

Complaint

Miss G has complained about the overdraft charges Bank of Scotland plc (trading as “Halifax”) applied to her current account. She’s effectively said the charges applied to her account were unfair as she was effectively living in her overdraft.

Background

Miss G has had an overdraft with Halifax since at least 2006. The limit on the overdraft has fluctuated as a result of limit increases and decreases. At its highest Miss G’s limit has been £1,500.00.

In January 2025, Miss G complained saying that Halifax applied overdraft charges to her account when she was effectively living in her overdraft and experiencing difficulty.

Halifax partially upheld Miss G’s complaint. It did not think that it had done anything wrong or treated Miss G unfairly in the period prior to November 2024. However, it accepted that it shouldn’t have allowed Miss G to increase her overdraft limit, or continue using the facility from November 2024 onwards.

So Halifax agreed to refund the overdraft interest, fees and charges applied to Miss G’s account from November 2024 onwards. This refund of interest was credited to Miss G’s account shortly after. Miss G remained dissatisfied and referred her complaint to our service

One of our investigators reviewed what Miss G and Halifax had told us. He reached the conclusion that he wasn’t persuaded that Halifax had acted unfairly towards Miss G prior to November 2024. So the investigator that that what Halifax had already done was fair and didn’t recommend that Miss G’s complaint be upheld.

Miss G 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.

Basis for my consideration of this complaint

There are time limits for referring a complaint to the Financial Ombudsman Service. Halifax has argued that Miss G’s complaint was made too late because she complained more than six years after some of the limit changes took place and some of charges on the overdraft were applied, as well as more than three years after she ought reasonably to have been aware of her cause to make this complaint.

Having carefully considered everything, I’ve decided not to uphold Miss G’s complaint. Given the reasons for this, I’m satisfied that whether Miss G’s complaint about some of the specific lending decisions and the charges applied was made in time or not has no impact on that outcome.

Having considered matters, I'm satisfied that it is reasonable to interpret Miss G's complaint as being one alleging that the lending relationship between Miss G and Halifax was unfair to Miss G as described in s140A of the Consumer Credit Act 1974 ("CCA"). I consider this to be the case as Miss G has not only complained about the circumstances behind the application of the individual charges, but also the fact Halifax's failure to act during the periods she alleges it ought to have seen she was experiencing difficulty caused ongoing hardship and trapped her in debt.

I'm therefore satisfied that Miss G's complaint can therefore reasonably be interpreted as a complaint that the lending relationship between herself and Halifax was unfair to her. I acknowledge the possibility that Halifax may still disagree that we are able to look at the whole of Miss G's complaint, but given the outcome I have reached, I do not consider it necessary to make any further comment or reach any findings on these matters.

In deciding what is fair and reasonable in all the circumstances of Miss G's case, I am required to take relevant law into account. As, for the reasons I've explained above, I'm satisfied that Miss G's complaint can be reasonably interpreted as being about that her lending relationship with Halifax was unfair to her, relevant law in this case includes s140A, s140B and s140C of the CCA.

S140A says that a court may make an order under s140B if it determines that the relationship between the creditor (Halifax) and the debtor (Miss G), arising out of a credit agreement is unfair to the debtor because of one or more of the following, having regard to all matters it thinks relevant:

- any of the terms of the agreement;
- the way in which the creditor has exercised or enforced any of his rights under the agreement;
- any other thing done or not done by or on behalf of the creditor.

Case law shows that a court assesses whether a relationship is unfair at the date of the hearing, or if the credit relationship ended before then, at the date it ended. That assessment has to be performed having regard to the whole history of the relationship. S140B sets out the types of orders a court can make where a credit relationship is found to be unfair – these are wide powers, including reducing the amount owed or requiring a refund, or to do or not do any particular thing.

Given Miss G's complaint, I therefore need to think about whether Halifax providing Miss G with overdraft and allowing her to use it in the way that it did, prior to November 2024, resulted in the lending relationship between Miss G and Halifax being unfair to Miss G, such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove any such unfairness.

Miss G's relationship with Halifax is therefore likely to be unfair if it provided an overdraft or allowed Miss G to continue using it in circumstances where it ought reasonably to have realised that this was unsustainable or otherwise harmful for her. And if this was the case, Halifax didn't then remove the unfairness this created somehow.

I've considered Miss G's complaint in this context.

Did Halifax act fairly and reasonably when providing Miss G with her overdrafts and increasing her credit limits prior to November 2024?

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 Miss G's complaint.

