

The complaint

Miss M complains that Bank of Scotland Plc trading as Halifax lent to her irresponsibly.

What happened

The facts of this case are familiar to both sides, so I don't intend to repeat everything in detail here. Instead, I'll provide a summary.

Halifax provided Miss M with an overdraft facility on her bank account ('Account One') in November 2018. The limit was increased 13 times over the next 10 months. The final overdraft limit increase (OLI 13) took place on 15 September 2019 and brought the overdraft limit up to £2,100.

In June 2024, Miss M complained to Halifax about its decision to lend. In doing so Miss M alleged Halifax agreed to increase her overdraft limit to an amount she could not afford to repay. Miss M says she was utilising her overdraft a lot of the time and her income was low.

In July 2024, Halifax issued its final response letter in which it did not uphold Miss M's complaint. As a result, Miss M referred her complaint to our service.

One of our investigators looked into the complaint and, in November 2024, issued his first opinion in which he did not uphold the complaint. In short, our investigator said he could see Miss M was receiving a healthy salary into her account and the account was always maintained well within the overdraft limit. So, he didn't think Halifax had acted unfairly when it approved the overdraft limit increases. Our investigator went on to say that Miss M had sufficient disposable income and, therefore, when completing annual reviews of the account, Halifax did not act unfairly by continuing to provide Miss M with the overdraft facility on the same terms.

Miss M didn't agree with our investigator's findings and, in doing so, raised a number of reasons why. I won't set these out in detail here as I can see our investigator shared them with Halifax – therefore the points Miss M raised are familiar to both parties. But, in short,

Miss M felt Halifax failed to:

- Conduct proper affordability checks prior to each limit increase; and
- Conduct proper checks at the time of each annual review (which, in any event, were insufficient bearing in mind the frequency of limit increases)
- Provide her with bank statements following a Data Subject Access Request (DSAR) which left her unable to confirm whether the correct processes were followed¹; and
- Take into consideration interest and charges which would have impacted her ability to repay the lending in question within a reasonable period of time.

In the months that followed there was ongoing dialogue between our investigator, Miss M and Halifax during which time further information was supplied by both parties.

As a result, our investigator issued a second opinion in March 2025 in which he upheld the complaint part. Specifically, the investigator felt Halifax had failed to take appropriate action – bearing in mind how Miss M was managing the account - when it carried out the first annual review in November 2019. So, the investigator recommended Halifax rework Miss M's overdraft balance so that all interest, fees and charges applied from 15 November 2019 onwards are removed.

Miss M accepted our investigators findings.

Halifax did not and, in doing so, provided further information for the investigator to consider. Our investigator reviewed everything again and, having done so, his overall opinion remained unchanged.

As an agreement couldn't be reached, the complaint was passed to me to decide.

In August 2025, I issued a provisional decision in which I said:

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've reached a different outcome to our investigator. I'm provisionally minded to conclude that this complaint should not be upheld. I know this will come as a disappointment to Miss M, but I'll explain why I think it is a fair outcome in the circumstances.

But, before I do, I would like to make it clear that I'm aware that I've summarised this complaint above in less detail than it may merit. No discourtesy is intended by this.

Instead, I've focussed on what I think are the key issues here. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts.

If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome. I will, however, refer to those crucial aspects which impact my decision.

Lastly, I would add that where the information I've got is incomplete, unclear or contradictory, I've based my decision on the balance of probabilities.

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 M's complaint.

The lending decisions

Our investigator did not uphold Miss M's complaint about the initial lending decision, or subsequent overdraft limit increases (OLIs 1-13). And, as I set out in the prior section, Miss M accepted our investigators findings.

What's more, Halifax only disagreed with our investigator insofar as his findings relate to the first annual review following OLI 13. So, it seems the lending decisions are no longer in dispute. With that being the case, I see no reason to say much on this issue.

Instead, this decision will focus on whether Halifax acted fairly when it conducted the first annual review in November 2019.

However, for completeness, I agree with the overall outcome our investigator reached with regards to the initial lending decision and OLIs 1-13 – and for the same reasons.

