

Complaint

Mr B has complained that Bank of Scotland plc (trading as “Halifax”) irresponsibly provided him with an overdraft which it continued applying charges on even when he was in financial difficulty.

Background

Halifax initially provided Mr B with an overdraft, which had a credit limit of £200, in July 2016. Halifax agreed to increase the credit limit on the facility in incremental amounts (the lowest increase was for £50 and the highest increase was for £300) until after two increases in 2016, four in 2017 and a final two 2018, it reached a total amount of £2,000.00 in June 2018.

One of our investigators looked at Mr B’s complaint. After some toing and froing she eventually reached the conclusion that Halifax hadn’t acted fairly and reasonably when agreeing to the limit increases from November 2017 onwards. In other words, she considered that Halifax didn’t act fairly and reasonably when increasing Mr B’s overdraft limit past £1,200.00.

So it was the investigator’s recommendation that Mr B’s complaint should be partially upheld and that Halifax needed to refund the interest, fees and charges it added on overdraft balances above £1,200.00 from November 2017.

Mr B accepted the investigator’s assessment. But Halifax disagreed with it and asked for an ombudsman to review the case.

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 currently minded to partially uphold Mr B’s complaint. I’ll explain why in a little more detail.

We’ve set out our general approach to complaints about unaffordable/irresponsible lending - including the key rules, guidance and good industry practice - on our website. And I’ve referred to this when deciding Mr B’s complaint.

Halifax needed to make sure that it didn’t lend irresponsibly. In practice, what this means is Halifax needed to carry out proportionate checks to be able to understand whether Mr B would be able to repay what he was being lent before providing any credit to him.

Our website sets out what we typically think about when deciding whether a lender’s checks were proportionate. Generally, we think it’s reasonable for a lender’s checks to be less thorough – in terms of how much information it gathers and what it does to verify it – in the early stages of a lending relationship.

But we might think it needed to do more if, for example, a borrower's income was low or the amount lent was high. And the longer the lending relationship goes on, the greater the risk of it becoming unsustainable and the borrower experiencing financial difficulty. So we'd expect a lender to be able to show that it didn't continue to lend to a customer irresponsibly.

Halifax has said that it obtained some information on Mr B's income and his expenditure before deciding to lend to him. It says that it cross-referenced this against information it obtained on the funds going into Mr B's bank account and his existing credit commitments which it obtained from credit reference agencies.

On the other hand, Mr B says that this overdraft caused him hardship and he shouldn't have been allowed to continue using it.

I've carefully thought about what both parties have said.

Mr B's overdraft was an open-ended (running account) agreement (in other words, while Halifax was required to periodically review the facility, there was no fixed end date) where there was an expectation that he'd repay what he borrowed plus the interest due within a reasonable period of time.

CONC didn't (at the time of the lending decisions) and still doesn't set out a definition of a reasonable period of time. So I think it's important to note that a reasonable period of time will always be dependent on the circumstances of the individual case. Furthermore, for the credit limit increases there was only a need to carry out such assessments there was only a requirement where the lender was significantly increasing the credit limit.

I note that Halifax has done a retrospective income and expenditure assessment. The results of this has led it to conclude that the overdraft was affordable for Mr B, but his management of the account caused him to remain overdrawn for extended periods. I've thought about what Halifax has said. However, Mr B's management of his account and existing overdraft limit is a relevant consideration, under the regulator's rules and guidance, which Halifax ought to have taken into account when determining whether to increase the overdraft limit.

I say this because a look at Mr B's account statements show that Mr B rarely had a credit balance on his account in the period leading up to November 2017. I think that this ought to have been concerning as it showed that Mr B was hardcore borrowing. Furthermore, it appears as though Mr B had been incurring returned direct debits on the account too.

