

## The complaint

Miss M complains that Bank of Scotland trading as Halifax acted irresponsibly when it continued to provide her with two overdraft facilities. Miss M says she became reliant on the overdrafts which soon became unaffordable. Miss M has asked for interest and charges incurred on the overdrafts to be refunded.

## What happened

The facts of this case are familiar to both sides, so I don't intend to repeat everything in detail here. Instead, I'll provide a summary.

In August 2010, Miss M opened a current account with Halifax (account number ending 39) – I'll call this 'Account One'. In January 2019, Miss M was provided with an overdraft facility of £100 on this account.

Alongside multiple decreases, the limit was increased a number of times in the years that followed. The highest limit was £2,000. A breakdown of the limit increases is set out below:

Lending Decision	Date	Existing Limit	Limit Increase	New Limit
Account Opened	5 August 2010	N/A	N/A	N/A
1	2 January 2019	£0	£100	£100
2	7 January 2019	£100	£150	£250
3	28 March 2019	£240	£240	£480
4	17 April 2019	£480	£320	£800
5	17 April 2019	£800	£100	£900
6	11 June 2019	£750	£100	£850
7	13 June 2019	£750	£400	£1,150
8	11 March 2020	£1,000	£1,000	£2,000
9	11 July 2020	£1,900	£100	£2,000

In April 2016, Miss M opened another current account (account number ending 67) - I'll call this 'Account Two'. In January 2019, Miss M was provided with an overdraft facility of £100 on this account.

Alongside multiple decreases, the limit was increased twice in the years that followed. The highest limit was £350. A breakdown of the limit increases is set out below:

Lending Decision	Date	Existing Limit	Limit Increase	New Limit
Account Opened	26 April 2016	N/A	N/A	N/A
1	2 January 2019	£0	£100	£100
2	13 November 2019	£80	£270	£350

3	22 October 2020	£100	£100	£200
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In August 2023 Miss M complained, via a professional representative (PR), to Halifax about its decision to lend in relation to Account Two. Halifax was unable to locate an arranged overdraft facility for Account Two at that time.

PR subsequently complained about Halifax's decision to lend in relation to Account One. As a result, the complaint was re-opened by Halifax at which time it was able to locate an arranged overdraft for Account Two.

In February 2024 Halifax issued its final response in relation to PR's complaint about both accounts. In short, Halifax did not uphold the complaint. In doing so, it said it *could see relevant checks were completed, and the affordability was considered with the details [Miss M] provided at the time*. Therefore, it was *satisfied these arranged overdrafts were given correctly...*

It offered £50 compensation for both the time taken to respond and for the incorrect information it provided when PR initially complained about Account Two.

Unhappy with this, PR on behalf of Miss M, referred the matter to our service.

One of our investigators looked into the complaint and, in May 2025, issued their findings in which they upheld the complaint in part. In short, our investigator said that with regards to Account One, *Miss M's account statements show that she regularly had returned direct debits on the account from July 2021. Furthermore, Halifax has provided evidence they declined a limit increase in December 2021 with the reason 'worst current status', it's unclear to me how and why Halifax did not consider this to be concerning*. Therefore, our investigator recommended Miss M's complaint about Account One is upheld from January 2022 – this being the date of the next annual review.

And with regards to Account Two, our investigator said by the time of the annual review in July 2021 *Miss M's account had not seen a credit balance for a prolonged period of time...and the sheer number of returned direct debits indicated that Miss M was struggling to make essential payments*. Our investigator, therefore, felt the Miss M's complaint about Account two should be upheld from July 2021.

Halifax accepted our investigators findings.

PR did not agree. In doing so, it said the bank statements our investigator provided it showed Miss M was consistently overdrawn on Account One from May 2019 and on Account Two from January 2019.

Therefore, PR said it felt *the complaints on the respective accounts could be upheld from May 2020 and January 2020 respectively, a year from the date they were consistently overdrawn*.

As an agreement couldn't be reached, the complaint 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'm aware that I've summarised this complaint above in less detail than it may merit. No

discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts.

If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome. I will, however, refer to those crucial aspects which impact my decision

Lastly, I would add that where the information I've got is incomplete, unclear or contradictory, I've based my decision on the balance of probabilities.

The rules lenders must follow are set out by the industry regulator, the Financial Conduct Authority, in its Consumer Credit Sourcebook (CONC). CONC 5D.2 and 5D.3 set out what a business must do to intervene where a customer is repeatedly using their overdraft.

CONC 5D.2 sets out a business' obligation to identify and monitor repeat use of overdrafts and its obligation to identify customers in actual or potential financial difficulty. Some examples of things that might indicate financial difficulties are given here. For instance, use of other products which may indicate a fall in disposable income, an upward trend in a customer's use of the overdraft over time or where a customer has become or remained overdrawn in every month over a 12-month period.

