

The complaint

Miss D argues Bank of Scotland plc trading as Halifax acted unfairly in relation to an overdraft it gave her.

What happened

In August 2018 Halifax agreed a £200 overdraft on Miss D's current account. Miss D has said that she couldn't afford to repay the overdraft. She's said Halifax failed to protect her from financial hardship and she struggled with overdraft costs, consistently living in her overdraft.

Halifax considered her complaint but disagreed. It said it lent responsibly to Miss D and found no evidence of financial difficulties such that it should have proactively stepped in to offer Miss D support. Miss D didn't agree with Halifax's response to her complaint and referred her complaint to our service.

One of our investigators considered the complaint. They didn't think Halifax acted unfairly when the overdraft was given. However, they felt that there were clear signs that Miss D was struggling and that it should have stepped in sooner to offer support. So, they said from August 2021 (at the time of the third annual account review) Halifax should have taken action. So they upheld the complaint from this point.

Halifax didn't agree and so the complaint has been passed to me to consider.

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'm planning to uphold this complaint for predominately the same reasons as the investigator.

I've read everything that the parties have said, but I'll concentrate my comments on what I think is relevant. If I don't comment on a specific point it's not because I've failed to consider it, but because I don't think I need to comment in order to reach a fair and reasonable outcome. And our rules allow me to do this. This reflects the nature of our service as a free and informal alternative to the courts.

The initial lending decision

We've explained how we handle complaints about unaffordable and irresponsible lending on our website. I have used this approach to help me decide Miss D's complaint.

Halifax needed to make sure it lent responsibly to Miss D. It therefore needed to complete sufficient checks to determine if Miss D could afford to sustainably repay the lending. Our website sets out our approach to what we typically think when deciding if a lender's checks were proportionate. There is no set list of checks a lender should do, but there is guidance

on the types of checks a lender could complete. However, these checks needed to be proportionate when considering things like the amount and term of the lending, what the lender already knew about the consumer, etc.

Generally, we think that earlier in a lending relationship it would be reasonable for a lender's checks to be less extensive. However, we might expect a lender to do more, for example, if a borrower's income was low or the amount lent was high.

Halifax has said it no longer has credit application data given how long ago the application took place. So it's not clear what checks it completed or what those checks revealed. So I don't know if Halifax completed proportionate checks before agreeing to lend.

However, Halifax has reviewed Miss D's current account statements in the months leading up to it granting the overdraft and has said that based on this, the £200 overdraft appeared affordable for Miss D. Having also reviewed Miss D's bank statements in the period leading up to Halifax agreeing the overdraft, I can see she is employed and so is receiving an income. This fluctuates from around £1,300 to around £1,700 per month. Whilst I can see some high-cost credit, this wasn't overly excessive and I don't think it suggested Miss D was overindebted. Overall, I think this suggests the £200 overdraft would have been affordable for Miss D. So I think Halifax made a fair lending decision.

Monitoring of the account

The regulations applicable at this time were set out by the industry regulator, the Financial Conduct Authority, in its Consumer Credit Sourcebook (CONC).

CONC 6.7.2R(1) said "A firm must monitor a customer's repayment record and take appropriate action where there are signs of actual or possible repayment difficulties."

While CONC doesn't set timeframes in which businesses ought to review overdrafts, we generally expect a review to take place at least annually (or when a new limit is applied for) and that such a review would consider things such as:

- how the account is funded;
- how often the account has a credit balance;
- how the overdraft facility is being used; and
- whether there were any signs of financial difficulties, which might mean the customer would struggle to repay their overdraft within a reasonable period of time.

I can see from Miss D's bank statements it states the renewal date is 21 August each year which would be the anniversary of the overdraft being given. I have looked at Miss D's overdraft and how she was managing the account, and I agree with the investigator that by 21 August 2021 it should have been clear to Halifax that Miss D was struggling financially, and I think it should have proactively taken steps to support her.

From looking at her account statements I can see there has been heavy use of the overdraft and for a sustained period. Typically, Miss D receives her benefits into the account and this only provides short-term assistance. Miss D is then quickly overdrawn again and usually remains in that position until her next benefit payment (at which point the pattern typically continues.) Given this is being sustained for a significant period of time its clear that Miss D was reliant on her overdraft throughout the majority of the month and not using it as a short-term solution. So I don't agree that Miss D was using the overdraft in the way it was intended

to be used.