Halifax needed to make sure it didn't lend irresponsibly. In practice, what this means is Halifax needed to carry out proportionate checks to be able to understand whether Miss G could afford to repay any credit it provided.

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.

I understand that Halifax agreed to Miss G's initial application after it obtained information on her income and carried out a credit search. And the information obtained indicated that Miss G would be able to make sufficient credits to clear the overdraft balance which could be owed at the respective times.

On the other hand, Miss G says that she shouldn't have been lent to or had her limit increased on the occasions that it was.

I've considered what the parties have said.

What's important to note is that Miss G was provided with a revolving credit facility rather than a loan. And this means that Halifax was required to understand whether a limit of up to £1,500.00 could be repaid within a reasonable period of time, rather than all in one go. It's fair to say that an overdraft limit of up to £1,500.00 would have required reasonably sized monthly credits in order to clear the full amount that could be owed within a reasonable period of time.

I understand that Halifax is likely to have carried out credit searches but given the length of time since Miss G's applications it no longer has a record of these showed. Given these applications took place a number of years ago, I don't think that this is unreasonable. In any event, I haven't seen anything to indicate that Miss G had any significant adverse information - such as defaulted accounts or county court judgments recorded against her at the times of her applications either.

I appreciate that Miss G did have some existing active credit. However, I don't think that this means she shouldn't have been provided with overdraft. As Miss G was an existing Halifax current account holder, where I have them, I've looked at her statements in the period leading up to her applications. I think that it is fair to say that Miss G's account statements show that she was in receipt of sufficient funds each month in order to clear overdraft limits of up to £1,500.00 within a reasonable period of time.

I fully accept it's possible that Miss G's position might have been worse than what it looks like on the information on her statements. But it wouldn't be fair and reasonable for me to use hindsight here, or say that Halifax should have known this was the case at the time it was making its lending decisions. This is especially bearing in mind the income and expenditure information that Miss G will herself have provided at the time of her applications, will have suggested that the overdraft and limit increases were affordable for her.

As this is the case, I'm not persuaded that Halifax acted unfairly when providing Miss G with her overdraft or increasing her limit on the occasions that it did prior to November 2024.

I'll now turn to setting out my thoughts on whether Halifax acted fairly and reasonably in allowing Miss G to use her overdraft in the way that she did after it was granted.

Did Halifax unfairly allow Miss G to continue using her overdraft in a way that was unsustainable or otherwise harmful for her prior to November 2024?

Before I go any further, as this essentially boils down to a complaint that Miss G was unfairly charged as a result of being allowed to continue using her overdrafts, 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 Miss G if it applied this interest, fees and charges to Miss G's account in circumstances where it was aware, or it ought fairly and reasonably to have been aware that there was a clear reason it would have been unfair to do so. I've therefore considered whether such a reason existed which would have resulted in Halifax charging Miss G unfairly.

Having looked through statements provided, it's clear that Miss G did use her overdraft. I'm therefore satisfied that there can be no dispute that Miss G was using her overdraft over the period of time she's had it. Miss G's arguments appear to suggest that this in itself means that her complaint should be upheld. For example, I've seen what she's said about being allowed to use the overdraft for an extended period.

But Miss G's overdraft was arranged under an open-ended agreement credit agreement. This means that Miss G had an agreement to use her overdraft and as a result she was entitled to use it without having to reapply to do so. As this is the case, Miss G using her overdraft in the period that she had it doesn't automatically mean that her complaint should be upheld. That said, I do 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, it isn't always the case that prolonged and repeated overdraft usage by a customer will always mean that they are, as a matter of fact, in financial difficulty. Indeed, if that were automatically the case, there would be an outright prohibition on revolving credit accounts being open ended, rather than there being a requirement for a lender to review how the facility is being used. Nonetheless, it's also worth me saying that an instance where a lender would be expected to act is where it was clear that the customer was experiencing financial difficulty.

I've therefore considered whether it is the case that Halifax knew, or it ought to have known that this was the case here.

In the first instance, I can't see Miss G notified Halifax that she was struggling and that paying these charges was proving difficult for her, at any stage prior to making this complaint. If she had done so, Halifax would have known that the charges were causing harm and I would have expected it to act. However, even though I can't see that Miss G directly told Halifax that she couldn't afford to pay these charges, I've considered whether her account activity ought to have alerted it to this being the case.

As Miss G didn't tell Halifax that she was struggling to pay these charges, it would need to have been objectively clear to Halifax, rather than a matter open to interpretation, that the overdraft charges were clearly making things worse and they were harmful as a result.