CONC 5D.3 sets out what interventions the business should take in cases of repeat overdraft users.

Where there are signs that a customer is (or might potentially be) suffering financial difficulties, CONC 5D.3 sets out that the business must:

- Communicate with the customer highlighting the pattern of use and whether this is resulting in high avoidable costs AND encourage the customer to contact them about their situation AND provide contact details of debt advice charities.
- If after a reasonable period of time the pattern continues and the customer hasn't made contact, the business must take reasonable steps to contact the customer to set out suitable options designed to help the customer.
- If the customer still doesn't engage with the business the business must after a reasonable period, consider whether to continue offering the overdraft facility and whether to reduce it, so long as this doesn't cause the customer financial hardship.

Given this, I've considered whether Halifax has acted fairly and in line with its obligations under CONC.

*Did Halifax conduct proportionate checks prior to making its lending decisions?*

#### Initial Lending Decisions - Account One and Account Two

Our website sets out what we typically think about when deciding whether a lender's checks were proportionate. Generally, we think it's reasonable for a lender's checks to be less thorough – in terms of how much information it gathers and what it does to verify it – in the early stages of a lending relationship.

But we might think it needed to do more if, for example, a borrower's income was low or the amount lent was high. And the longer the lending relationship goes on, the greater the risk of it becoming unsustainable and the borrower experiencing financial difficulty. So we'd expect

a lender to be able to show that it didn't continue to lend to a customer irresponsibly.

So before agreeing to approve or increase the credit available to Miss M, Halifax needed to make proportionate checks to determine whether the credit was affordable and sustainable for her. There isn't a prescribed list of checks a lender should make. But the kind of things I expect lenders to consider include – but are not limited to the type and amount of credit, the borrower's income and credit history, the amount and frequency of repayments, as well as the consumer's personal circumstances. And it's important to note that an overdraft is designed for short term borrowing. I'd also expect Halifax to think about Miss M's ability to repay the whole borrowing in a reasonable period.

Halifax hasn't provided our service with a copy of the raw data from the credit checks it carried out. It has, however, provided our service with a copy of the credit report dated February 2024 which is quite far removed from the initial lending decisions (in January 2019) to be of meaningful use.

But looking at the accounts statements I can see (as could Halifax at the time) that Miss M's monthly income was around £1,600 and it does not look like Miss M was committing a significant portion of her income towards existing credit commitments. Nor were there other consistent signs of financial strain (such as returned Direct Debits or reliance on short-term lending, for example).

With this in mind, and given the nominal limit, I am satisfied Halifax did not make an unfair lending decision when it agreed to provide Miss M with the overdrafts.

Halifax told us that with each subsequent increase, given the income and expenditure and the lack of any adverse information from the credit files, they were affordable for Miss M.

#### *Halifax's responsibility to monitor Miss M's overdraft usage*

##### Account One

As I've said, in response to our investigators findings, PR argued that Miss M's complaint about this account should be upheld from May 2020 – this being one year from the point at which Miss M was regularly using her overdraft.

As I've said, I've taken the opportunity to look through Miss M's bank statements, covering the period from when she started using her overdraft facility, in January 2019. I see that between January 2019 and May 2019 Miss M was only using her overdraft intermittently. There were regular periods during this when the account was brought into credit.

As PR noted, from mid-May 2019 onwards, Miss M appears to use her overdraft more consistently. Whilst payments in do, temporarily at least, bring the account into credit balance, for the most part Miss M was using the majority of her available overdraft limit from this time.

However, I can see that she had savings in a various accounts held with Halifax which - at times - could have cleared the overdraft in full and Miss M could have closed the facility.

Further, Miss M's monthly income was higher than her overdraft limit. And it's fair to say that her salary suggested she could have cleared her overdraft within a reasonable period of time had she wished to do so.

And whilst I'm not seeking to make retrospective value judgements over Miss M's expenditure, looking at the account conduct, I can't fairly say that Miss M was using her overdraft purely for essential spending, or because she had a reliance on credit to get by.

Equally, I can't see that she was borrowing from unsustainable sources in order to meet her overdraft charges or that her borrowing was increasing exponentially.

Whilst Miss M did have other credit commitments, this does not mean that she was reliant on credit to meet her essential expenditure. And it isn't immediately obvious to me that Miss M was borrowing from unsustainable sources – such as payday type lenders - in order to meet her overdraft charges or that her borrowing was increasing exponentially.

I accept none these things in isolation (or when taken together) mean that Miss M wasn't experiencing difficulty. But I don't think Miss M's wider circumstances lead me to conclude she was reliant on credit or otherwise trapped in a cycle of borrowing such that it ought to have given Halifax cause for concern.