I've considered whether Halifax should have stepped in at an earlier review. However, whilst there are some concerning signs of struggling on her account in the years prior to this review, I think that it's not until the period leading up to August 2021 that there is more sustained evidence of Miss D's financial struggles.

Halifax has argued that Miss D was choosing to manage her money in this way. It says Miss D was making transfers to her ISA and if she wanted to, she could have easily cleared such a minimal debt. I think Halifax's arguments are based too heavily on the fact that this is only a £200 overdraft and so objectively it's a low amount which should be easy to clear. However, when considering the limit, Halifax should also take into consideration Miss D's income and how she is managing the account.

Having reviewed Miss D's ISA statements, it is clear that she doesn't have a consistent amount of savings available to repay her overdraft and so stop using it (as Halifax has argued). Her behaviour suggests to me that she is trying to ringfence small amounts of money before needing to transfer funds back and spend them. I note Miss D has said she was doing this to try and protect direct debits. I think it's clear from looking at her account statements that this was a pattern of behaviour over a period of time. And so, I don't agree with Halifax's argument that Miss D was simply choosing to manage her overdraft poorly, when she clearly had disposable income available to repay it.

Halifax has also made comments that there is a large amount of discretionary spending such as takeaways. Miss D has explained that due to her wider health circumstances she found it difficult to leave the house at times and so it was essential she ordered food. However, even if this wasn't the case, financial struggles may well be caused by poor money management, but I don't think that this negates Halifax's responsibility to step in when there are clear signs their customer is struggling financially. And given Miss D's relatively modest income and how she was managing the account, I think there were clear signs.

Finally, I have noted that Miss D went on to speak to Halifax several times when she continued to struggle and Halifax attempted to complete an income and expenditure ("I&E") assessment. In October 2022 Miss D explained that a direct debit had mistakenly come out of her account and she needed this money to pay for food for her child. At this time, she declined to complete an I&E with Halifax. However, when she spoke to Halifax in May 2023 she did provide details of her I&E information which suggested she was already unable to repay her existing commitments. At this time, she said she didn't want the overdraft removed or the account defaulted. Furthermore, Halifax has said it has provided short-term interest waivers.

I've considered everything Halifax has said it has done to support Miss D, however all the information I have suggests this was years after the point I think Halifax should have stepped in. I note Halifax hasn't been entirely clear about when the interest waivers took place, but the evidence I have suggests this was much more recently. However, in any event, I don't think a short-term interest waiver was sufficient to make a material difference to her circumstances. I've also considered Miss D's request not to remove the overdraft or default the account. I can appreciate why Miss D would have said this at the time – most customers are likely to view these options as a negative when they are struggling financially. However, this doesn't prevent Halifax's responsibility to take these steps where necessary, particularly as the notes suggest that this wasn't caused by a change of circumstances and she had no clear and realistic strategy for how she was going to improve her circumstances.

Whilst I've carefully considered Halifax's arguments, for the reasons explained above, I think Halifax should have stepped in earlier to support Miss D. And I'm not persuaded that the

limited steps it took after this time were sufficient to support Miss D.

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 Miss D 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

- Re-work Miss D's current overdraft balance so that all interest, fees and charges applied to it from 21 August 2021 onwards are removed.

AND

- If an outstanding balance remains on the overdraft once these adjustments have been made, Halifax should contact Miss D to arrange a suitable repayment plan for this. If it considers it appropriate to record negative information on Miss D's credit file, it should backdate this to 21 August 2021. I would encourage Miss D to work with Halifax to create a suitable repayment plan if possible. If this isn't possible, Halifax may need to recover the outstanding balance through its usual collections activities. However, I would remind Halifax of its responsibility to treat customers in this situation positively and sympathetically, particularly given what Miss D has told it about her vulnerabilities.

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 D, 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 Miss D's credit file from 21 August 2021 onwards. †

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

My final decision

For the reasons I've explained, I uphold this complaint in part and require Bank of Scotland plc trading as Halifax to put things right in the way I've described above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D to accept or reject my decision before 15 October 2025.

Claire Lisle
Ombudsman