

## **The complaint**

Mr H, who is represented by a third party, complains that Bank of Scotland plc, trading as Halifax ('Halifax') acted irresponsibly when it provided him with an overdraft facility. He says the overdraft became unaffordable and has asked for the interest and charges incurred on the overdraft to be refunded.

## **What happened**

In 2006 Mr H was accepted for an initial overdraft on his current account. Both Halifax and Mr H have agreed that for this decision we are only looking at the period of his account and overdraft usage going forward from 15 September 2017. During that time Mr H had an overdraft facility of up to £4,300.

I understand the account was closed in March 2025.

Halifax didn't uphold Mr H's complaint. It said, having reviewed the account and overdraft use since 2017, it had no concerns with how it was being used at each annual renewal date. Halifax also said that Mr H was receiving a regular income and after paying his essential commitments, looked to have had enough funds to pay down or reduce the overdraft had he wished to.

One of our investigators reviewed what Mr H and Halifax had told us. And she thought Halifax had acted unfairly in charging overdraft fees from 15 September 2018. This was on the basis that Mr H wasn't using his overdraft on the short-term or emergency basis it was intended for. She also found that his level of use meant it was unsustainable, with his income not being able to bring the account into credit. So, Halifax ought to have properly monitored what was happening and stepped in to help Mr H so he could reduce his overdraft reliance and wouldn't continue to incur fees and charges.

Halifax disagreed with our investigator. It said that Mr H was spending a significant amount of his income on non-essential items which didn't therefore suggest he was struggling financially. It also said that it had already agreed to compensate Mr H for the period from 22 September 2022 and to backdate the default date on his file to then.

When our investigator revisited her earlier findings she still thought Halifax ought to have done more to support Mr H, but given his level of non-essential spending in the 12 months leading up to September 2018, she thought it wouldn't be fair to ask Halifax to refund fees and interest for that period. So she said instead that Halifax should have acted by September 2019.

In my provisional decision dated 9 June 2025 I again upheld Mr H's complaint in part. But I decided that the original uphold point of 15 September 2018 that our investigator identified was the correct one, rather than a year later. Essentially, given the size of the overdraft and the extent to which Mr H had been using – and breaching it – in the previous 12 months, Halifax ought to have realised that the overdraft wasn't being used for its proper purpose and stepped in to provide help and support to Mr H. I set out an extract below.

*"I've seen that Mr H was using his overdraft for the full 12 months before September 2018. For the most part he was using all, or at best around 75-80% of his £4,300 overdraft limit. That means he was never earning enough from month to month to be able to put his account back into credit. He went over his agreed credit on numerous occasions, and so incurred fees at the unarranged overdraft level. He also had several items returned as unpaid due to lack of available funds.*

*Halifax makes the point that during this time his level of non-essential spending was significant – that is things he didn't necessarily have to spend his money on, such as eating out, hotels, plus other items that could be considered to be leisure spending. Halifax says that it was continuously monitoring accounts from 2019 due to changes in the requirements set by the Mr H Credit sourcebook ('CONC') guidance, requiring businesses to look for signs of actual or potential financial difficulties as well as when customers show a pattern of repeat use of their credit. It's good industry practice for responsible lending that businesses like Halifax should be monitoring how credit is being used to ensure it remains suitable and affordable.*

*Halifax also says that the level of non-essential spending by Mr H doesn't support the possibility that he was struggling financially. It also says he could have avoided additional charges from having unpaid items returned if he'd curbed his debit card use and level of cash withdrawals.*

*By September 2018 Mr H had been heavily into his overdraft for a year. I think by then it ought to have been reasonably clear to Halifax that his constant overdraft use was a strong sign of potential financial difficulties. He wasn't using the overdraft sustainably and was maintaining a high level of indebtedness relative to his income. I would add here that Mr H appeared to be earning the majority of his income on a self-employed basis. Mr H himself has confirmed he was doing some consultancy work then. He has also said that any cash withdrawals were for essential spending and that this was his main account. He also says that the funds received from an external account wasn't savings or other income but financial support from family and friends.*

*I think all of this shows that by September 2018 Halifax needed to step in to interact directly with Mr H and discuss options with the aim of reducing the heavy reliance on his overdraft. I therefore intend to follow the initial finding of our investigator that by then it was reasonable for Halifax to have taken positive steps to ensure that Mr H became less reliant on the level of overdraft that was available to him. By then Halifax ought to have realised that the overdraft was not being used on the short-term, limited basis it was meant for.*

*Having seen what Halifax said in response to our investigator's findings, I would like to add that I don't accept that Mr H's spending on items considered by Halifax to be non-essential changes the position. I also think it was reasonable for him to make regular cash withdrawals as needed. I think Halifax had the same duty, having noted Mr H's heavy reliance on his overdraft, to monitor the account and to take action to support him and if possible change his pattern of use, having seen that he was 'stuck' in a high an unsustainable level of overdraft indebtedness."*

## **Response to my provisional decision**

Mr H accepted my provisional decision.

Halifax asked for more time to review my findings and I agreed to two extensions of time. Those representing Mr H have said that he was frustrated about these delays, that his account had now been closed that he was experiencing difficulties as a result.

I received further information from Halifax on 25 July 2025

### **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.

Halifax sent me further information, raising concerns about the way Mr H was using his account. Halifax says this activity does not demonstrate financial difficulties. I've considered this further information very carefully and particularly in the context of how Mr H was managing his account. But it doesn't cause me to change my finding.

I remain of the view that I would still have expected Halifax to step in and provide Mr H with active support no later than September 2018, in order that positive measures could be taken to reduce his overdraft use. Halifax still had a duty to monitor Mr H's account and take action to support him, given his unsustainable level of overdraft indebtedness.

My decision therefore remains that I don't consider that Halifax acted fairly in allowing Mr H to continue to operate his overdraft in this way from September 2018 onwards.

I've considered whether the relationship between Mr H and Halifax might have been unfair under S.140A of the Consumer Credit Act 1974. However, I'm satisfied the redress that I have directed should be carried out for Mr H 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 15 September 2018 are removed, with the exception of compensation already paid to him.

AND

- If an outstanding balance remains on the overdraft once these adjustments have been made Halifax should contact Mr H 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 Mr H, 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 H 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'm upholding this complaint in part 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 H to accept or reject my decision before 27 August 2025.

Michael Goldberg

**Ombudsman**