

The complaint

Mr M complains Bank of Scotland trading as Halifax (Halifax) closed his credit card account and registered a fraud marker at Cifas, the national fraud database.

What happened

Mr M took out a credit card with Halifax in July 2024 with a £10,000 limit. Mr M used the card from July to September with no problems, utilising his credit up to the limit of the card. In September, when Mr M's first direct debit payment was due, the direct debit was returned to his bank as unpaid. In between the time the first payment was called, and the time it was returned to Mr M's bank, he had spent over £3,500 on the credit card. Taking his balance significantly over the limit of the card.

Halifax blocked the card and completed a review. As part of the review, it didn't reach out to Mr M, but based on the information it already had it made the decision to withdraw the account. It also registered a fraud marker at Cifas.

Mr M made a complaint to Halifax, he was unhappy it had withdrawn the account and that his direct debit still collected even though he'd made manual payments to the account.

Halifax issued a final response on the complaint and explained whilst it won't provide the reasons for closing the credit card, it had done so considering the terms and conditions of the account. It explained Mr M would need to repay the remaining balance, and he must visit a branch to pay in cash. It explained the direct debit was taken in September, because manual payments don't usually reduce the direct debit amount, whilst it had satisfied the minimum payment amount, there was still an active direct debit to repay the statement balance from August. It therefore didn't uphold the complaint.

Unhappy with Halifax response the complaint was brought to our service to investigate.

One of our investigators reviewed everything and concluded Halifax had enough information to record the marker with Cifas. They also considered the account was closed fairly so didn't recommend Halifax do anything to resolve the complaint.

Mr M disagreed with the investigator. Mr M has said he regularly pays his credit cards manually to cover the minimum payment, and it was a mistake that the account had been set up with a direct debit to pay the full balance. He's demonstrated that he's made manual payments to this account, and suggested a fraudster wouldn't do this. Mr M has said the large payment that was due to come out that day was a planned payment, he was expecting to transfer funds from his business account to cover the payments. He said only when he noticed funds from his bank account had gone to the credit card, did he use what he thought was available balance on the credit card.

Mr M also accepts he owes the money but has said that Halifax hasn't provided the chance to rectify or explain. He says he wants to be able to pay the card off, clear the information from his credit file and move on.

As no agreement has been reached, it's 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.

The marker that Halifax has filed with Cifas is intended to record that there's been a 'misuse of facility' – relating to using the account for multiple encashment fraud. What this means in practice is knowingly withdrawing funds in excess of the allowed limit. In order to file such a marker, the bank isn't requested to prove beyond a reasonable doubt that Mr M is guilty of fraud or a financial crime, but it must show that there are grounds for more than mere suspicion or concern. Cifas guidance goes on to say there must be reasonable grounds to believe that an identified fraud or financial crime has been committed or attempted and the evidence must be clear, relevant and rigorous.

Halifax must be able to show that Mr M spent funds that weren't legitimately his. And secondly, Halifax will need to have strong evidence to show that the consumer was deliberately dishonest in doing so – in simple terms meaning that he knew the available funds on his Halifax credit card weren't his. A marker should not be registered against someone who is unwitting; there should be enough evidence to show deliberate complicity.

To meet the standard of proof required to register a Cifas marker, the business must carry out checks of sufficient depth and retain records of these checks. This should include giving Mr M the opportunity to explain the activity on his account in order to understand the level of knowledge and intention.

I haven't seen any evidence Halifax spoke to Mr M do to this as it ought to have done. When the complaint has come to our service, we have completed those further enquiries to determine if, had Halifax made them, would it have made a difference to its outcome. Halifax has been provided with Mr M's additional comments and stands by its original decision.

Mr M says that he had set up his direct debit to pay off the full balance by mistake, and his normal method of paying off the card was by manual payment. He's demonstrated this with statements from other card providers.

I've reviewed the application process Mr M would've had to go through to set up the direct debit. Mr M would've needed to select that he wanted to pay by direct debit with options of both yes and no to select. He would've then needed to input his sort code and account number. Mr M was using an external account, so this wasn't an account Halifax could know without Mr M providing it. He then would've needed to select whether he wanted to pay, the full balance, a fixed amount, or the minimum payment. The application process was clear that this information was being input specifically for a direct debit payment, and so I find it unlikely that Mr M would've completed this by mistake.

