

Complaint

Mr B is unhappy with the compensation that Bank of Scotland plc (trading as “Halifax”) paid after it agreed that it unfairly provided him with an overdraft.

Background

In November 2011, Halifax provided Mr B with an overdraft on his current account. From what I’ve been able to see at its highest, Mr B’s overdraft limit was £2,500.00 and at its lowest it was around £1,500.00. At the time of Mr B’s complaint, his limit was £1,750.00.

In November 2024, Mr B complained to Halifax saying that he should never have been given an overdraft and Halifax doing so caused him ongoing difficulty.

Halifax upheld Mr B’s complaint. As a result, it:

- refunded all of the interest, fees and charges that it added to Mr B’s overdraft from when it was granted.
- added interest, at 8% simple a year, where any charges were applied in circumstances where Mr B would have had a credit balance to reflect that he would have lost the use of these funds.
- paid Mr B a further £150 in compensation.
- deducted Mr B’s overdrawn balance from the compensation amount and then removed the facility from his current account.

Mr B remained dissatisfied at Halifax’s response and referred his complaint to our service.

One of our investigators looked into Mr B’s concerns. She thought that what Halifax had already done to put things right for Mr B was fair and reasonable in all the circumstances. So she didn’t think that Halifax needed to do anything more and didn’t uphold Mr B’s complaint.

Mr B disagreed with the investigator’s assessment and asked for an ombudsman to review his complaint.

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 provided, I’m satisfied that what Halifax has already done to put things right for Mr B is fair and reasonable in all the circumstances of his complaint. As this is the case, I’m not requiring it to do anything more or anything further and so I’m not upholding the complaint. I’ll explain why I think this is the case in a little more detail.

Halifax has accepted that it shouldn’t have given him an overdraft or allowed him to continue using it. 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, we'd tell a business to put a consumer in the position they'd now be in if they hadn't been given the credit they shouldn't have. However, that's not possible in cases where funds that shouldn't have been advanced, were advanced, because typically those funds will have already been spent.

So we have to look at a way of asking a lender to put things right in some other fair and reasonable way. And where a business provided credit which it should have realised was unaffordable or unsustainable for a customer, we'd typically expect it to put the consumer in the position they'd be in now if they hadn't paid any further interest and charges on that credit. This means we'd normally expect a lender to refund the interest and charges added as a result of any credit that it should not have provided. And if those interest and charges were paid also add 8% simple interest per year.

Indeed, while Mr B has argued that Halifax benefitted from irresponsibly lending to him, any benefit would be these interest, fees and charges that it added. This is also the remedy that was awarded in the final decision that Mr B has referenced as part of his submissions. With all of this in mind, I'm satisfied that Halifax has put things right for Mr B in the way I'd typically expect a firm to when upholding a complaint about irresponsible lending.

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 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 or compelling reason to say that's what would be fair and reasonable to do in the circumstances of that individual case.

Mr B has argued that there is a strong or compelling reason for Halifax to do something more here. The main reason why Mr B remains unhappy (and he believes that Halifax should have done more) is because he was allowed to make transactions to betting companies using his current account. He believes that Halifax should have intervened on these transactions and so it failed to act responsibly in terms of managing his account.

I've carefully thought about what Mr B has said.

In the first instance, I wish to say that I'm sorry to hear that Mr B has had a difficult time and I sympathise with the situation that he has been in. That said, I do think that it may be helpful for me to explain that while Mr B has referred to Halifax's management of his overdraft, it wasn't required to actively manage Mr B's current account transactions and process them on an individual basis.

For the purposes of his overdraft, what Halifax was required to do was decide whether it wished to lend (and potentially continue lending) to Mr B or not. Halifax has accepted that it shouldn't have lent to Mr B and I've already explained why I'm satisfied that the steps it took after upholding Mr B's complaint addresses this.

I accept the possibility that the debit card on Mr B's current account may have allowed him to gamble more than he would have. I'm also prepared to accept the possibility that having an overdraft allowed Mr B the ability, on some occasions at least, to gamble more quickly than he might have been able to if he wasn't able to access this credit. But given the cumulative amount of the transactions Mr B has referred to greatly exceeds Mr B's overdraft limit, I'm not really in a position to say that the overdraft itself is clearly responsible for his gambling.

From what I've seen, particularly on the occasions when he did have a credit balance, Mr B is likely to have made gambling transactions irrespective of whether Halifax had provided him with an overdraft. So I'm unable to say that Halifax's decision to provide Mr B with an

overdraft is the sole, or even main reason, for any gambling losses that Mr B is now seeking to reclaim.

For the sake of clarity and avoidance of doubt, I would also add the introduction of the Financial Conduct Authority's Consumer Duty, in July 2023, did not impose additional legal duties on current account providers to block authorised transactions, in the way that Mr B argues. This is important because Mr B didn't make a request to block such transactions and there doesn't appear to be any dispute that Mr B authorised the transactions he's referring to either.

I'm also mindful that there doesn't appear to be any dispute that Halifax wasn't made aware of Mr B's diagnosis, his treatment, or his problem gambling prior to these transactions either. If Halifax was made aware of any of these factors prior to Mr B getting in touch in 2024, then I would have expected it to have taken this into account in its dealing with him. In other words, I would have expected Halifax to have taken these matters into account and consider whether it needed to take any additional steps (and if so what it could do) before processing any gambling transactions. But as Halifax wasn't aware of these matters, I can't reasonably say that ought to have had regard to them.

I note that Mr B has also referred to action that the Gambling Commission has taken in relation to problem gambling, in support of his argument that Halifax should have acted here. However, the action (taken by the Gambling Commission) which Mr B has referred to was taken against gambling companies, which the Gambling Commission is responsible for regulating, not financial services providers such as Halifax.

So while the Gambling Commission may have considered that some of the companies it regulates failed to treat customers fairly and took enforcement action against those companies as a result, this doesn't mean that I can or should make an award against Halifax. Of course, if Mr B believes that the gambling companies that he used acted unfairly towards him in the same way as the companies that he has referred to in his submission, this is a matter that he needs to take up with those companies.

However, as this complaint before me is against Halifax and concerns its actions, I can only consider whether it acted fairly and reasonably and in accordance with its obligations. I can't hold Halifax responsible for any unfairness that may have been caused by any gambling companies that Mr B used, once the funds for the transactions Mr B made went to those companies.

Bearing in mind all of this, while I've considered what Mr B has said, I'm satisfied that what Halifax has done, which is along the lines of our typical approach to putting things right in irresponsible lending cases, is fair and reasonable in all the circumstances of this case.

In reaching my conclusions, I've also considered whether the lending relationship between Halifax and Mr B might have been unfair to Mr B 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 Mr B'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.

As I've explained, I'm sorry that Mr B has gone through a very difficult time. But having carefully considered everything in the round, I'm satisfied that Halifax refunding all the overdraft interest, fees and charges it added, together with interest where applicable, as well

as paying Mr B £150 in compensation, fairly and reasonably compensates him for what Halifax is responsible for having done wrong in this case.

Overall and having considered everything, I'm satisfied that what Halifax has already agreed to do to put things right for Mr B is fair and reasonable in all the circumstances of this complaint. I appreciate that this will prove disappointing for Mr B as it is clear that he feels strongly about his complaint. But I hope he'll understand the reasons for my decision and that he'll at least feel his 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 Mr B is fair and reasonable in all the circumstances. So I'm not requiring it to do anything more, or anything further and I'm not upholding Mr B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 11 March 2026.

Jeshen Narayanan
Ombudsman