

Complaint

Miss S has complained about the overdraft charges Bank of Scotland Plc (trading as “Halifax”) applied to her current account. She’s said the charges applied to her account were unfair as she was effectively living in her overdraft and wasn’t using it for short-term borrowing.

Background

Miss S originally applied for an overdraft in April 2019. At this point, the limit was £100 and over the course of the next few months, the limit was increased on nine occasions, until it reached £2,200.00 in November 2019.

One of our investigators reviewed what Miss S and Halifax had told us. And he eventually reached the conclusion that Halifax hadn’t done anything wrong or treated Miss S unfairly in relation to providing the overdraft, increasing the credit limit or allowing Miss S to use the overdraft in the way that she did. So he didn’t recommend that Miss S’ complaint be upheld.

Miss S 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 S’ complaint. I’ll explain why in a little more detail.

Did Halifax act fairly and reasonably when providing Miss S with her overdraft and increasing her credit limit?

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 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 S 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 S' initial application after it obtained information on her income and carried out a credit search. And the information obtained indicated that Miss S 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 S 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 S was provided with revolving credit facilities rather than a loan. And this means that Halifax was required to understand whether limits of up to £2,200.00 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 £2,200.00 would have required reasonably sized monthly credits in order to clear the full amount that could be owed within a reasonable period of time.

Halifax carried out credit checks on Miss S. I've considered the information that Halifax has provided us together with the information Miss S has sent in to get an idea of what Halifax is likely to have known about Miss S' existing credit at the respective times. Having considered the information provided, I've not seen any indication that Miss S had recent adverse credit information recorded against her.

It's fair to say that there was at least one historic defaulted account. But given that this was from sometime prior to these applications being made, I don't think that this adverse information means that Miss S shouldn't have been lent to. Furthermore, as Miss S was an existing Halifax current account holder, I've also looked at her statements in the period leading up to her applications.

I think that it is fair to say that Miss S' account statements show that she was in receipt of sufficient funds each month in order to clear an overdraft of up to £2,200.00 within a reasonable period of time. Bearing in mind, Miss S' response to the investigator's later assessment, I want to be clear in saying that I don't think it's the case that she could have paid up to £2,200.00 in one go. I think that it is the case that she could have paid this amount within a reasonable period of time.

I fully accept it's possible that Miss S' position might have been worse than what it looks like on the information on her statements. I know that Miss S has referred to other debt and that she was receiving non-salary credits into her account. 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 S herself provided at the time of her applications, suggested that this credit was affordable for her.

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

I'll now turn to setting out my thoughts on whether Halifax acted fairly and reasonably in allowing Miss S to use her overdraft in the way that she did from November 2019 onwards.

Did Halifax unfairly allow Miss S to continue using her overdraft in a way that was unsustainable or otherwise harmful for her from November 2019 onwards?

Before I go any further, as this essentially boils down to a complaint that Miss S 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 Miss S if it applied this interest, fees and charges to Miss 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 S unfairly.

Having looked through Miss S' statements, it's clear that she has been using her overdraft since it was granted to her. I'm therefore satisfied that there can be no dispute that Miss S was using her overdraft over the period of time she's had it. Miss S' arguments appear to suggest that this in itself means that her complaint should be upheld.

However, while I've noted that Miss S has referred to not using her overdraft for short-term emergency borrowing, she's complained about an overdraft not a short-term loan. Indeed, Miss S's overdraft was arranged and was an open-ended agreement credit agreement. This means that Miss S had an agreement to use her overdraft and as a result she was entitled to use it without having to reapply to do so. This is different from say short-term loans which she would have had to repay over a fixed period and then make a further application for additional loans if she wanted further funds.

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.

It's also worth saying that one such instance where a lender would be expected to act is where it was clear that the customer was experiencing financial difficulty. Nonetheless, it would need to be objectively clear to the lender, 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 S, in this light. In other words, I've considered whether there were periods where Halifax continued charging Miss S 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 Miss S' account statements throughout the period concerned, I can't see that Halifax ought reasonably to have realised that Miss S was experiencing financial difficulty to the extent that it would have been fair and reasonable for it to have unilaterally taken corrective measures in relation to Miss S' overdraft in the period prior to her making her complaint.

I'll explain why I think this is the case in a little more detail.

To begin with, I can't see Miss S notified Halifax that she was struggling and that these charges were causing her difficulty prior to her complaint. If she had Halifax would have

known that the charges were causing harm and I would have expected it to act. Nonetheless, even though I can't see that Miss S 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.

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 S' account transactions, I've seen no indication that any of the potential signs of financial difficulty contained in the guidance, were obviously present in her circumstances during the entire period I've looked at. I also can't see anything in Miss S' account transactions 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 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 S 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 S' account was in receipt of credits that were sufficient to clear the overdraft within a reasonable period of time. Indeed, I'm satisfied that Miss S' case isn't one where a borrower was marooned in their overdrawn with no reasonable prospect of exiting it. The fact that Miss S was receiving regular credits into other Halifax accounts is another reason why her overdraft doesn't appear to have been obviously unsustainable for her.

Furthermore, while I'm not seeking to make retrospective value judgements over Miss S expenditure, there are significant amounts of non-committed, non-contractual and discretionary transactions going from Miss S' account

I accept that Miss S 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 it isn't immediately obvious to me that Miss S was borrowing from unsustainable sources – such as payday type lenders – in order to pay for the charges, or meet other committed expenditure either.

Of course, I accept neither of these things in themselves (or when taken together) mean that Miss S wasn't experiencing difficulty. But I don't think that Miss S' account conduct and overdraft usage obviously show that she was. And bearing in mind I'm satisfied that it is more likely than not that Miss S 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, it looks like Miss S had the funds to be able to reduce the amount that she used her overdraft. It's also clear that Miss S' other account had sufficient funds to

be able to reduce her overdraft usage too I know that Miss S has said that this was because she was holding on to these funds in a separate account for a family member.

However, Halifax won't have known this or that these funds may have been earmarked for other purposes. So, in these circumstances, Halifax was reasonably entitled to conclude that Miss S was choosing to use her overdraft rather than it being the case that she had become reliant on it.

Therefore, I don't think that Miss S was obviously locked into using her overdraft and paying the charges for doing so. In my view, there was a reasonable prospect of Miss S exiting her overdraft. And Halifax was reasonably entitled to believe that Miss S 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.

Overall and having considered everything, I don't think that it was unreasonable for Halifax to have added the overdraft 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 Miss S immediately repay her overdraft and if not defaulting her account, in circumstances where, from the outside at least, it appears as though there was a realistic prospect of Miss S clearing what she owed in a reasonable period of time.

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

However, I'm satisfied Halifax did not lend irresponsibly or act unfairly in allowing Miss S 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 either.

So overall and having considered everything, while I can understand Miss S' sentiments and appreciate why she is unhappy, I'm nonetheless not upholding this complaint. I appreciate this will be very disappointing for Miss S. 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 Miss 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 and this complaint was made.

I would also encourage Miss S 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. Miss S 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 Miss S' complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 8 December 2025.

Jeshen Narayanan
Ombudsman