

## **Complaint**

Mrs W has complained about the overdraft charges Bank of Scotland plc (“Halifax”) applied to her account.

She’s said that she was unfairly allowed to use her overdraft even when it was clear that she couldn’t afford to.

## **Background**

Mrs W’s earliest statements, from 2005, show that she had an overdraft that had a limit of £300. Halifax has already agreed it shouldn’t have allowed Mrs W to continue using the overdraft and it has refunded all the interest, fees and charges it added to Mrs W’s account.

Mrs W remained unhappy with Halifax’s offer and referred her complaint to our service. One of our investigators considered Mrs W’s complaint and eventually reached the conclusion that what Halifax had already done to put things right was fair and reasonable in all of the circumstances of the case.

Mrs W 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 think that what Halifax has already done to put things right for Mrs W is fair and reasonable in all the circumstances of her complaint. I’ll explain why I think this is the case.

It might help for me to start by explaining that where a business accepts (or we decide) it did something wrong, we’d expect the business to put the consumer in the position they would be in if that wrong hadn’t taken place. And in an ideal world, this would mean us expecting a business to put a consumer in the position they’d now be in if what has been complained about hadn’t happened.

However, in cases concerning irresponsible lending that’s simply not possible as the funds that shouldn’t have been advanced were lent. As the funds lent will have been used and spent it’s effectively too late to wind things back.

In these circumstances, we have to look at some other way of asking a business to put things right in a fair and reasonable manner and bearing in mind what is practically possible. Where a business provided a credit that was unaffordable for a borrower, we’d typically expect it to put the consumer in the position they’d be in now if they hadn’t paid any interest and charges on that credit.

This would see the customer repay the funds that they borrowed and had the use of, but we’d normally expect the lender to ensure that the consumer paid no interest and charges.

This usually balances the fact that lender shouldn't have lent to the consumer against them having benefitted from the decision – in terms of having funds they wouldn't have had and having spent funds which, in many cases, they may well have known they were unlikely to be able to repay.

In this case, Halifax has agreed to ensure that Mrs W is in the position where she paid no interest, fees and charges from July 2019 onwards. However, as an interest and fee free overdraft of £300 was a benefit of Mrs W's account up until July 2019 it didn't add any interest, fees or charges to Mrs W's overdraft prior to this. The position changed around this time and Mrs W's overdraft attracted interest even though she had a packaged bank account.

Nonetheless, the net effect of what Halifax has done here is that Mrs W is now in the position she would be in had no interest and charges been added to the account from the outset.

Therefore, while I accept that Halifax's final response and our investigator's initial assessment may have confused matters, what has happened here means that Mrs W will be in the position we'd typically expect Halifax to place her in, had we upheld her complaint that she shouldn't have been given the overdraft in the first place. This is despite the fact that Halifax believes it acted unfairly from July 2019, rather than at the outset.

That said, we do look at each case individually and on its own particular merits. And while we have a general approach to how we how we might tell a lender to put things right where it provided credit it shouldn't have (such as here), we can and will tell it to do something different and/or something more if there's a strong reason to say that's what would be fair and reasonable to do in the circumstances of that individual case.

Mrs W has referred to having been unfairly provided with other credit and being mis-sold her packaged bank account. But Mrs W has already had separate answers to her complaint about those matters. And given those complaints have been considered separately, I don't think that they are relevant to my consideration of this complaint – this is especially as, I've already explained, Halifax has already done what I would have asked it to do if I were to have upheld the complaint myself.

In reaching my conclusions, I've also considered whether the lending relationship between Halifax and Mrs W might have been unfair to Mrs W under section 140A of the Consumer Credit Act 1974 ("CCA").

However, I'm satisfied that what Halifax has already agreed to do to put things right for Mrs W's complaint as a whole, is fair and reasonable in all the circumstances of this case and I'm not requiring it to do anything further. I'm also not persuaded that section 140A CCA or anything else would, given the facts of this complaint, lead to a different outcome in respect of this.

Overall and having considered everything, I'm satisfied that what Halifax has done is fair and reasonable in all the circumstances of this case and I'm therefore not upholding Mrs W's complaint. I hope that Mrs W will 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 satisfied that what Bank of Scotland Plc has already done to put things right for Mrs W is fair and reasonable in the circumstances of her complaint. And I'm not requiring it to do anything further or upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 5 January 2026.

Jeshen Narayanan  
**Ombudsman**