

Complaint

Mr H has complained about the overdraft charges Bank of Scotland plc (trading as “Halifax”) applied to his account.

Mr H is being represented, by the (“representative”), in his complaint.

The representative has said the charges applied to Mr H’s account were unfair as there was a failure to take account of his patterns of reliance on debt and hardcore borrowing. In the representative’s view, there was no proper consideration of the longer-term impact of the borrowing on him.

Background

Mr H successfully applied for an overdraft with Halifax in September 2017. He was provided with a limit of £1,000.00 and this limit was never increased prior to his complaint in October 2023.

In October 2023, Mr H complained saying that he was allowed to continue using the overdraft in a way that was unsustainable and which caused him continued financial difficulty. Halifax partially upheld Mr H’s complaint. It did not think that it had done anything wrong or treated Mr H unfairly in the period up until September 2020.

However, it accepted that it shouldn’t have allowed Mr H to continue using his overdraft from September 2020 onwards as it ought to have realised that it had become unsustainable for him. So Halifax agreed to refund the overdraft interest, fees and charges applied to Mr H’s account from September 2020.

Mr H remained dissatisfied at Halifax’s response and referred his complaint to our service. One of our investigators reviewed what Mr H and Halifax had told us. He thought that what Halifax had already done to put things right for Mr H was fair and reasonable in all the circumstances of his case. The representative, on Mr H’s behalf, disagreed with the investigator and asked for an ombudsman’s decision.

My findings

I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

Having carefully considered everything, I’m satisfied that what Halifax has already done to put things right for Mr H is fair and reasonable in all the circumstances of his complaint. So I’m not requiring it to do anything more and I’m not upholding the complaint. I’ll now explain why in a little more detail.

Before I go any further, as this essentially boils down to a complaint that Mr H was unfairly charged as a result of being allowed to continue using his overdraft, I want to be clear in saying that I haven’t considered whether the various amounts Halifax charged were fair and reasonable, or proportionate in comparison to the costs of the service provided. Ultimately,

how much a bank charges for its services is a commercial decision. And it isn't something for me to get involved with.

That said, while I'm not looking at Halifax's charging structure per se, it won't have acted fairly and reasonably towards Mr H if it applied this interest, fees and charges to Mr H's account in circumstances where it was aware, or it ought fairly and reasonably to have been aware Mr H was experiencing financial difficulty. So I've considered whether there was an instance, or there were instances, where Halifax didn't treat Mr H fairly and reasonably in the period I'm looking at.

In other words, I've considered whether there were periods prior to September 2020 where Halifax continued charging Mr H even though it ought to have instead stepped in and taken corrective measures on the overdraft as it knew, or it ought to have realised, that he was in financial difficulty.

Having looked through Mr H's account statements throughout the period up to September 2020, I can't see that Halifax ought reasonably to have realised that Mr H was experiencing financial difficulty to the extent that it would have been fair and reasonable for it to have unilaterally taken corrective measures in relation to Mr H's overdraft.

To explain, there is no dispute that Mr H used his overdraft regularly. The representative's arguments appear to suggest that this in itself means that Mr H was experiencing financial difficulty and therefore the complaint should be upheld. But I think that it is far too simplistic to say that it automatically follows that a customer was in financial difficulty simply because they were using a financial product that they were entitled to use.

I accept that the rules, guidance and industry codes of practice all suggest that prolonged and repeated overdraft usage can sometimes be an indication of financial difficulty. However, this is not the same as saying that prolonged and repeated overdraft usage by a customer will always mean that they are, as a matter of fact, in financial difficulty.

So I think it's important to look at overall circumstances of a customer's overdraft usage as part of considering their overall financial position. And, in this case, I've considered Mr H's incomings and outgoings as well as any overdrawn balances and thought about whether it was possible for him to have stopped using his overdraft, based on this. I think that if Mr H was locked into paying charges in circumstances where there was no reasonable prospect of him exiting his overdraft then his facility would have been unsustainable for him. So I've carefully considered whether this was the case.

Having considered matters, it is clear that Mr H was often in receipt of credits that were not only sufficient to clear the overdraft within a reasonable period of time, but also able to clear the facility in full. Therefore, I'm satisfied that Mr H's case isn't one where the borrower was in an overdraft with no hope of being able to exit it. Although I do accept that there were occasions where Mr H met the criteria of someone who displayed a pattern of repeat use of their overdraft. For the avoidance of doubt, I accept that there is a section of CONC (CONC 5D) which relates to this.

However, even if Halifax didn't meet all of the requirements set out in CONC 5D, I wish to make it clear that I don't think that simply sending letters will mean that a lender will have met all of its obligations, I'd still need to consider whether Mr H lost out as a result of any potential failing. I've also therefore considered whether Mr H's use of his overdraft (and Halifax continuing to allow him to use it) was causing him to incur high cumulative charges that were harmful to him. Having considered matters, I'm satisfied that this isn't the case in this instance. I'll now proceed to explain why.

