

## The complaint

Mrs G complains Bank of Scotland plc trading as Halifax provided her with an unaffordable overdraft facility.

Mrs G is represented by a professional representative, but for ease I'll refer to all submissions as though they are her own.

## What happened

Halifax provided Mrs G with an overdraft facility on the following terms:

Date	Existing Limit	Increase	New Limit
August 2018	£0	£2,000	£2,000
October 2019	£2,000	£1,000	£3,000

Mrs G raised a complaint about unaffordable lending with Halifax in August 2023. She said proportionate checks ought to have led to it identifying this lending was unaffordable for her. Mrs G also complained about Halifax not supporting her when it ought to have been clear she was using the facility to make ends meet.

Halifax didn't uphold Mrs G's complaint and she referred it to our service for review.

Our investigator considered the details and upheld the complaint from the limit increase in October 2019. Mrs G accepted the view; Halifax didn't and 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:

*"The information in this case is well known to Mrs G and Halifax, so I don't intend to repeat it in detail here. While my decision may not cover all the points or touch on all the information that's been provided, I'd like to assure both parties I've carefully reviewed everything currently available to me; but I've focused my findings on what I consider to be the key points and facts relevant to this complaint. I don't mean to be discourteous to Mrs G or Halifax by taking this approach, but this simply reflects the informal nature of our service.*

*I'd also like to acknowledge that I've seen Mrs G has provided a decision reached by our service in support of her complaint. While I'm aware of this decision, I would set out that my review and decision here focuses on the individual details and circumstances of this case.*

*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 Mrs G with the original overdraft limit and limit increase, it needed to complete proportionate checks to ensure the credit limits were affordable. Halifax also has an obligation to continually monitor the facility and ensure it remains sustainably affordable for Mrs G.*

*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, and the information the business knew or ought reasonably to have known about the borrower. And it isn't sufficient for Halifax to just complete proportionate checks – it must also consider the information it obtained from these checks to go on and make a fair lending decision when providing this credit, and continuing to provide it on the same terms on an ongoing basis. This includes not lending to someone in financial hardship; and ensuring repayments can be made sustainably without the need to borrow further.*

*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 initial limit in August 2018 and limit increase in October 2019*

*Halifax has provided the details of the affordability checks it completed when approving the initial overdraft limit of £2,000 in August 2018 and the increase to £3,000 in October 2019.*

*It obtained details of Mrs G's income and non-discretionary expenditure, including any commitments to existing credit, which was all evident from her account statements.*

*Halifax has said at both lending events it considers its checks were proportionate and that it went on to make fair lending decisions when providing the overdraft limits.*

*I've carefully considered Halifax's arguments, and I'm currently persuaded by them.*

*I say this because through the checks it completed and the information it obtained it was able to reasonably understand Mrs G's financial situation. The checks enabled it to conclude Mrs G had a reasonable level of disposable income each month which would enable her to repay both of the overdraft limits that were approved within a reasonable period of time.*

*The statements I've reviewed evidence Mrs G's monthly income and regular expenditure, which includes a small number of payments towards mobile contracts, TV licence and media subscriptions, as well as a monthly payment to an existing credit commitment. There's no regular payments towards housing or other associated housing costs, but Mrs G confirmed to Halifax that her husband made these payments. Mrs G's income is evidenced as averaging around £1,700 per month across the three months leading up to the initial limit in August 2018, and her non-discretionary expenditure and credit repayments average around £500 per month. And in the three months leading up to the limit increase in October 2019 her income averages around £1,500 and her non-discretionary expenditure and credit repayments average around £300 per month.*

*There are cash withdrawals in the statements, but there are also other ad-hoc credits from what appears to be family members and other individuals, as well as multiple credits which include the reference 'rent', suggesting Mrs G was regularly in receipt of further funds which only acted to increase her monthly income further. But in any event, I consider the evidence suggests that before each lending event Mrs G was left with more than £1,000 of disposable income a month which could have been used in full or part to repay the overdraft limit within a reasonable period of time.*

*Our investigator upheld the limit increase in October 2019, as he said Mrs G's account hadn't been in a credit position for an extended period of time. While that is an accurate observation in the months leading up to this limit increase, I've seen that in the earlier months of 2019 Mrs G's account did swing into a credit position on a monthly basis, albeit generally briefly, before returning into an overdrawn position. But I don't consider an account largely running in an overdrawn position for a short period before this increase is, in itself, enough to suggest a customer may be experiencing financial difficulties; or that increasing the limit would be a problem.*

*I say this because, as I've found above, Mrs G's evidenced income and non-discretionary expenditure does provide a high level of disposable income. And there's no signs that I consider suggested financial difficulties, such as Mrs G having payments returned, going over the agreed limit, or obtaining other lending to support her income and expenditure. And while in the immediate months leading up to this increase Mrs G had remained in an overdrawn position, looking back over a longer period of time it had swung into credit on a monthly basis. So, at the point of the October 2019 limit increase it does appear to me that Mrs G could have repaid the increased limit within a reasonable period of time.*

*So, I consider Halifax made fair lending decisions when providing Mrs G with these limits.*

#### *The ongoing monitoring of the overdraft facility*

*Halifax's obligations didn't end when it approved the overdraft limits. The regulations also require Halifax to continually monitor the facility to ensure it remains suitable for Mrs G.*

*There isn't a set list of checks Halifax needed to complete, but it needed to satisfy itself that it was responsibly continuing to provide Mrs G with the facility on an ongoing basis on the same terms.*