This being that I think Halifax carried out reasonable and proportionate checks prior to agreeing to lend and, in doing so, didn't uncover anything which ought to have caused it to refuse to lend. Therefore, like our investigator, I don't think Halifax acted unfairly when providing this facility or subsequently increasing the overdraft limit.

Miss M's account performance

I've turned to consider what happened after OLI 13 was approved in September 2019. The regulations applicable at this time – which had been in place for some 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.*

From the available information, it appears Halifax conducted its first review of the account on 10 November 2019 (presumably with the intention of reviewing the account every November thereafter). With that being the case, I've looked carefully at the bank statements to understand what Halifax would have seen in November 2019 when it conducted its account review. I note that this is only two months after the CLI 13 had been approved – however as the purpose is for firms to conduct a holistic review of account performance – I've thought about how the account has been managed over the preceding 12 months (i.e. since the overdraft was first approved), with a particular focus on the three months prior to the annual review.

Having done so, I can see that by way of regular income Miss M received her salary (c£1,600) and Child Benefit (c£82) every month. Miss M also received Tax Credits (c£91) until March 2019. And, from June 2019 onwards, Miss M begins to receive what appears to be regular contribution of £550 towards her rent from a third party.

Between November 2018 and January 2019, the account is predominately in credit. Miss M's overdraft usage is occasional and, in my opinion, modest. In February and March 2019, Miss M's overdraft usage begins to increase, however the account is brought back into a credit balance – and holds a credit balance for some time - upon receipt of her salary.

In April 2019, Miss M's overdraft usage begins to become more regular. However, Miss M's income is sufficient to not only bring the account back into a credit balance. It is also sufficient to clear the overdraft in full if she wished to do so.

In May 2019, Miss M continues to regularly use her overdraft. And her overdraft usage climbs in-line with the limit increases. And from June 2019 onwards, Miss M is consistently using her overdraft – often towards the upper limit. There are brief periods when the account

is brought back into credit upon receipt of her salary and rental contribution. This pattern continues until the account review in November of that year.

It could be argued that regular use of an overdraft is, in itself, an indication that a customer is struggling. 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. Instead, it's important to look at overall circumstances of a customer's overdraft usage as part of considering their wider financial position.

Having done so, it looks like Miss M was in receipt of sufficient credits (including her salary, Child Benefit and rental contribution) to clear the overdraft within a reasonable period of time. Indeed, as I've said, the account was brought into credit, albeit briefly, each month. This income was, in my view, sufficient to cover her essential spending - particularly once regular contributions towards her rent began.

And whilst I'm not seeking to make retrospective value judgements over Miss M's expenditure, looking at the account conduct, I can't fairly say that Miss M was using her overdraft purely for essential spending. There is evidence of quite large amounts of discretionary spending which meant she used her overdraft for a significant amount of time too.

What's more, there are no other obvious signs of financial hardship at this time – such as returned Direct Debits or reliance on short-term, high-cost lending (or borrowing from other unsustainable sources).

Overall and having considered everything, I've not been persuaded that Halifax acted unfairly towards Miss M by allowing her to use her overdraft in the way that he did up until November 2019.

Events after November 2019

In November 2019, Miss M opened a new account with Halifax ('Account Two'). This account did not have an overdraft facility. From December 2019, it appears Miss M arranged for her salary to be paid into Account Two. And, in the months that followed, her Direct Debits were also transferred to Account Two. In short, it appears Account Two became her primary bank account at this point and Account One was left with a debit balance.

It appears Child Benefit was still being paid into Account One until March 2020 which, for a time, had the effect of keeping the account within the overdraft limit. However, the account began continually exceeding the limit from late January 2020 onwards.