The first thing for me to say is that prior to September 2020, Mr H was in receipt of credits that were sufficient to clear the overdraft within a reasonable period of time. Therefore, I'm satisfied that Mr H's case isn't one where the borrower was in and overdraft with no hope of being able to exit it. Although I do accept that there were plenty of times where Mr H met the criteria of someone who displayed a pattern of repeat use of their overdraft.

For the avoidance of doubt, I accept that there is a section of CONC (CONC 5D) which relates to this. However, it's worth noting that CONC 5D came into force in December 2019. Therefore the September 2020 review, which is where Halifax agrees it ought to have acted, is the first review that took place after CONC 5D came into force. In any event, even though CONC 5D didn't apply at the time of Halifax's earlier reviews, I've nonetheless considered whether Mr H's use of his overdraft (and Halifax continuing to allow him to use it), prior to September 2020, was causing him to incur high cumulative charges that were harmful to him. Having considered matters, I'm satisfied that this isn't the case in this instance. I'll now proceed to explain why.

To start with, while I'm not seeking to make retrospective value judgements over Mr H expenditure, there are significant amounts of non-committed, non-contractual and discretionary transactions going from Mr H's account. Equally, I can't see that he was borrowing from unsustainable sources in order to meet his overdraft charges or that his borrowing was increasing exponentially.

Mr H did have a limited number of other credit commitments and there was some limited gambling but this does not mean that Mr H was struggling, or that he was reliant on credit to meet his essential expenditure. And it isn't immediately obvious to me that Mr H was borrowing from unsustainable sources – such as payday type lenders either. Furthermore, there simply isn't a prohibition on a customer having an overdraft should they also have other commitments in the way that the representative's argument appears to suggest.

I accept neither of these things in themselves (or when taken together) mean that Mr H wasn't experiencing difficulty. But I don't agree that Mr H was reliant on credit. He was quite comfortably able to make any essential commitments without using his overdraft – particularly given the relative low limit on the facility and he was regularly returning to a credit balance. However, he was choosing to use his overdraft to make discretionary transactions and in periods where he had increased funds his discretionary expenditure increased.

As the representative has also referred to CONC 5D (notwithstanding the fact that it only came into force in December 2019), I also wish to make it clear that it isn't simply the case that a customer should never be allowed to make discretionary payments from an overdraft. Indeed, its argument appears to be suggesting that a corrective action should be taken against a customer every time they meet the criteria for being sent a letter, irrespective of the circumstances. However, the rules and guidance aren't as blunt a tool as this.

Indeed, the representative's interpretation runs contrary to the purpose of the rules and guidance which is to ensure that customers are protected from high cumulative charges where they are likely to cause harm. The rules and guidance aren't to prevent the use of overdraft in all circumstances where a repeat use letter has been sent in the way that the representative's argument suggests.

Even more importantly the representative's argument is at odds with the concept of proportionality – a firm should take action proportionate to the circumstances. This concept of proportionality runs right through CONC 5 as a whole. Given the amount of funds that Mr H was in receipt of and the regularity of his credit balances, in the periods prior to the reviews which took place up to September 2019, I'm not persuaded that Halifax ought

reasonably to have realised that Mr H's overdraft usage was causing him harm at those respective stages.

Overall and having considered everything, I don't think that it was unreasonable for Halifax to have proceeded adding the charges that it did prior to September 2020. This is particularly bearing in mind the consequences of Halifax taking corrective action, in the way that it would have done had it acted in way that the representative is suggesting it should have, would have been disproportionate.

I say this because I don't think that it would have been proportionate for Halifax to demand that Mr H immediately repay his overdraft, in circumstances where there was a realistic prospect of Mr H clearing what he owed in a reasonable period of time. Indeed, I think that if Halifax had suggested that it would take corrective action, Mr H would have argued that it would be unfair, bearing in mind the consequences of such action being taken, in circumstances where he was regularly clearing the overdraft and having a credit balance each month.

Therefore, I've not been persuaded that Halifax acted unfairly towards Mr H by allowing him to use his overdraft in the way that he did up until September 2020. And any unfairness that may have occurred as a result of Halifax allowing Mr H to continue using the overdraft from September 2020 onwards has since been rectified by its refund of the interest, fees and charges from this point onwards. As this is the case, I'm satisfied that what Halifax has already done to put things right for Mr H is fair and reasonable in all the circumstances of his case and I'm satisfied that it doesn't have to do anything further.

Overall and having considered everything, while I can understand Mr H's sentiments and appreciate why he is unhappy, I'm nonetheless not upholding this complaint. I appreciate this will be very disappointing for Mr H. But I hope he'll understand the reasons for my decision and that he'll at least feel his concerns have been listened to.

My final decision

For the reasons I've explained, I'm satisfied that what Bank of Scotland plc has already done to put things right is fair and reasonable in all the circumstances and I'm therefore not upholding Mr H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 16 June 2025.

Jeshen Narayanan
Ombudsman