

## **The complaint**

Mrs M complains that Bank of Scotland plc trading as Halifax (“Halifax”) acted irresponsibly when it granted her a current account overdraft and that it failed to act when it could and should have been apparent to it that she was over reliant on that overdraft.

Mrs M is represented in her complaint but for ease I will refer to Mrs M in this decision when talking about her or her representative

## **What happened**

Mrs M has held an account with Halifax since 2010 and in 2011 was provided with an overdraft of £2,500. This overdraft was never increased.

In August 2023 Mrs M complained to Halifax that it had been irresponsible granting her a £2,500 overdraft in 2011 and that it had failed, annually thereafter, to consider whether she was in financial difficulties and whether the overdraft remained affordable for her.

On 5 October 2023 Halifax issued Mrs M with a final response letter (“FRL”). Under cover of this FRL, Halifax said it was unable to consider anything that happened over six years ago due to time limits. Halifax though explained the checks it would have completed when Mrs M first applied for her overdraft and the subsequent checks it undertook annually thereafter. Halifax didn’t uphold the complaint and said it was satisfied it had acted responsibly. Halifax later consented to us considering the merits of this complaint from the point of the application in 2011.

Unhappy with Halifax’s FRL, Mrs M brought her complaint to us in October 2023.

Mrs M’s complaint was considered by one of our investigators who concluded Halifax had acted unfairly when it failed to identify Mrs M’s over reliance on her overdraft and when it continued to charge her interest, fees and charges on it.

Halifax didn’t accept the investigator’s view, so the complaint has been passed to me for review and 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.

Having done so, I can confirm that I’ve reached the same conclusion as the investigator and for broadly the same reasons.

I’m aware that I’ve summarised this complaint above in less detail than it may merit. No discourtesy is intended by this. Instead, I’ve focussed on what I think are the key issues here. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts.

If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome. I will, however, refer to those crucial aspects which impact my decision.

Lastly, I would add that where the information I've got is incomplete, unclear or contradictory, I've to base my decision on the balance of probabilities.

The rules lenders must follow are set out by the industry regulator, the Financial Conduct Authority, in its Consumer Credit Sourcebook (CONC). CONC 5D.2 and 5D.3 set out what a business must do to intervene where a customer is repeatedly using their overdraft.

CONC 5D.2 sets out a business' obligation to identify and monitor repeat use of overdrafts and its obligation to identify customers in actual or potential financial difficulty. Some examples of things that might indicate financial difficulties are given here. For instance, use of other products which may indicate a fall in disposable income, an upward trend in a customer's use of the overdraft over time or where a customer has become or remained overdrawn in every month over a 12-month period.

CONC 5D.3 sets out what interventions the business should take in cases of repeat overdraft users.

Where there are signs that a customer is (or might potentially be) suffering financial difficulties, CONC 5D.3 sets out that the business must:

- Communicate with the customer highlighting the pattern of use and whether this is resulting in high avoidable costs AND encourage the customer to contact them about their situation AND provide contact details of debt advice charities.
- If after a reasonable period of time the pattern continues and the customer hasn't made contact, the business must take reasonable steps to contact the customer to set out suitable options designed to help the customer.
- If the customer still doesn't engage with the business the business must after a reasonable period, consider whether to continue offering the overdraft facility and whether to reduce it, so long as this doesn't cause the customer financial hardship.

Given this, I've considered whether Halifax has acted fairly and in line with its obligations under CONC.

*Halifax's decision to initially grant Mrs M an overdraft limit of £2,500 in 2011.*

Before authorising the initial overdraft limit of £2,500 in 2011, Halifax was required to complete proportionate affordability checks to ensure the credit was affordable and sustainable. What is considered proportionate will vary depending on the specific circumstances of each case, as there isn't a set list of checks that had to be completed.

Halifax told us that it no longer holds the credit risk and affordability data for Mrs M's initial application but that from the details Mrs M provided and what it already knew about her, together with information from credit reference agencies, she passed all its affordability checks.

As I don't know what those checks would have likely revealed, I can't conclude that Halifax acted unfairly in initially granting the overdraft.

I will now go on to consider whether Halifax continued to meet its obligation to review and monitor Mrs M's account in accordance with CONC 5D.3

*Halifax's decision to continue the overdraft upon review*

As highlighted above, the CONC regulations puts an obligation on lenders to consider whether an overdraft is being used for long term borrowing. So as well as needing to act responsibly when it took its decision to grant Mrs M an initial overdraft limit of £2,500 – ensuring that the overdraft was sustainably affordable without the need for Mrs M to borrow more – Halifax also needed to monitor and review her overdraft usage. And where it identified a pattern of repeat usage or identified Mrs M might be in actual or potential financial difficulty, it needed to step in. And on balance, I'm not satisfied Halifax have done this. I say this as from the statements I've seen from the October 2018 review onwards, Mrs M was in the main constantly overdrawn and at times exceeded the agreed overdraft limit. This resulted in direct debits being returned and daily charges whilst the limit was exceeded. There was also evidence that Mrs M was relying on payday loans.

Our investigator concluded that by the October 2019 review, there were signs of financial difficulty. And I agree as up to that point, whilst Mrs M had constantly used her overdraft, she had in the main managed her account reasonably well with sufficient income coming in each month to bring the account back into credit and no obvious signs of financial difficulty. But following the October 2018 review, there were clear signs of an over reliance and financial difficulty.

Halifax told us it considered Mrs H fell into the category of consumers that showed a pattern of repeated use and that its obligation was to monitor and communicate at least annually after the first two communications until the pattern of use ceases to be a concern and it believed it had met this requirement. Whilst I agree that Mrs H did fall into this category, I'm also satisfied that by the time of the annual review in October 2019, Mrs M was also displaying signs of actual or potential financial difficulties and the pattern of use continued.

Despite Mrs M having a salary being paid into her account each month sufficient to clear the overdraft, the account quickly became overdrawn again with the agreed limit being exceeded each month, direct debits were being returned and there was evidence of a reliance on payday loans. And so I think Halifax needed to consider other options such as but not limited to reducing or waiving interest or reducing the limit. But I can't see that Halifax considered any of these options at this time.

So taking into consideration Halifax's obligations under CONC, I'm not satisfied it did enough to support Mrs M. I say this because I think Mrs M was showing signs of financial difficulty by the time of the annual review in October 2019 and Halifax should have done more to help her to explore different options to reduce the debt. Because of this, I uphold this complaint from the date of the annual review in October 2019.

### *Did Halifax act unfairly in any other way*

I've also considered whether Halifax have acted unfairly or unreasonably in any other way and if an unfair relationship existed between Halifax and Mrs M, as defined by section 140A of the Consumer Credit Act 1974. However, I'm satisfied the redress I've Directed above results in fair compensation for Mrs M 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.

### **Putting things right**

Halifax should:

- Re-work Mrs M's overdraft account to remove any interest, fees and charges applied from October 2019.

AND

- If an outstanding balance remains on the overdraft once these adjustments have been made, Halifax should contact Mrs M to arrange a suitable repayment plan for this. If it considers it appropriate to record negative information on Mrs M's credit file, it should backdate this to October 2019.

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 Mrs M, along with 8% simple interest on the overpayments from the date they were made (if they were) until the date of the settlement. If no outstanding balance remains after all adjustments have been made, then Halifax should remove any adverse information from Mrs M's credit file.\*

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

### **My final decision**

My final decision is that I uphold this complaint. Bank of Scotland plc trading as Halifax should take the actions set out above in resolution of this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 7 May 2025.

Paul Hamber  
**Ombudsman**