I've therefore considered whether Halifax acted fairly and reasonably towards Miss G, in this light. In other words, I've considered whether there were periods where Halifax continued charging Miss G 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 she was in financial difficulty.

In considering this matter, I'm mindful that in order to help with determining whether it is objectively the case that a customer was experiencing financial hardship, the regulator has set out guidance on what it considers to be potential indicators of financial difficulty. The '*Guidance on financial difficulties*' states that things such as a customer failing to meet consecutive payments to credit, being unable to meet their commitments out of their disposable income, having adverse credit or other insolvency information recorded against them, or being in a debt arrangement should be considered as potential signs of a customer being in financial difficulty.

However, having looked at Miss G's account statements, I've seen no indication that the potential signs of financial difficulty contained in the guidance, were obviously and persistently present in her circumstances such that it ought reasonably to have taken action. I also can't see anything in Miss G's statements which suggest that Halifax should have known that she was borrowing from payday or other high-cost lenders, which although not contained in the regulator's guidance, is generally accepted to be an indication that a borrower could be struggling too.

I've also looked at Miss G's incomings and outgoings as well as her overdrawn balances and determined whether it was possible for her to have stopped using her overdraft, based on this. I think that if Miss G was locked into paying charges in circumstances where there was no reasonable prospect of her exiting her overdraft then her facility would have been unsustainable for her, even where the indicators of financial difficulties I've set out above weren't clearly present in her circumstances, when looking at the account transactions.

In reviewing this matter, I've noted that throughout the period of time I'm looking at, Miss G's account was in receipt of credits that were sufficient to clear the overdraft within a reasonable period of time. Indeed, as she was able to adjust the limit on a number of occasions, I'm satisfied that Miss G's case isn't one where a borrower was marooned in their overdrawn with no reasonable prospect of exiting it.

Furthermore, while I'm not seeking to make retrospective value judgements over Miss G expenditure, there are significant amounts of non-committed, non-contractual and discretionary transactions going from Miss G's account. Indeed, I've seen that there were extended periods where Miss G had a credit balance too.

I accept that Miss G may well have had other credit commitments at this time. But this in itself does not mean that she was reliant on credit to meet her essential expenditure. And from Miss G's Halifax account statements, it isn't immediately obvious to me that Miss G was borrowing from unsustainable sources – in order to pay for the charges, or meet other committed expenditure either. If anything in increasing and decreasing her overdraft limit in the way that she did, it wasn't unfair to for Halifax to conclude that Miss G was tailoring her borrowing to her circumstances.

Of course, I accept neither of these things in themselves (or when taken together) mean that Miss G wasn't experiencing difficulty. And I'm sorry to hear about the financial difficulties that

Miss G has told us she experienced. However, I don't think that Miss G's account conduct and overdraft usage obviously show that she was struggling in this way. And bearing in mind I'm satisfied that Miss G did not directly tell Halifax that she was experiencing financial difficulty, that's what I'd need to be persuaded of in order to uphold her complaint.

Looking from the outside, I think that Halifax was reasonably entitled to conclude that Miss G had the funds to be able to reduce the amount that she used her overdraft. It's also clear that Miss G regularly adjusted her overdraft limit and also went into a credit balance. Therefore, I don't think that Miss G was obviously locked into using her overdraft and paying the charges for doing so.

So, in my view, there was a reasonable prospect of Miss G exiting her overdraft in the period up to November 2024. And Halifax was reasonably entitled to believe that Miss G was choosing to use her overdraft in the way that she was, rather than a case that her financial circumstances meant that she had no choice other than to do so.

As this is the case, I don't think that it was unreasonable for Halifax to have proceeded adding the charges that it did and hasn't refunded. Therefore, I don't find that the relationship between Miss G and Halifax was unfair to Miss G. I've not been persuaded that Halifax created unfairness in its relationship with Miss G by allowing her to use her overdraft in the way that she did up until November 2024.

Equally, any unfairness that may have been created by Halifax allowing Miss G to use the overdraft from November 2024 onwards has since been removed as a result of Halifax refunding the fees that it added to the overdraft from this point. Based on what I've seen, I don't find Halifax treated Miss G unfairly in any other way either.

Overall and having considered everything, while I can understand Miss G's sentiments and appreciate why she is unhappy, I'm not upholding this complaint. I appreciate this will be very disappointing for Miss G. But I hope she'll understand the reasons for my decision and that she'll at least feel her concerns have been listened to.

My final decision

For the reasons I've explained, I'm not upholding Miss G's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss G to accept or reject my decision before 16 February 2026.

Jeshen Narayanan
Ombudsman