

Complaint

Miss R has complained about overdrafts that Bank of Scotland Plc (trading as “Halifax”) provided to her.

She says the overdrafts she was provided with, which had the limits increased, were unaffordable for her given her existing debts and she shouldn’t have been allowed to continue using them.

Background

Miss R has complained about the overdrafts on two current accounts that she had with Halifax. On the first account, which I’ll refer to as account A, the facility had a limit of £600. In August 2018, the limit was increased to £800 and then £1,200.00. The limit was then increased to £2,000.00 in June 2019, £2,500.00 in January 2020 and then finally £3,000.00 in August 2020¹.

On the second account, which I’ll refer to as account B, Miss R had a limit of £500 which was increased to £700 and then £1,000.00 in August 2018. The limit on the overdraft was then increased to £2,000.00 before it was removed in or around December 2019.

One of our investigators reviewed what Miss R and Halifax had told us. And she thought that Halifax hadn’t done anything wrong or treated Miss R unfairly in relation to providing the overdrafts, increasing the credit limits, or allowing her to continue using the facilities. So she didn’t recommend that Miss R’s complaint be upheld.

Miss R disagreed and asked for an ombudsman to look at the complaint.

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’ve decided not to uphold Miss R’s complaint. I’ll explain why in a little more detail.

Did Halifax act fairly and reasonably when providing Miss R with her overdrafts and increasing her credit limits?

We’ve explained how we handle complaints about unaffordable and irresponsible lending on our website. And I’ve used this approach to help me decide Miss R’s complaint.

¹ The information Halifax has provided indicates that an application for a limit increase from £2,500.00 to £3,500.00 was ‘referred’ in March 2020. But by November 2020 Miss R was applying to increase the limit from £3,000.00 to £5,000.00 and this was declined. The review dates on Miss R’s statements suggest that the increase from £2,500.00 to £3,000.00 took place in August 2020.

Halifax needed to make sure it didn't lend irresponsibly. In practice, what this means is Halifax needed to carry out proportionate checks to be able to understand whether Miss R could afford to repay any credit it provided.

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.

I understand that Halifax agreed to Miss R's initial application after it obtained information on her income and carried out a credit search. And the information obtained indicated that Miss R would be able to make sufficient credits to clear the overdraft balance which could be owed at the respective times.

On the other hand Miss R says that she shouldn't have been lent to or had her limit increased on the occasions that it was.

I've considered what the parties have said.

What's important to note is that Miss R was provided with revolving credit facilities rather than a loan. And this means that Halifax was required to understand whether limits of up to £4,000.00² could be repaid within a reasonable period of time, rather than all in one go. It's fair to say that an overdraft limit of up to £4,000.00 would have required reasonably chunky monthly credits in order to clear the full amount that could be owed within a reasonable period of time.

I understand that Halifax carried out credit checks on Miss R. I've considered the information that Halifax has provided us together with the information Miss R has sent in to get an idea of what Halifax is likely to have known about Miss R's existing credit at the respective times. Having considered the information provided, I've not seen any indication that Miss R had defaulted accounts or county court judgments ("CCJ") recorded against her, or that she had any short-term lending or high-cost borrowing at the time of any of the decisions to lend.

I appreciate that Miss R did have some existing active credit, including a loan with Halifax itself, by the time the limit increases in August 2018 took her combined limits to £2,200.00. I also appreciate that Miss R had successfully applied for a repayment holiday on her loan in early 2018. However, Miss R had successfully returned to making payments on her Halifax loan by the time of the August 2018 limit increase.

So it isn't the case that Halifax provided Miss R with overdraft limit increases while she had a repayment holiday on her loan. Furthermore, by the time that Miss R applied to take her overdraft limits to a combined amount of £4,000.00 she'd had already settled her Halifax loan ahead of the original scheduled end date, despite having had a repayment holiday. This was information that Halifax was entitled to take into account when deciding whether to lend to Miss R.

² This is the maximum amount that Miss R could owe if she used all of the credit available on both overdrafts. At this point, both of Miss R's accounts had individual overdraft limits of £2,000.00. By the time that the limit on account A was increased to £2,500.00 in January 2020, the overdraft on account B had already been removed and Miss R had a single Halifax overdraft.

As Miss R was an existing Halifax current account holder, I've looked at her statements in the period leading up to her applications. I think that it is fair to say that Miss R's account statements show that she was in receipt of sufficient funds each month in order to clear overdrafts of up to £4,000.00 within a reasonable period of time.

