

## **The complaint**

Mr L complains that Bank of Scotland Plc trading as Halifax (Halifax) lent to him irresponsibly.

## **What happened**

Mr L has an overdraft with Halifax, the initial lending decision for an overdraft of £1,000 was made in July 2016. The credit limit was increased in July 2018 to £2,000 and again in September 2019 to £2,500.

In November 2023, with the help of a representative, Mr L complained to Halifax saying it had lent to him irresponsibly and failed to appropriately monitor his account. He said this led to him paying more than he could afford in interest, fees and charges and as a result the relationship between him and Halifax was unfair.

Halifax looked into Mr L's complaint and said Mr L was too late to complain about the initial lending decision but considered the subsequent increases. It said it felt it had acted fairly in providing the increases and in renewing the overdraft at each review. Halifax concluded that it hadn't been made aware of any financial difficulties being suffered by Mr L despite it writing to him about his overdraft usage in 2021 and 2023. In summary Halifax didn't uphold the complaint.

Mr L didn't accept what Halifax said and, again with the help of a representative, referred his complaint to our service and one of our investigators looked into it. When our investigator requested information from Halifax, it provided what it had, but said it didn't consent to us looking into the whole complaint because part of it had been brought too late under the complaint handling rules set by the Financial Conduct Authority (FCA).

Our investigator disagreed with Halifax that it had been brought too late under the rules, so considered the merits of the complaint. But she didn't think Halifax had acted unfairly.

Mr L rejected the investigators view and Halifax didn't respond. As there was no agreement, the complaint has been passed to me for a 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 thinks this complaint was referred to us too late. Our investigator explained why she didn't, as a starting point, think we could look at a complaint about the lending decisions that happened more than six years before the complaint was made. But she also 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 (s.140), and why this complaint about an allegedly unfair lending relationship had been referred to us in time.

For the avoidance of doubt, I agree with our investigator that I have the power to look at the complaint on this basis. I think this complaint can reasonably be considered as being about an unfair relationship as Mr L says the overdraft lending given to him was unaffordable for him and wasn't properly monitored. This may have made the relationship unfair as he's said he had to pay more in interest than he could afford and was unable to reduce the debt. I acknowledge Halifax still doesn't agree we can look at parts of this complaint, but given the outcome I have reached, I don't intend to comment on this further.

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, relevant law in this case includes s.140A, s.140B and s.140C of the Consumer Credit Act 1974.

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, including:

- 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, requiring a refund, or to do or not do any particular thing.

Given what Mr L has complained about, I need to consider whether Halifax' decision to lend to him, or its later action or inaction, 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 and doing so would have revealed its lending to be irresponsible or unaffordable, or if it failed to appropriately monitor the account and doing so would have revealed the lending was unfair, and if it didn't then remove the unfairness this created somehow.

I think there are key questions I need to consider in order to decide what is fair and reasonable in the circumstances of this complaint:

- Did Halifax carry out reasonable and proportionate checks to satisfy itself that Mr L was in a position to sustainably repay the credit?
- If not, what would reasonable and proportionate checks have shown at the time?
- Did Halifax make a fair lending decision?
- Did Halifax act unfairly or unreasonably towards Mr L in some other way?

Halifax had to carry out reasonable and proportionate checks to satisfy itself that Mr L would be able to repay the credit sustainably. It's not about Halifax assessing the likelihood of it being repaid, but it had to consider the impact of the repayments on Mr L.

There is no set list of checks that it had to do, but it could take into account several different things such as the amount and length of the credit, the amount of the monthly repayments and the overall circumstances of the borrower.

Did Halifax carry out reasonable and proportionate checks to satisfy itself that Mr L was able to sustainably repay the credit and if not, what would reasonable and proportionate checks have shown at the time?

Halifax has only limited information about the initial lending decision as it only retains full information for six years. As the first lending decision took place more than six years before the complaint was raised, this isn't unreasonable. As Halifax hasn't been able to provide evidence of the checks it carried out at the time, I can't fairly conclude that reasonable and proportionate checks were carried out for the first lending decision. Having reached the same view, our investigator turned to the bank statements available for the period prior to July 2016 to ascertain what Halifax might have found if proportionate checks were completed.