I've reviewed Mr M's credit card statements Halifax has sent our service. I can see Mr M had nearly spent up to the limit of his credit card on 9 September. I've also seen that in the two weeks prior to 9 September Mr M had reached his limit and made small manual payments into his account which enabled him to continue spending on the account. So, I'm satisfied Mr M was likely aware what his limit was, and that he was near to top of that limit.

Mr M explains that these two payments show how he intended to use the account, by making manual payments in, as well as that he had intentions to pay off the balance.

On 9 September Halifax added £7,928.35 to his account in line with his direct debit

instructions for the full statement balance to be paid. Mr M has provided us with his bank account statement from the account that payment was due from. This statement shows me Mr M was overdrawn on the account at the time and didn't have the available funds to be able to make such a payment. This was the reason it was returned.

Mr M's explanation shows he was aware his account was overdrawn, he said when he saw the payment on his bank account, he knew he would have to reconcile the bank account. On the same day, Mr M spent more than £3,500 on his credit card. Based on Mr M's testimony I'm satisfied he was aware that he didn't have the funds in his bank account to cover the direct debit – and he spent the funds on the credit card knowing that to be the case.

Mr M has said that he was planning this purchase for the day it happened, and he was planning to cover the costs with funds from his business account. Neither Mr M's available balance on the credit card, nor his bank account appeared to have sufficient funds to be able to cover the spend Mr M made on the day the direct debit was returned to his bank account. But Mr M didn't transfer any money into either his credit card, or his personal account from his business account that day or very soon after. The only funds Mr M transferred from the business account to his personal account, appear to be to ensure there's enough funds in the personal account for Mr M's day to day spend.

I appreciate Mr M has said that he's made attempts to pay the balance but had difficulties in doing so, including being told that he had to pay in cash in branch. I've also seen evidence Mr M has been told how he can make payments to clear the balance, and that Mr M has been able to make payments towards the balance. However, these payments have only been a small portion of the amount Mr M had overspent on the card before his direct debit was returned.

I've thought about what Mr M has said about his circumstances. But this isn't marginal spending. He spends significantly over his limit, and I'm satisfied he does so knowing what his credit limit is, and that he didn't have the funds in his bank account to cover the direct debit payment. I think this indicates Mr M's motivation was to gain access to funds made available by the direct debit.

I realise this will be disappointing news to Mr M, and I'm sorry to hear the impact this will likely have on him. I'm satisfied the burden of proof has been met for Halifax to load a Cifas marker. I think it's more likely than not Mr M was dishonest in spending the funds on his credit card, and knew the direct debit would be reversed. And therefore, he was spending funds which Halifax never agreed to lend him.

Account closure

It's generally for banks to decide whether or not it wants to provide, or continue to provide, account facilities to any particular customer. Unless there's a very good reason to do so, this service won't usually say that a bank or financial business must keep a customer or require it to compensate a customer who has had their account closed.

As long as banks and financial businesses reach their decisions fairly, it doesn't breach law or regulation and is in keeping with the terms and conditions of the account, this this service won't usually intervene. They shouldn't refuse to continue to provide account services without proper reason, for instance of unfair bias or unlawful discrimination. And they must treat new and existing customers fairly.

Halifax has relied on the terms and conditions when closing Mr M's account. I've reviewed the terms, and they explain that Halifax can close an account by giving at least two months' notice, or do so immediately in exceptional circumstances.

For Halifax to act fairly here, it needed to meet the criteria to apply the terms for immediate closure – and having looked at these terms and all the evidence that Halifax and Mr M has provided, I'm satisfied it did. And that it was entitled to close the account as it's already done. So I don't conclude Halifax treated Mr M unfairly when it closed the account.

In summary, having considered everything I'm not persuaded Halifax acted unreasonably or unfairly in the circumstances of this complaint. So I won't be asking Halifax to do anything differently.

My final decision

My final decision is I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 1 October 2025.

Simon Yates
Ombudsman