It also appears to be the case that Mr B's overdraft limit was increased to an amount exceeding his monthly income. I've seen that there was some disagreement between Halifax and the investigator over the relevance of this. I accept that the investigator could have been clearer and I agree with Halifax when it says that increasing a credit limit beyond a customer's monthly income is not in itself unreasonable, or a reason to uphold Mr B's complaint. So I want to be clear here that I'm not saying that there was or is a prohibition on providing an overdraft limit that exceeds a customer's monthly income, or that this in itself means that Mr B shouldn't have been lent to.

However, I'm mindful of the circumstances of this case. In particular, I think that Halifax ought to have had some concerns about Mr B having already accumulated a debt that he was visibly having trouble clearing. It's difficult to see how Mr B would be able to get into and then stay in a credit balance on a higher limit, above his monthly income, when by Halifax's own admission he wasn't managing his existing limit particularly well. And to me this is why it was unfair to increase Mr B's overdraft limit in these circumstances.

Halifax has also said that a customer operating their account within the terms and conditions wouldn't be asked to pay the overdraft on demand. It has also said that it wouldn't be fair and reasonable for it to require this where there was a realistic prospect of the customer repaying the overdraft within a reasonable period of time.

Again, I don't disagree with the principle of what Halifax has said. However, I do disagree with the relevance of that argument in this particular case. I say this here as the question I'm considering here isn't whether Halifax should have taken corrective action on the facility, it is whether it acted fairly and reasonably in increasing Mr B's limit.

In these circumstances, I don't think that it was fair and reasonable for Halifax to rely on what it may or may not have been told about Mr B's income and expenditure and its assumptions of his disposable income. I say this because irrespective of what Halifax may believe that its checks, calculations and assumptions showed, the actual data it had on Mr B's account management was clearly suggesting something different.

As I've explained, under the regulator's rules, an accountholder's management of their existing limit is in itself a relevant consideration when it comes to deciding whether it is reasonable to increase it. I don't think that it was fair and reasonable for Halifax to ignore Mr B's account management in the hope that Mr B's income and expenditure would result in him being able to manage a higher limit more appropriate.

I'm satisfied that Halifax ignored Mr B's existing management of his account in favour of a more optimistic assessment of his disposable income. I find that Halifax ignoring that Mr B's account management demonstrated that he was unlikely to be able to repay an overdraft limit of £1,500.00, within a reasonable period of time, saw it fail to act fairly and reasonably when increasing Mr B's overdraft limit in November 2017 as well as the occasions that it did in May 2018 and June 2018.

As Mr B ended up paying additional interest, fees and charges as a result of his overdraft limit being increased when it shouldn't have been increased, satisfied that Mr B lost out because of what Halifax did wrong and that it should now put things right.

In reaching my conclusions, I've also considered whether the lending relationship between Halifax and Mr B might have been unfair to Mr B under section 140A of the Consumer Credit Act 1974.

However, I'm satisfied that what I direct Halifax to do (in the section below) results in fair compensation for Mr B given the overall circumstances of his 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 B

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

- Reworking Mr B's current overdraft balance so that all interest, fees and charges applied to it (and which haven't already been refunded) on balances above £1,200.00 from November 2017 onwards are removed. This is to reflect the fact that Mr B's overdraft limit shouldn't have been increased in November 2017, May 2018 or June 2018.

AND

- If an outstanding balance remains on the overdraft once these adjustments have been made Halifax should contact Mr B to arrange a suitable repayment plan, Mr B 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 Mr B's credit file, it should reflect what would have been recorded had it started the process of taking corrective action on the overdraft in November 2017. Halifax can also reduce Mr B's overdraft limit by the amount of any refund if it considers it appropriate to do so, as long as doing so wouldn't leave him over any new 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 Mr B 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 B's credit file. Halifax can also reduce Mr B'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 B a certificate showing how much tax it has taken off if he asks for one.

My final decision

For the reasons I've explained, I'm upholding Mr B's complaint. Bank of Scotland plc 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 B to accept or reject my decision before 1 May 2025.

Jeshen Narayanan
Ombudsman