These show that Mr L had a healthy balance in the account in the run up to the first lending decision and that he had a regular income made up of wages and what appear to be benefit payments averaging £1,649 a month. There were also significant transfers in and out of the account to and from another account in what appears to be Mr L's name. Even if we exclude the transfers between accounts, Mr L had a disposable income of around £600, which I think is sufficient to sustainably repay an overdraft of £1,000 over a reasonable amount of time. So, I'm not persuaded Halifax acted unreasonably when it first agreed to lend to Mr L.

Halifax told us that it completed credit checks and relied on the information Mr L had provided in his applications to reach its decisions to increase his credit limit. However, it hasn't provided this service with the results of the checks it did at the limit increases in July 2018 and September 2019. It has provided us with the applications which show Mr L declared his income but didn't declare any outgoings such as rent or repayments to other credit.

So, I've considered the statements that are available to understand how Mr L had been managing his finances prior to the limit increases. I can see that Mr L had credit cards that it appears he was making over payments to, and he had healthy balances in his account. In the periods before the increases Mr L had used his overdraft on occasion, but I don't think the usage would have given a cause for concern. Mr L had an average disposable income of over £700 just before the 2018 lending decision and an average disposable income of over £1,000 just before the 2019 limit increase. I think this is sufficient disposable income to be able to sustainably repay an overdraft of £2,000 and then £2,500 in a reasonable amount of time.

Overall, I'm not persuaded that Halifax created unfairness in its relationship with Mr L as a result of its decision to give him the overdraft or to increase his credit limit.

Did Halifax act unfairly or unreasonably towards Mr L in some other way?

Halifax has a responsibility to monitor its customers overdrafts. CONC 5D.2 covers a business' obligation to identify and monitor repeat use of overdrafts. It sets out that a business should identify any customers for whom there is a pattern of repeat use where there are signs of actual or potential financial difficulties, and customers who do not fall into that category. There is no set timeframe for the reviews to take place, but most banks review overdrafts annually.

Taking account of when the lending decisions on Mr L's account were made, and in the absence of Halifax informing us otherwise, it would have been reasonable for reviews to take place around July between 2016 and 2019 and then around September thereafter.

Looking at the account it appears that it was managed relatively well between 2016 and 2020. There was some use of the overdraft, but this was often for shorter periods of time, and I don't think the usage to this point suggested that Mr L was having a problem managing his money or that he was in financial difficulty.

From late 2020 the situation appears to have changed. Mr L starts to use his overdraft more and I think it was clear that Mr L was spending very little time in credit, and this continued to be the case until he complained in 2023. However, having reviewed the statements, I don't think this was as a result of financial difficulties, Mr L had consolidated some debt and had some new agreements, but he still had a disposable income of between around £400 and £1,000 a month. I think this was enough for Mr L to repay the overdraft over a reasonable period if he had wanted too.

That said, even though there are no signs of financial difficulty on the account I would have expected Halifax to get in touch with Mr L about his overdraft usage, given it's an expensive way to borrow over the longer term. I can see that Halifax contacted Mr L in 2021 and then again in 2023 about his overdraft usage. In these communications Halifax pointed out that the overdraft might be costing him more than he realised and that it was designed for short term borrowing. It suggested that he reduce his overdraft if necessary and explained how to do this. It also let Mr L know how he could get in touch with Halifax if he had concerns about his finances as well as providing the details of free debt advice charities in case Mr L preferred to speak to them. But I've seen no evidence that Mr L sought help with his finances before complaining in November 2023.

Given the lack of financial difficulties and the disposable income Mr L had, I think it was reasonable for Halifax to write to Mr L about his overdraft usage, there was no regulatory obligation on Halifax to do more than this. So, I don't think Halifax acted unfairly by not taking more significant action than this prior to the complaint being raised.

Overall, and based on the available evidence I don't find that Mr L's relationship with Halifax was unfair. It's not clear enough to me that Halifax created unfairness in its relationship with Mr L by lending to him irresponsibly, or failing to take the appropriate action when the account was reviewed.

I haven't seen anything to persuade me that any unfairness – or an unfair relationship between the parties under s.140A CCA – existed by the point Mr L complained. So, I'm satisfied s.140A CCA doesn't materially impact the outcome of this case.

So, based on what I've seen, I don't find Halifax treated Mr L unfairly. However, I would remind Halifax of its responsibility to treat Mr L fairly regarding any overdraft usage going forward.

### **My final decision**

My final decision is that 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 3 June 2025.

Charlotte Roberts

**Ombudsman**