

## The complaint

Mr K complains that Bank of Scotland Plc (Halifax) was irresponsible in granting him a personal current account overdraft, as it was unaffordable for him. Mr K also complains that his relationship with Halifax was unfair as they were allowed to rely on high-cost debt, and this had an ongoing impact on his finances.

## What happened

Mr K has held a personal current account with Halifax for several years. In August 2012, Mr K applied for – and Halifax granted – a personal current account overdraft facility of £1,000. The credit limit of the overdraft has remained the same.

In 2024, Mr K complained – via a personal representative – that Halifax had been irresponsible in granting the overdraft facility, and in allowing them to rely on high-cost debt.

In its final response, Halifax said it thought it had acted fairly and reasonably. Mr K weren't happy with Halifax's final response, and referred the complaint to our service.

One of our Investigators considered Mr K's complaint. In summary, she thought that Halifax should have stepped in from August 2014 as Mr K had used the overdraft facility heavily throughout that time. To resolve things, our Investigator recommended that Halifax refund interest, fees and charges applied to the account from August 2014 onwards.

Mr K accepted the Investigator's opinion. Halifax disagreed. In summary, it said that although Mr K regularly used their overdraft facility, he had sufficient disposable income to repay it within a reasonable period of time. Halifax said the regulations in 2014 didn't give a clear obligation to intervene based solely on long term overdraft use.

I issued a provisional decision, in which I didn't uphold the complaint. Halifax accepted my provisional decision. Mr K's representative disagreed. In summary, Mr K's representative said that it thought Halifax had failed to take sufficient action, given its obligations under CONC 5D.

The case returns to me for final decision.

## 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 issued a provisional decision, in which I said:

*"Firstly, as Halifax has consented, I don't need to consider whether all of the complaint has been brought within the time limits set by the regulator."*

*I've considered the relevant rules and guidance on responsible lending set by the FCA, laid out since 2014 in the consumer credit handbook (CONC). In summary, these say that before Halifax granted the overdraft, it needed to complete reasonable and proportionate checks to satisfy itself that Mr K would be able to repay the debt in a sustainable way, without borrowing further elsewhere. As this was an open-ended account Halifax needed to consider whether Mr K would be able to repay the debt within a reasonable period. It also had a duty to review the account regularly to ensure the overdraft continued to be affordable for Mr K.*

### **Granting of the overdraft facility in 2019**

*In August 2012, Halifax granted Mr K a personal current account overdraft facility of £1,000. As I've explained above, prior to granting the overdraft, Halifax needed to conduct proportionate checks to satisfy itself that the limit would be sustainably affordable for Mr K.*

*Halifax hasn't provided us with details of the checks it carried out at the time.*

*As Halifax hasn't provided us with details of the checks it conducted prior to granting the personal current account overdraft facility, I can't reasonably conclude they were proportionate. I've therefore reconstructed what information I think it's likely those checks would have found.*

*Mr K's bank statements show he was receiving income of just under £500 a week, or around £2,000 a month. I'm satisfied that, after his essential expenditure, he had sufficient disposable income to repay the full credit limit of the overdraft within a reasonable period.*

*So, if Halifax had conducted proportionate checks, I think it's likely it would have found that the credit limit of £1,000 was sustainably affordable for Mr K.*

### **Ongoing use of the overdraft facility**

*As I've explained above, Halifax also had a duty to regularly review the overdraft facility, to ensure it continued to lend responsibly to Mr K.*

*Halifax has said it reviewed the overdraft annually.*

*The statements show that Mr K was using the overdraft frequently – almost continuously – from August 2012 onwards. The statements show a mix of essential and discretionary spending. In 2013, I think there were some signs that Mr K was experiencing some financial stress as some of his direct debits were returned. In particular, on 8 April and 7 May 2013, direct debits – which appear to be for an insurance policy - for just over £70 were returned.*

*By early 2014, Mr K had stopped showing signs of financial stress. So I don't think Halifax needed to step in when it reviewed the overdraft facility in August 2014.*

*Halifax sent Mr K letters about his overdraft use periodically from January 2021 onwards. In summary, these letters highlighted that Mr K was paying a significant amount in interest, and invited him to contact Halifax to discuss their options.*

*I think it was reasonable that Halifax contacted Mr K about his overdraft usage. Given Mr K was using the overdraft facility heavily throughout the time he'd held it, I think Halifax should have written to Mr K sooner.*

*However, it doesn't appear that Mr K responded to Halifax's letters, so I don't think that it would have changed things if Halifax had written earlier. And, as I noted above, the statements show a mix of essential and non-essential expenditure. So, I think Mr K could*

*have used some of the funds from his non-essential expenditure to reduce his overdraft facility over time – if he wished.*

*Accordingly, I don't think Mr K's use of the account warranted Halifax taking further action to intervene.*

*I've also considered whether the relationship might have been unfair under s140A of the Consumer Credit Act 1974. However, for the reasons I've already given, I don't think Halifax lent irresponsibly to Mr K or otherwise treated them unfairly under the scope of this complaint. 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."*

I've read and considered the full file again, and considered the comments from Mr K's representatives.

Mr K's representatives have provided Ombudsmen's decisions upholding cases they think are similar to Mr K's. As Mr K's representatives will be aware, our service considered each case on its own facts and merits.

Mr K's representatives also cited CONC 5D.3.2 as reason that Halifax should have taken further action when Mr K didn't respond to its letters about their usage of their overdraft facility. But CONC 5D only came into effect in late 2019. And, CONC 5D.3.2 applies where:

*"a firm identifies that a customer:*

*(a) has a pattern of repeat use within the meaning of CONC 5D.2.1R(2)(a); and*

*(b) is one in respect of whom there are signs of actual or potential financial difficulties."*

As I explained in my provisional decision, although I could see that Mr K had a pattern of repeat use of his overdraft facility, and showed some signs of financial stress prior to 2014, I don't think he was showing any other signs of actual or potential financial difficulties from late 2019 onwards. So, I don't think CONC 5D.3.2 applies in this instance.

Instead, I think CONC 5D.3.1 applies from late 2019 onwards. In summary, CONC 5D.3.1 says that where a consumer has a pattern of repeat use of their overdraft facility (but the firm doesn't consider they are showing actual or potential signs of financial difficulties), a firm should attempt to contact them – and continue to do so if the consumer doesn't respond. Halifax continued to contact Mr K periodically, so I think it met its obligations under the relevant regulation.

For these reasons, my decision about Mr K's complaint hasn't changed.

## **My final decision**

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 16 October 2025.

Frances Young  
**Ombudsman**