DRN-5487428

The complaint

Mr E complains that Bank of Scotland plc, trading as Halifax, irresponsibly provided him with access to an overdraft facility and allowed him to become reliant on it without stepping in. He says this resulted in the relationship between the parties being unfair.

Mr E is supported in bringing this complaint by a representative. But, for ease, I'll refer to Mr E throughout.

What happened

Halifax provided Mr E with an overdraft facility for £250 in March 2019. The limit changed several times over the year before reaching £2,000 in November 2019.

In summary, Mr E says Halifax didn't undertake an appropriate assessment of his circumstances and failed to take into account that he was reliant on borrowing. As a result, Mr E says he remained at the upper limit of his overdraft for a prolonged period and incurred significant charges as a result.

Halifax reviewed Mr E's complaint. In summary, it thought the overdraft facility was affordable for Mr E once his income and essential spending was considered, and it could have been cleared in a reasonable period of time. Overall, it didn't uphold the complaint.

Mr E remained unhappy and brought his complaint to this service. One of our Investigators reviewed matters and didn't think Halifax was wrong to provide the opening overdraft limit or any of the subsequent increases. However, she thought that Halifax ought to have stepped in by the review that would have taken place in March 2021 as Mr E was displaying signs of financial difficulties. She then set out how she thought Halifax should put matters right for Mr E.

Mr E accepted this position, but Halifax disagreed with it. In summary, it noted that there was a lot of discretionary spending and cash withdrawals on the facility. Halifax said it sent Mr E letters about his overdraft usage but received no response from him. It also said Mr E had enough income to repay the overdraft within a reasonable timeframe.

Our Investigator's view remained unchanged. So, given that no agreement has been reached, the case has been passed to me to decide.

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.

I think it's important to firstly explain that I've read and considered all the information provided by both parties in reaching my decision. If I've not reflected something that either party has said, that's not because I haven't seen it, it's because I didn't deem it relevant to the crux of the complaint. This isn't intended to be a discourtesy to either party. Rather, it reflects my informal role in deciding a fair and reasonable outcome.

I’ve started by looking at whether Halifax acted fairly and reasonably when accepting Mr E’s overdraft application and then increasing his limit when it did.

The rules and regulations in place at the time Halifax provided Mr E with the overdraft required it to carry out a reasonable and proportionate assessment of whether he could afford to repay what he owed in a sustainable manner. This is sometimes referred to as an ‘affordability assessment’ or ‘affordability check’.

The checks had to be ‘borrower’ focused. This means Halifax had to think about whether repaying the credit sustainably and within a reasonable period of time would cause difficulties or adverse consequences for Mr E. In other words, it wasn’t enough for Halifax to consider the likelihood of it getting the funds back – it had to consider the impact of any repayments on Mr E.

Checks also had to be ‘proportionate’ to the specific circumstances of the lending. In general, what constitutes a proportionate affordability check will be dependent on a number of factors including – but not limited to – the particular circumstances of the consumer (e.g. their financial history, current situation and outlook, any indications of vulnerability or financial difficulty) and the amount/type/cost of credit they were seeking. I’ve kept all of this in mind when thinking about whether Halifax did what it needed to before lending to Mr E.

Mr E’s overdraft is a type of revolving credit facility. This means that when assessing whether Mr E could repay any overdraft sustainably, Halifax needed to consider whether Mr E could repay the amount he could owe as a result of his overdraft within a reasonable period of time.

Mr E applied for the overdraft facility in March 2019. As I understand it, Halifax didn’t complete a full income and expenditure assessment before providing the overdraft, but deemed it affordable based on its internal affordability criteria. It’s not clear to me exactly how Halifax reached this conclusion however, considering the income crediting Mr E’s account in the months leading up to the decision, I don’t think it was unreasonable to provide the opening limit of £250.

As I understand it, the limit was reduced before being increased again, ultimately to £250 in around July 2019. Halifax didn’t complete a full income and expenditure assessment, much like when it granted the opening limit. However, having considered the income crediting the account around the time, I find it was reasonable to provide these relatively modest limits too.

From around August – November 2019, the limit increased again incrementally before reaching £2,000. Halifax says it carried out an income and expenditure assessment for these increases and concluded that Mr E had sufficient disposable income ranging from around £589 – £731 each month. Overall, I’m persuaded that Halifax gathered enough information to show that a limit of up to £2,000 was likely to be affordable. So, considering all the available information, I don’t think it was wrong to provide the increases to the facility. Therefore, I’m satisfied that Halifax acted fairly and reasonably when it initially provided Mr E’s overdraft and also when it took the decisions to increase his credit limits.

