the 12-month period Mr O's utilisation of the £1,000 limit was generally high, with his balance rarely, if at all, reducing below being £500 overdrawn. As I've set out above, Mr O was paid weekly, which does present a different picture of the management of an account compared to someone receiving a monthly salary.

But whereas Mr O had previously been managing his account to relatively modest overdraft limits, he was now showing a heavy reliance on the higher limit. Mr O's balance regularly exceeded being over £900 overdrawn, and he was increasingly becoming more reliant on *transfers in from what appear to be other accounts and family members for generally modest figures, which appear to be in order to keep his balance below the £1,000 limit. However, this wasn't always the case, and across the second half of the 12-month period there are multiple examples of direct debits being returned due to the balance exceeding the approved £1,000 limit; and in other instances, there are multiple examples of Halifax allowing the balance to go above the £1,000 approved limit.*

Quite often the bounced direct debits clearly related to existing credit commitments, or household subscription services – not discretionary expenditure. There were also instances where Mr O's weekly salary happened to credit the account on the same day as scheduled monthly direct debits; and it was only because of this that the balance didn't go into an unapproved position, or the direct debits weren't returned unpaid.

I therefore currently consider Halifax ought reasonably to have been on notice from its review in April 2022 that Mr O was showing signs of financial difficulty; and it ought to have stepped in and supported Mr O, rather than continuing to provide the overdraft facility on the same terms, and continue to apply debit interest and charges to Mr O's account."

Halifax responded and accepted my provisional decision. Mr O responded asking for copies of the bank statements I'd relied on when reaching my provisional decision. I extended the time for a response, but that deadline has now passed without any further submissions.

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.

Having done so, I've not been presented with any new information or evidence which leads me to conclude I should depart from the findings reached within my recent provisional decision.

As such, for the reasons set out in my provisional decision, I'm satisfied Halifax didn't make a fair lending decision when continuing to provide Mr O with the overdraft facility on the same terms from April 2022.

Did Halifax act unfairly or unreasonably in any other way

I've considered Halifax's actions after it ought reasonably to have become aware of Mr O's financial difficulties; and I've also considered whether the relationship might have been unfair under s.140A of the Consumer Credit Act 1974.

However, I'm satisfied the redress I'm directing in this case, as set out below, results in fair compensation for Mr O in the circumstances of his complaint. I'm therefore satisfied, based on what I've seen, that no additional award would be appropriate in this case.

Putting things right

In order to fairly resolve this complaint Halifax should take the following action:

- Re-work Mr O's current overdraft balance so that all interest, fees and charges applied to it from April 2022 onwards are removed.

AND

- If an outstanding balance remains on the overdraft once these adjustments have been made Halifax should contact Mr O to arrange a suitable repayment plan for this. If it considers it appropriate to record negative information on Mr O's credit file, it should backdate this to April 2022.

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 O, 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 O's credit file.

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

My final decision

For the reasons set out above my final decision is that I'm upholding Mr O's complaint about Bank of Scotland plc trading as Halifax.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 11 April 2025.

Richard Turner
Ombudsman