

Complaint

Ms A has complained about the overdraft charges Bank of Scotland Plc (trading as “Halifax”) applied to her current account. Ms A is being represented, by the (“representative”), in her complaint.

The representative has said the charges applied to Ms A’s account were unfair as there was a failure to take account her 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 her.

Background

Ms A successfully applied for an overdraft of £200 on her Halifax current account in December 2018. The limit on the overdraft was gradually increased until it reached £1,600.00 in October 2019.

One of our investigators reviewed what Ms A and Halifax had told us. He reached the conclusion that he wasn’t persuaded that Halifax had acted unfairly by allowing Ms A to use her overdraft in a way that was unsustainable or otherwise harmful. So the investigator didn’t recommend that Ms A’s complaint be upheld.

The representative, on Ms A’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, I’ve decided not to uphold Miss A’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 Ms A was unfairly charged as a result of being allowed to continue using her 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 Ms A if it applied this interest, fees and charges to Ms A’s account in circumstances where it was aware, or it ought fairly and reasonably to have been aware Ms A was experiencing financial difficulty. So I’ve considered whether there was an instance, or there were instances, where Halifax didn’t treat Ms A fairly and reasonably.

In other words, I’ve considered whether there were periods where Halifax continued charging Ms A 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.

Having looked through Ms A's account statements throughout the period concerned, I can't see that Halifax ought reasonably to have unilaterally taken corrective measures in relation to Ms A's overdraft. I accept that Ms A used her overdraft and there is no dispute over that.

However, the representative's arguments appear to suggest that this in itself means that Ms A 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 had an agreement to use and which 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. 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.

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 Ms A's incomings and outgoings as well as any overdrawn balances and thought about whether it was possible for her to have stopped using her overdraft, based on this.

I think that if Ms A 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. So I've carefully considered whether this was the case. The first thing for me to say is that Ms A was in receipt of credits that were sufficient to clear the overdraft within a reasonable period of time.

I'm therefore satisfied that Ms A's case isn't one where the borrower was permanently in their overdraft. Although I do accept that there were periods of times where Ms A 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 came into force in December 2019 which specifically 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 Ms A lost out as a result of any potential failing. I've also therefore considered whether Ms A's use of her overdraft (and Halifax continuing to allow her to use it) was causing her to incur high cumulative charges that were harmful to her. 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 Ms A expenditure, there are significant amounts of non-committed, non-contractual and discretionary transactions going from Ms A's account.

Given the repeat usage letters Ms A is likely to have been sent by Halifax, I think that she ought to have realised that how much she was paying as a result of using her account in this way. So I simply don't agree that Ms A was using her overdraft purely for essential spending, or because she had a reliance on credit to get by, as the representative says.

Indeed, it's fair to say that Ms A's account credits were sufficient to have cleared the overdraft within a reasonable period of time had she wished to do so. Equally, while I've noted what the representative has said about Ms A borrowing elsewhere, I can't see anything in the account transactions which ought to have alerted Halifax to the possibility that Ms A was borrowing unsustainably, or that the charges she was incurring was causing her harm either. Ms A did have other credit commitments but this in itself does not mean that she was reliant on credit to meet her essential expenditure.

I accept neither of these things in themselves (or when taken together) mean that Ms A wasn't experiencing difficulty. But I don't agree that Ms A was reliant on credit. She was able to make any essential commitments without using her overdraft. However, Halifax was reasonably entitled to conclude that she was choosing to use her overdraft to make discretionary transactions and in periods where she had increased funds her discretionary expenditure increased.

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 Ms A was in receipt of, I'm not persuaded that Halifax ought reasonably to have realised that Ms A's overdraft usage was causing her 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 Ms A contacted Halifax to explain that she was experiencing difficulty, or that she needed help in repaying her overdraft, prior to her complaint. Furthermore, given I've not seen anything in Ms A'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 Ms A potentially, or actually being in financial difficulty.

As this is the case, I'm satisfied that the applicable section of CONC 5D, to Ms A'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 a further letter. As this is the case, I don't think that Halifax was under an obligation to call Ms A in the way that the representative has suggested.

Overall and having considered everything, 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 Ms A immediately repay her overdraft and if not defaulting her account, in circumstances where there was a realistic prospect of Ms A clearing what she owed in a reasonable period of time.

In reaching my conclusions, I've noted that the representative's letter of complaint indicates that the lending relationship between Halifax and Ms A was unfair to Ms A under section 140A of the Consumer Credit Act 1974 ("CCA").

However, I'm satisfied Halifax did not lend irresponsibly or act unfairly in allowing Ms A to use her overdraft in the way that she did. I haven't seen anything to suggest that section 140A CCA would, given the facts of this complaint, lead to a different outcome here.

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

Although I'm not upholding Ms A's complaint, I would remind Halifax of its continuing obligation to exercise forbearance and due consideration, given what Ms A has said about her financial situation and it appears to me that her position may well have worsened since Halifax last reviewed the overdraft.

I would also encourage Ms A to get in contact with and co-operate with any steps that may be needed to review what she might, if anything, be able to repay going forward. Ms A may be able to complain to us – subject to any jurisdiction concerns – should she be unhappy with Halifax's actions in relation to exercising forbearance on her outstanding overdraft balance.

My final decision

For the reasons I've explained, I'm not upholding Ms A's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms A to accept or reject my decision before 24 November 2025.

Jeshen Narayanan
Ombudsman