

## **The complaint**

Mr M, who is represented by a third party, complains that Bank of Scotland plc, trading as Halifax ('Halifax'), acted irresponsibly when it agreed to provide him with an overdraft facility and continued to make it available to him. He says Halifax failed to take into account his heavy reliance upon it and difficult financial situation.

## **What happened**

In January 2016 Mr M was accepted for a £500 arranged overdraft on his current account with Halifax.

One of our investigators looked into the complaint. Whilst they thought Halifax acted fairly in granting the initial overdraft facility in 2016, by 2019 it ought to have been apparent that Mr M had become over-reliant on it, following on from evidence suggesting that his financial could be worsening. It therefore shouldn't have continued to offer it to him.

Halifax disagreed with our investigator's finding. Essentially it says It says it was monitoring his account usage and carried out regular reviews. On that basis, it thought it was continuing to provide Mr M with his overdraft facility responsibly.

The complaint has therefore come to me for an ombudsman's 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.

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 this complaint.

Having done so, I will be upholding part of this complaint on broadly the same basis as our investigator. I will explain why.

Halifax needed to make sure it didn't lend irresponsibly. In practice, what this means is it needed to carry out checks that were reasonable and appropriate in order to understand whether Mr M could afford to repay any overdraft facility it made available to him.

Halifax's checks included finding out about Mr M's regular income and using statistical data to work out his likely monthly outgoings. This all suggested that an initial overdraft of £500 was likely to be affordable and something he could repay sustainably. So the checks carried out by Halifax were likely to have been fair and proportionate at the time.

I've next gone on to look at how, going forwards from the opening, Mr M used his overdraft alongside how he was using account for day-to-day purposes. The available bank statements from Mr M's current account have helped me when doing this.

I've noted that the income from the employer he was with at the outset appears to have ceased from around March 2017, being replaced by income from other sources. I can't identify the exact employment it relates to – it was possibly one job or maybe more – but there was regular income coming in.

I've also seen some evidence of Mr M using online gambling sites from around November 2016 – spending somewhere between £100-200 each month. That's a potential concern, but Mr M appears to have kept his gambling largely in check so that the sums he was spending remained more or less constant.

From around October 2017 Mr M was making payments that appeared connected to defaulted sums with another lender. The level of those payments suggests that Mr M had found it necessary to agree reduced payments. Halifax says that these payments were cleared by October 2019. Nevertheless, I think that it's a concern, suggesting at the very least that Mr M had been experiencing financial difficulties in the recent past.

I also notice that Mr M had two returned payments in May 2016. At around that time he also reached the limit of his overdraft for the first time. He also had a returned payment in March 2017. In 2018, however, he had no less than 10 returned direct debits that I can see, plus another two in January 2019.

I've seen that going forward from May 2016 Mr M was making very regular use of his overdraft facility. And by 2018, with the exception of last week or so in October, he was making heavy use of it each month. And on the occasions he exceeded it, he was of course being charged daily fees.

Halifax had an obligation to monitor how Mr M was using his overdraft and whether it was being used in the way it was intended – as a short term or emergency credit facility. It says its automated systems are continuously doing that.

Halifax has provided information it says shows that Mr M's account usage didn't show severe signs of financial difficulty going forward from January 2019. It identified that he was receiving varying levels of income at different times. It also said he was spending income on non-essential items. Halifax has also suggested that Mr M was in a position to repay his overdraft in full over a 12-month period by taking steps to reduce his non-essential spending.

Whilst I agree that Mr M had to take a measure of responsibility for managing his own finances, once it could be seen that Mr M was heavily reliant on his overdraft - which I think was very noticeable going forward from early 2018 - Halifax then had a duty to act by intervening to steadily reduce Mr M's reliance on his overdraft. Although £500 is a relatively low level of overdraft, it represented a significant proportion of his monthly income – something Halifax was or ought to have been well aware of.

Halifax has told us it sent letters to Mr M in 2024 and 2025 to notify him of his overdraft usage. These were not, it says, triggered by Halifax being concerned that Mr M might be in financial hardship. Rather, it was to point out that he was using his overdraft a lot and whilst Halifax still considered it to be affordable, it was open to Mr M to contact Halifax for support.

Putting everything together, I agree there's enough evidence to show that by early 2019, Mr M had become overly-reliant on his overdraft. It follows that I think Halifax ought to have been able to identify what was becoming an unsustainable pattern of overdraft use when carrying out the annual review of the overdraft facility in January 2019. By then, at the latest, Halifax ought to have realised that the overdraft was not being used on the short-term, limited basis it was intended for. So it needed to take steps to intervene and if necessary provide him with forbearance, as well as applying active measures to enable him gradually

to reduce his overdraft debt. It follows that I'm in agreement with our investigator that Halifax didn't treat Mr M fairly.

I appreciate that going forwards Mr M's financial situation may have shown signs of improvement. But the position remains that he continued to make use of his overdraft facility, exceeding it on occasion and so incurring more fees in the years that followed.

I've considered whether the relationship between Mr M and Halifax might have been unfair under S.140A of the Consumer Credit Act 1974. However, I'm satisfied the redress I have directed should be carried out for Mr M results in fair compensation for him 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 – what Halifax needs to do**

Halifax therefore needs to do the following:

- Re-work the overdraft balance so that all interest, fees and charges applied to it from 25 January 2019 onwards are removed and refunded, save for any that may have been removed already.

AND

- If an outstanding balance remains on the overdraft once these adjustments have been made, Halifax should contact Mr M to arrange a suitable repayment plan for this. If it considers it appropriate to record negative information on Mr M's credit file, it should backdate this to 25 January 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 Mr M, 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 his credit file. †

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

### **My final decision**

For the reasons I've given, I am upholding part of this complaint and require Bank of Scotland plc, trading as Halifax, to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 10 June 2025.

Michael Goldberg  
**Ombudsman**