I fully accept it's possible that Miss R's position might have been worse than what it looks like on the information on her statements. Like I've said, I know that Miss R has referred to other debt and that she was receiving non-salary credits into her account. But it wouldn't be fair and reasonable for me to use hindsight here, or say that Halifax should have known this meant that it ought to have known Miss R was struggling at the time it was making its lending decisions. This is especially as the available information indicates that Miss R was in receipt of enough funds to repay what she could owe at the time the lending decisions were made.

The relevance of the outcome on Miss R's Halifax loan complaint

In reaching my conclusions, I've noted that Miss R has queried how it is possible for us not to uphold her overdraft complaints in circumstances where an investigator has upheld her complaint about the loan Halifax provided her with. I can understand why Miss R might find it strange that she's received a different outcome on this complaint which she perceives to be materially the same.

But it's important for me to explain that we consider complaints on an individual basis and looking at the individual circumstances. As I've already explained, what will constitute a proportionate check will very much depend on the particular circumstances of the individual application. A proportionate check, even for the same customer, could look different for different applications.

Furthermore, I'm not bound by the outcomes reached on different cases. This is particularly where the respondent firm has accepted an investigator's assessment of the complaint and that case therefore did not reach an ombudsman. Ultimately, I'm required to consider the facts of a case and reach my own conclusion on what's fair and reasonable in all the circumstances.

So the outcome Miss R has referred to receiving on her loan case cannot and does not bind me into reaching the same conclusion on this case. That said, consistency is important and with a view to providing some clarity and reassurance to Miss R, it might help for me to explain that there are some key differences between this overdraft complaint and Miss R's loan complaint.

Having looked at Miss R's loan case, it's clear that she was advanced a loan for a significantly higher amount (more than double) than she could ever have owed on these overdrafts. Furthermore, the relatively short loan term Miss R selected also meant that she had to pay much higher monthly payments and this significantly influenced the level of checks that Halifax was reasonably expected to carry out at the time and what it was expected to have known about Miss R.

In this overdraft case, I've already explained why I don't think that proportionate checks would have shown that the maximum amount she could owe as a result of these overdrafts was unaffordable for Miss R. I've also explained that Miss R didn't have set monthly payments that she needed to make on these facilities either.

For the sake of completeness, I think it's also worth me stating as Miss R's loan complaint has been upheld, the compensation she's received has effectively placed her in the position

she would be had she not been provided with that loan in the first place. As this correction has been made and that is effectively the position that Miss R is now in, it would not be fair and reasonable for me to now 'double count' this, by considering whether she could afford to clear the balance on this overdraft within a reasonable period of time, as well as make payments to the Halifax loan she's already been placed in the position of not having.

To do so would seek to place Miss R in the position she would be in had Halifax not provided her with any credit, because Miss R was in a position where she couldn't afford to repay any credit at all. I don't think that this is the position that reasonable and proportionate checks will have shown that Miss R was in, I'm also not persuaded that this was the position that Miss R was actually in either.

As this is the case, while I'm not required to replicate the outcomes reached on other cases, nonetheless I don't consider that my answer here is incompatible or inconsistent with the one Miss R received on loan complaint, notwithstanding the differing outcomes.

Bearing in mind all of this, I don't think that Halifax acted unfairly or unreasonably when providing her with her overdrafts or increasing her credit limits. As this is the case, I'm not upholding this aspect of Miss R's complaint.

Did Halifax allow Miss R to continue using an overdraft it ought reasonably to have realised had become unsustainable for her?

Even though I don't think that Halifax acted unfairly or unreasonably when providing Miss R with her overdrafts, or when increasing her agreed limits, Halifax still had an ongoing duty to review Miss R's overdrafts and consider whether it was fair and reasonable to continue allowing her to use the facilities in light of the way she was using them.

So I've also considered the position in relation to Miss R's overdraft usage once the limit increases were granted. In my view, if Miss R was locked into paying charges in circumstances where there was no reasonable prospect of her exiting her overdrafts then her facilities would have been unsustainable for her.

As I've previously explained, Miss R was in receipt of credits that were sufficient to clear the overdraft within a reasonable period of time. Although I do accept that there were plenty of times where Miss R met the criteria of someone who displayed a pattern of repeat use of their overdraft.

