

Complaint

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

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

The representative has said the charges applied to Mr M’s account were unfair as there was a failure to take account 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

Halifax provided Mr M with an overdraft of £850 in October 2016. In October 2018 this limit was increased to £1,200.00.

Mr M’s complaint was looked at by one of our investigators. He eventually reached the conclusion that Halifax hadn’t acted unfairly or unreasonably and so didn’t recommend that the complaint be upheld.

The representative, on Mr M’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 provided, I’m not upholding Mr M’s complaint. I’ll explain why in a little more detail.

Before I go any further, as this essentially boils down to a complaint that Mr M 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 M if it applied this interest, fees and charges to Mr M’s account in circumstances where it was aware, or it ought fairly and reasonably to have been aware Mr M was experiencing financial difficulty. So I’ve considered whether there was an instance, or there were instances, where Halifax didn’t treat Mr M fairly and reasonably.

In other words, I’ve considered whether there were periods where Halifax continued charging Mr M 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 M's account statements throughout the period concerned, I can't see that Halifax ought reasonably to have unilaterally taken corrective measures in relation to Mr M's overdraft. I accept that Mr M used his overdraft. The representative's arguments appear to suggest that this in itself means that Mr M 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 M'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 M 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. The first thing for me to say is that Mr M was in receipt of credits that were sufficient to clear the overdraft within a reasonable period of time.

Furthermore, I'm satisfied that Mr M's case isn't one where the borrower was permanently in their overdraft. There were some periods where Mr M was in credit. Although I do accept that there were plenty of times where Mr M would have 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 met all of its obligations, I'd still need to consider whether Mr M lost out as a result of any potential failing. I've also therefore considered whether Mr M'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. And having considered matters, I'm satisfied that this isn't the case.

To explain, while I'm not seeking to make retrospective value judgements over Mr M expenditure, there are significant amounts of non-committed, non-contractual and discretionary transactions going from Mr M's account. Indeed, a significant proportion of Mr M's monthly spend was discretionary. Equally, it looks like there were many occasions where Mr M had funds in a separate Halifax account that could have reduced what he owed on his overdraft. Given the repeat usage letters Mr M is likely to have been sent by Halifax, I think that he ought to have realised how much he was paying for operating his accounts in this way.

So I simply don't agree that Mr M was using his overdraft purely for essential spending, or because he had a reliance on credit to get by, as the representative says. Equally, I can't see anything to indicate that the charges he was incurring for what was on the whole discretionary spending was causing him harm either.

For example, I can't see that he was borrowing from unsustainable sources in order to meet these charges or that his borrowing was increasing exponentially. Mr M did have other credit commitments but this does not mean that he was reliant on credit to meet his essential expenditure. And it isn't immediately obvious to me that Mr M was borrowing from unsustainable sources – such as payday type lenders either.

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

I say all of this while mindful that I've seen no indication that any of the potential signs of financial difficulty contained in the regulator's guidance on financial difficulty (set out in CONC 1.3) – such as Mr M failing to meet consecutive payments to credit, or Mr M failing to meet his commitments out of his disposable income – were present in Mr M's circumstances.

I've noted that Mr M has provided information to show that he was in rent arrears in 2021. While I sympathise with this being the case, I can't see that he notified Halifax of this and there is nothing in his account transactions that ought to have alerted Halifax to this possibility either.

Given the representative's reference to CONC 5D, 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. The position is far more nuanced.

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 M was in receipt of and the size of his overdraft limit, I'm not persuaded that Halifax ought reasonably to have realised that Mr M's overdraft usage was causing him harm.

I've also seen what the representative has said regarding CONC 5D.3.2R (3). However, CONC 5D.3.2 R (1) makes it clear that CONC 5D.3.2R only applies to customers who have a pattern of repeat use *AND* there are signs of the customer being in actual or potential difficulty.

In the first instance, it's worth noting that there isn't any suggestion that Mr M contacted Halifax to explain that he was experiencing difficulty, or that he needed help in repaying his overdraft, prior to his complaint. Furthermore, given I've not seen anything in Mr M's statements, indicating that there were any of the signs highlighted in CONC 1.3, I'm satisfied that this isn't a case where there were signs of Mr M potentially, or actually being in financial difficulty.

As this is the case, I'm satisfied that the applicable section of CONC 5D, to Mr M's circumstances, is CONC 5D.3.1, rather than CONC 5D.3.2. CONC 5D.3.1 permits a firm to employ more subtle techniques such as sending a customer further letters. As this is the case, I don't think that Halifax was under an obligation to call Mr M in the way that the representative has suggested.

For the reasons I've explained, in this case, I'm satisfied that Halifax had no reason to believe that Mr M was experiencing difficulty. And in circumstances, where there appears to be no dispute that Mr M did not expressly reach out to Halifax and ask it for help to repay his balance, I think that telling him what he was paying to use his overdraft in the way he was reasonable.

In these circumstances, I don't think that it was unreasonable for Halifax to have proceeded adding the charges that it did. 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 M immediately repay his overdraft, in circumstances where there was a realistic prospect of Mr M clearing what he owed in a reasonable period of time. Indeed, Halifax taking such action when there wasn't clear indications that it ought to have done so

In reaching my conclusions, I've also considered whether the lending relationship between Halifax and Mr M might have been unfair to Mr M under s140A of the Consumer Credit Act 1974 ("CCA").

However, for the reasons I've already explained, I'm satisfied that Halifax did not act unfairly in allowing Mr M to use his overdraft in the way that he did bearing in mind all of the circumstances. And I haven't seen anything to suggest that s140A CCA would, given the facts of this complaint, lead to a different outcome here.

Overall and having considered everything, I've decided not to uphold Mr M's complaint. I appreciate that this will be very disappointing for Mr M. 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 not upholding Mr M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 8 September 2025.

Jeshen Narayanan
Ombudsman