As well as ensuring that Mr E could afford to repay the overdraft when the limits were initially provided, Halifax also had an obligation to monitor the facility to ensure it remained affordable and that Mr E could repay the debt within a reasonable period of time. As I understand it, Mr E’s overdraft facility was reviewed in March each year when the facility was renewed.

I’ve reviewed Mr E’s overdraft usage in the period leading up to March 2020. Having done so, Mr E was using his overdraft facility regularly and the account seemed to be overdrawn more than it wasn’t. In fact, it rarely saw a credit balance in the months leading up to the review. There were also occasions where the account went into the unarranged overdraft. That being said, I’m conscious there were a lot of discretionary transactions over the year. Mr E was also receiving incoming credits from others over the period.

On balance, whilst Mr E certainly wasn’t using his overdraft facility in the way it’s intended to be used – short-term emergency borrowing – I’m not persuaded that there were signs of financial difficulty such that Halifax ought reasonably to have realised that the overdraft had become demonstrably unsustainable. I say this especially bearing in mind the likely implications of Halifax stepping in at this stage – a default and/or other significant adverse information being reported about him – will more likely than not have been disproportionate.

However, by the following review date, not much had changed. Whilst there were still several discretionary transactions on the account, it had rarely seen a credit balance, now for a longer period of time. Additionally, Mr E was often using a sizable proportion of the available limit and the account often entered the unarranged overdraft. For example, much of October 2020 was spent in the unarranged overdraft and Mr E incurred daily overdraft charges. The same pattern occurred for a portion of January and most of February 2021.

Halifax will be aware that overdrafts are intended for short-term emergency borrowing and not prolonged day-to-day expenditure. By the review date that took place in March 2021, Mr E had been consistently overdrawn for a prolonged period. He was also clearly struggling to manage things as a result of being regularly in the unarranged overdraft and sometimes being in that position for a number of days.

Therefore, considering all the circumstances, I think Halifax should have taken action at this point, beyond letting Mr E know about his overdraft usage, but there’s no evidence to suggest it did. I’ve considered Halifax’s point that Mr E didn’t say he was in financial difficulty, however it ought to have been aware by the point it reviewed the overdraft usage that the facility wasn’t being used as intended. So, I think it shouldn’t have continued offering the overdraft on the same terms.

I’ve considered that Mr E had what appears to be a savings account that he moved money between, more regularly in 2019 and parts of 2020 compared with later in 2020 and 2021. So, I’ve thought about whether this information changes the findings I’ve reached. However, as I understand it, these transfers from the other account into this account in question stopped around the time Mr E began having difficulties in 2020 and 2021. I also find it unlikely that Mr E would have had enough funds to better his position, considering the management of the facility in question. And, in any case, as well as being consistently overdrawn, the account was often in the unarranged overdraft which – in my opinion – ought to have prompted Halifax to step in. It follows that this doesn’t change the findings I’ve reached.

So overall, I think Halifax ought to have taken action in March 2021 and shouldn’t have continued offering the overdraft facility on the same terms. I think by not doing so, it failed to act fairly and reasonably. Therefore, I think Halifax should put things right by doing the following:

- Rework Mr E’s current overdraft balance so that all interest, fees and charges applied to it from March 2021 are removed,

AND

- If an outstanding balance remains on the overdraft once these adjustments have been made, Halifax should contact Mr E to arrange a suitable repayment plan for this. If it considered it appropriate to record negative information on Mr E's credit file, it should backdate this to March 2021.

OR

- If the effect of removing the relevant interest and charges results in there no longer being an outstanding balance, then any extra should be treated as overpayments and returned to Mr E 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 the adjustments have been made, then Halifax should remove any adverse information from Mr E's credit file.*

*HM Revenue & Customs requires Halifax to take off tax from this interest. Halifax must give Mr E a certificate showing how much tax it has taken off if he asks for one.

I've considered whether the relationship might have been unfair under s.140A of the Consumer Credit Act 1974. However, I'm satisfied the redress I have directed above results in fair compensation for Mr E 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.

My final decision

My final decision is that I uphold this complaint and direct Bank of Scotland plc, trading as Halifax, to settle things in the way I've outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 22 July 2025.

Hana Yousef
Ombudsman