CONC sets out rules that govern treatment of customers in financial difficulty. CONC 7.3.4R says that a firm must treat customers in default or in arrears difficulties with forbearance and due consideration. It's worth noting that I haven't seen evidence Miss M contacted Halifax to explain that she was experiencing difficulty, or that she needed help in repaying her overdraft, prior to her complaint. But, notwithstanding this, Miss M had ceased making regular credits into the account and it had – to all intents and purposes – become dormant with an outstanding debt. Therefore, I think Halifax was on notice that Miss M may have been struggling. So, I think it's fair to treat the CONC provisions as a relevant consideration.

In terms of forbearance, it's been fairly long-standing guidance that a lender dealing with a borrower in financial difficulty and able only to make 'token' payments should consider reducing or stopping interest and charges. Based on the information Halifax had in its possession at this time, it's fair to say that Miss M was in such a position.

Once the account began to exceed the overdraft limit, Halifax wrote to Miss M on 8 February 2020 asking her to get in touch to discuss her options. It also advised Miss M that there was a need for her to bring the facility within its agreed limit.

As no contact was forthcoming – and it was clear that Miss M wasn't making any inroads into the balance owed - Halifax suppressed all fees and charges to the account from 23 March 2020.

It wrote to Miss M a further five times between March and May 2020 about the overdue balance. The final letter, on 22 May 2020, advised Miss M that it would be closing the account and transferring the account to its recoveries department.

I think Halifax has acted reasonably here. I say this because, once it became clear that no further payments were being made into the account to reduce the balance owed, it took steps to prevent ongoing financial harm to Miss M by stopping all further interest and charges (in accordance with CONC 7.3.5(1)G). It then afforded Miss M a reasonable period of time and opportunity to repay the debt (in accordance with CONC 7.3.6G) before referring the account to its recoveries department and, ultimately, defaulting the account.

Miss M has explained that she buried her head in the sand and she was simply trying to keep [her] head above water at the time. I have a great deal of sympathy for the difficulties Miss M found herself in which I imagine caused an enormous amount of stress. I would also like to thank Miss M for openness and honesty about her circumstances. However, looking at things in the round, I think Halifax has acted fairly – and in accordance with its regulatory obligations – in its handling of Miss M's account.

Did Halifax act unfairly or unreasonably towards Miss M in some other way?

In reaching my conclusions, I've also considered whether the lending relationship between Halifax and Miss M might have been unfair to Miss M under Section 140A of the Consumer Credit Act 1974.

However, for the reasons I've already given, I don't think Halifax lent irresponsibly to Miss M or otherwise treated her unfairly in relation to this matter. I haven't seen anything to suggest that Section 140A or anything else would, given the facts of this complaint, lead to a different outcome here.

Summary

For the reasons I've explained, I'm provisionally minded to conclude that Halifax did not act unfairly with relation to the overdraft facility. It has, in my view, also provided a reasonable level of support to Miss M in relation to her financial situation — in line with principles of good industry practice and regulatory guidance

So, whilst I understand this will come as a disappointment to Miss M, I won't be asking Halifax to do anything further to resolve the complaint.

Responses to my provisional decision

In response to my provisional decision, Miss M reiterated her view that Halifax did not carry out the necessary checks and, as a result, lent irresponsibly.

Halifax accepted my provisional decision with no further submissions.

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.

I've also carefully considered everything that has been said in response to my provisional decision. Having done so, I have not been presented with any new evidence or information which leads me to depart from the findings set out in my provisional decision.

I appreciate this will come as a disappointment to Miss M however, for the reasons set out in my provisional decision - which should be read in conjunction with my final decision – I don't think Halifax acted unfairly when it agreed to lend. So I don't think it needs to do anything further to resolve this complaint.

In reaching this conclusion, I've also considered whether Halifax acted unfairly or unreasonably in some other way given what Miss M has complained about, including whether their relationship with her might have been viewed as unfair by a court under s.140A Consumer Credit Act 1974.

However, for the reasons I've already given, I don't think Halifax lent irresponsibly to Miss M or otherwise treated her unfairly. I haven't seen anything to suggest that Section 140A or anything else would, given the facts of this complaint, lead to a different outcome here.

My final decision

My final decision is I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 6 October 2025.

Ross Phillips
Ombudsman