However, as our investigator noted – and as Halifax appear to accept – the landscape changes somewhat by the time of the annual review in January 2022.

I say this for several reasons. Firstly, in the months prior to the annual review, there was evidence Miss M was beginning to experience financial hardship in the form of returned Direct Debits and reliance on short-term lending to get by.

What's more, Halifax has confirmed that it declined an overdraft limit increase application just one month prior to the annual review, in December 2021, with the reason for doing so being 'worst current status'. This ought to have alerted Halifax to the fact Miss M was potentially have some problems managing her money.

In addition, it looks like the funds in Miss M's savings accounts is reduced by this stage, such that it would be insufficient to clear the overdraft limit.

So, whilst Miss M's income remained higher than her overdraft limit, I think there were other indicators that ought to have alerted Halifax to the fact Miss M was in financial difficulty. And, in these circumstances, Halifax needed to take steps to intervene, provide her with forbearance and take active steps to enable her to reduce her overdraft debt. And I think this ought to have happened by January 2022.

It follows that I'm in agreement with our investigator that Halifax didn't treat Miss M fairly from January 2022 onwards.

### Account Two

As our investigator noted, the volume of transactions suggests this was not Miss M's primary bank account. It looks like Miss M moved money between accounts and this account was used primarily to pay some essential Direct Debits, as well as her rent.

Having reviewed Miss M's statements, I agree with our investigator that she was frequently utilising her overdraft (often towards the upper end of her credit limit). However, I don't agree that this complaint should be upheld from January 2020 (this being one year from the initial lending decision) for this reason as PR has suggested.

I say this because a customer can utilise their full overdraft limit for multiple reasons – not just because they're in financial difficulties. And Miss M's statements suggest it was her

management of her funds that resulted in her using her overdraft – which it is worth noting was relatively modest - so frequently.

After all, the available information suggests Miss M's monthly income was higher than her overdraft limit. (even when combined with the overdraft limit on Account One). And it's fair to say that her salary suggested she could have cleared her overdraft within a reasonable period of time had she wished to do so.

The available evidence suggests Halifax carried out another annual review in July 2021. By this point, Miss M had been utilising the overdraft facility consistently for over 18 months which may have given Halifax cause for concern. But, more than this, there were other signs of financial strain. For example, in the month prior to this annual review, there were regular returned Direct Debits to what would be considered important bills, including what appears to be car or home insurance, media/internet and TV licencing.

Looking at things in the round I think – and Halifax appear to agree - there were other indicators that ought to have alerted Halifax to the fact Miss M was in financial difficulty. And, in these circumstances, Halifax needed to take steps to intervene, provide her with forbearance and take active steps to enable her to reduce her overdraft debt. And I think this ought to have happened by July 2021.

### Summary

All of this leads me to conclude that Miss M was clearly experiencing financial difficulty and that her overall financial position was worsening to the point that there wasn't a realistic prospect that she would be able to pay off the overdrafts.

With regards to Account One, I think Halifax ought to have realised this by the time of the annual review in January 2022. And with regards to Account Two I think Halifax ought to have realised this by the time of the annual review in July 2021.

So, I'm satisfied it's appropriate to partially uphold this complaint from January 2022 in relation to Account One and from July 2021 in relation to Account Two

Miss M ended up paying additional interest as a result of Halifax failing to realise that she was in financial difficulty. Therefore, Miss M lost out because of what Halifax did wrong and that it needs to put things right.

In reaching my conclusions, I've also considered whether Halifax have acted unfairly or unreasonably in any other way and if an unfair relationship existed between Halifax and Miss M, as defined by section 140A of the Consumer Credit Act 1974.

However, I'm satisfied the redress I've directed in this decision results in fair compensation for Miss M in the circumstances of her complaint. I'm satisfied, based on what I've seen, that no additional award would be appropriate in this case.

### **Putting things right**

To put things right, Halifax should:

#### Account One

- Re-work the overdraft balance so that all interest, fees and charges applied to it from 1 January 2022 onwards are removed, less those that have been already refunded to Miss M (if any).

AND

- If an outstanding balance remains on the overdraft once these adjustments have been made, Halifax should contact Miss M to arrange a suitable repayment plan for this.

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 Miss 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 her credit file. †

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

#### Account Two

- Re-work the overdraft balance so that all interest, fees and charges applied to it from 25 July 2021 onwards are removed, less those that have been already refunded to Miss M (if any).

AND

- If an outstanding balance remains on the overdraft once these adjustments have been made, Halifax should contact Miss M to arrange a suitable repayment plan for this.

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 Miss 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 her credit file. †

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

#### **My final decision**

My final decision is that I uphold this complaint in part. I require Halifax to put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 29 July 2025.

Ross Phillips  
**Ombudsman**