That said, while I'm not seeking to make retrospective value judgements over Miss R's expenditure, nonetheless there are significant amounts of non-committed, non-contractual and discretionary transactions going from her accounts. I accept that this in itself doesn't mean that Miss R wasn't experiencing financial difficulty. And I know that Miss R has referred to experiencing financial difficulty in her written correspondence.

However, I can't see that she ever made Halifax aware of this prior to December 2023. And there isn't anything in Miss R's transactions (other than her using her overdrafts which for the reasons I've explained doesn't suggest the facilities were unsustainable) which ought to have alerted Halifax to potential financial difficulty either.

Indeed, I'm mindful that Miss R was receiving significant amounts of funds into her accounts. I realise that Miss R has said that these funds weren't her income. I accept that this may be the case. However, given just how much the funds were and Miss R appears to be making payments to and from investment platforms, it's difficult for me to accept that Miss R was trapped into continuing to use her overdraft.

From what I've been able to see, there are many occasions where Miss R had surplus funds sufficient to remove the overdraft facilities and she did go on to remove the overdraft on account B in December 2019. Therefore, I'm satisfied that Miss R's case isn't one where the borrower was in an overdraft with no hope of being able to exit it.

In these circumstances and in the absence of being told anything by Miss R, I don't think that it was unreasonable for Halifax to have proceeded adding the charges that it did after having provided the overdraft and limit increases either.

Did Halifax act fairly and reasonably towards Miss R when she got in contact to explain that she was experiencing difficulty in December 2023?

I now turn to Miss R's comments regarding Halifax's actions once she notified it that she was having difficulty. There is no dispute that, in December 2023, Miss R notified Halifax that she had had a reduction in salary in August 2023 and she was now experiencing financial difficulty as a result.

When a lender becomes aware, or it ought reasonably to be aware, that a borrower is experiencing difficulty, I think that it is fair and reasonable to expect it to exercise forbearance and due consideration, in line with its regulatory obligations. There are a number of ways that a lender could exercise such forbearance and there is no one size fits all approach.

In this case, I can see that Halifax refunded the previous months' overdraft charges³ and then applied a temporary hold to any further charges being applied. I can't see that any charges have been applied since then and it looks like Halifax is awaiting information on an income and expenditure assessment in order to determine what, if anything Miss R is able to pay towards what she owes.

Furthermore, I understand that Halifax has said that it is still prepared to work with Miss R in terms of setting up an affordable and sustainable repayment plan for the balance after the conclusion of this complaint. As this is the case, I would encourage Miss R to get in contact with and co-operate with any steps that may be needed to review what she might, if anything, be able to repay to repay Halifax going forward.

I would also remind Halifax of its continuing obligation to exercise forbearance and due consideration in relation to this outstanding debt going forward. This is particularly as it is now aware that Miss R has said she is experiencing financial difficulty and has provided evidence of this being the case.

For the sake of completeness, I'd also add that Miss R may be able to complain to us – subject to any jurisdiction concerns – regarding any failure by Halifax to agree a repayment arrangement with her, or she is unhappy with any other actions in relation to it exercising forbearance going forward.

But for now, I don't think that Halifax has treated Miss R unfairly since she notified it that she was experiencing financial difficulty and having trouble clearing her overdraft balance. As this is the case, it follows that I've not been persuaded to uphold this aspect of Miss R's complaint either.

In reaching my conclusions, I've also considered whether the lending relationship between Halifax and Miss R might have been unfair to Miss R under s140A of the Consumer Credit Act 1974 ("CCA").

³ This is on account A as the overdraft on account B had already been removed by this stage.

However, for the reasons I've explained, I've not been persuaded that Halifax irresponsibly lent or treated Miss R unfairly in allowing to use her overdraft in the way that she did, bearing in mind all of the circumstances. And I haven't seen anything to suggest that s140A CCA or anything else would, given the facts of this complaint, lead to a different outcome here.

So overall I'm satisfied that it wasn't unfair for Halifax to provide the overdrafts or the limit increases to Miss R. I'm also satisfied that Halifax did not charge Miss R in circumstances where it ought to have realised that it was unfair to do so. As this is the case, I'm not upholding Miss R's complaint. I appreciate that this will be very disappointing for Miss R and I'm really sorry to hear that she's going through a difficult time. But I hope she'll understand the reasons for my decision and that she'll at least feel her concerns have been listened to.

My final decision

For the reasons I've explained, I'm not upholding Miss R's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss R to accept or reject my decision before 9 June 2025.

Jeshen Narayanan
Ombudsman