*Halifax has told us that it completes reviews annually to ensure the facility remained responsibly lent. It's said on review of Mrs G's behaviours and management of the facility it's satisfied it fairly continued to provide her with the £3,000 facility. It has said, however, that as part of its ongoing review of the account following Mrs G's complaint, that it noticed a change in behaviours and management in around September 2024, and that it has taken forbearance action to look to support Mrs G.*

*Looking at Mrs G's management of the overdraft facility from October 2019 to October 2022 the pattern is fundamentally the same. Mrs G continues to run the account in a largely overdrawn position; and from around January 2021 to October 2022 Mrs G's account remains in an overdrawn position. However, it fluctuates on a monthly basis between low and high usage given her regular credits and debits.*

*But at the review point in October 2022 I consider it's clear that Mrs G's reliance on the overdraft has increased, with her utilisation regularly reaching 90% and above of the available limit in the months leading up to the review. There's also a couple of instances in mid-2022 where credits from what appear to be individuals have the reference 'loan' or 'lend'; and there are what appear to be correlating debits a few days or weeks later. This possibly suggests Mrs G was borrowing money from individuals when her overdraft utilisation was high, and repaying the individuals when she'd received her monthly income.*

*So, I consider by the review in October 2022 Halifax ought to have had concerns with Mrs G's management of the facility. By this review she had persistently been in an overdrawn position on the account for nearly two years. Her utilisation of the facility had steadily increased across this period, and there were also signs, as I've found above, that Mrs G may have been borrowing from individuals in order to supplement her income and*

*meet her expenditure. While on a strictly pounds and pence basis Mrs G appeared to have a level of disposable income each month to repay the overdraft borrowing within a reasonable period of time, her behaviours and management of the account suggested otherwise.*

*So, I think by October 2022 Halifax ought reasonably to have engaged with Mrs G to look to understand what her actual financial situation was, and whether it was responsible for it to continue to offer the overdraft on the same terms.*

*It could have done this in a number of ways, and I've seen Halifax did look to engage with Mrs G as by October 2022 it had sent her five letters across the previous two-year period. These letters set out her use of the facility, the cost of it, and provided details of support available, including independent services if Mrs G was experiencing financial difficulties. Halifax has said by sending these letters it wasn't suggesting there was a problem with Mrs G's use of the facility, but that it wanted to highlight her repeat use and give her details of support available in case this was needed.*

*While it's clear Halifax was taking some action to engage with Mrs G and make her aware of her use of the facility, I can't agree with its position that by sending these letters it wasn't suggesting there wasn't a problem. I say this because by October 2022 Halifax had sent five of these letters to Mrs G, and it's clear from her account management that her use of the facility hadn't changed; in fact, Mrs G's reliance had increased over time. So, I don't consider that continuing to send these types of letters and continuing to provide the overdraft facility on the same terms was reasonable; purely on the basis that it appears Mrs G wasn't engaging with the contact she was receiving. And as I've found above, I consider there were signs by October 2022 that Halifax ought to have engaged with Mrs G further in order to understand whether continuing to provide the facility on the same terms was reasonable.*

*However, I've seen Mrs G contacted Halifax in February 2023, setting out that she was in financial difficulties. The notes indicate an income and expenditure assessment was completed on the call, and it was found that Mrs G had a level of disposable income to be able to repay the £3,000 overdraft limit within a reasonable period of time. But, as I've set out above, while this may have been true on a strictly pounds and pence basis, I think there were signs in Mrs G's account management and changed behaviours, as well as the call she'd made to Halifax in which she told it she was struggling with her finances and needed support, that meant it ought reasonably to have taken action at this time and not continued to offer the overdraft facility on the same terms.*

*Halifax has said as part of its review of the complaint it has identified concerns in around September 2024 and provided forbearance. But, for the reasons I've set out above, I consider Halifax already had enough information to conclude it ought reasonably to have engaged further and looked to understand Mrs G's financial situation from October 2022. And given the information Mrs G disclosed in February 2023, I'm currently minded to conclude that Halifax ought to have stepped in and stopped offering the overdraft facility on the same terms from February 2023."*

Halifax responded and accepted my provisional decision. Mrs G's representative said it was taking Mrs G's instructions but hasn't responded further by an extended deadline.

### **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 act fairly when continuing to provide Mrs G with the overdraft facility on the same terms from February 2023.

#### Did Halifax act unfairly or unreasonably in any other way

I've considered whether Halifax has acted unfairly or unreasonably in any other way, including 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 Mrs G in the circumstances of the complaint. I'm therefore satisfied, based on what I've seen, that no additional award would be appropriate in this case.

#### **Putting things right**

As Halifax didn't step in and stop offering the overdraft on the same terms from February 2023, I consider it hasn't acted fairly and as such it should:

- Rework Mrs G's account so that all interest, fees and charges applied from February 2023 are removed.

AND

- If this leaves an outstanding balance Halifax should engage with Mrs G to arrange a suitable repayment plan for the remaining balance. If it considers it appropriate to record negative information on Mrs G's credit file, it should backdate this to February 2023.

OR

- If after the adjustments there is no longer an outstanding balance then any extra should be treated as overpayments and returned to Mrs G, 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 Mrs G's credit file. †

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

#### **My final decision**

My final decision is that I'm upholding Mrs G's complaint about Bank of Scotland plc trading as Halifax and direct it to resolve the complaint as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G to accept or reject my decision before 12 May 2025.

Richard Turner  
**Ombudsman**