

The complaint

Mr K complains that Bank of Scotland plc trading as Halifax acted irresponsibly when it gave him an overdraft he couldn't afford. He says the level of overdraft interest and charges it has applied is unfair.

What happened

Mr K had a current account with Halifax for several years on which he had an overdraft that reached £2,000 prior to March 2017. Mr K fell into difficulties with the overdraft, so the bank closed the account and sold the debt to a third-party debt purchaser on 20 March 2020.

In April 2024, Mr K complained to Halifax. He said the overdraft limit had never been affordable for him and the charges and interest levied on the account were unfair.

Halifax responded to his complaint. It said it wouldn't look into the agreement of the overdraft or the interest and charges levied before April 2018, as they had taken place more than six years before Mr K raised his complaint. But it considered his complaint regarding charges since then and felt it hadn't acted unfairly. Halifax didn't uphold the complaint.

Mr K didn't accept Halifax's response and referred his complaint to our service. One of my ombudsmen colleagues has agreed with Halifax that we can't look at events which took place prior to April 2018, but he asked one of our investigators to look into the charges and interest applied since that date.

Having done so, our investigator didn't uphold the complaint. She said that while there were some signs of financial strain such as payday lending, there was also significant non-essential spending and transfers to another account in Mr K's name. His account performance worsened and in mid-2019 he began to exceed his overdraft limit, and direct debits began to be returned unpaid. The account was closed in February 2020, and no more charges and interest have been applied since then. Our investigator didn't think Halifax had treated Mr K unfairly.

Mr K didn't agree with our investigator so, as there was no agreement, the complaint has been passed to me for a 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.

For completeness, I agree with my ombudsman colleague that we don't have the power to consider events prior to April 2018 for the reasons he set out, so my decision will only deal with events since then.

The regulations lenders must follow are set out in the Consumer Credit sourcebook (CONC). In April 2018, CONC 6.7.2 which applied to consumer credit in general, said businesses must monitor a customer's repayment record and take appropriate action where there are

signs of actual or possible repayment difficulties. In December 2019, overdraft specific regulations came into force. CONC 5D dealt with overdraft repeat use and set out steps businesses should take where actual or potential financial difficulties were identified.

CONC 5.2A.12 says that lenders should consider whether a customer can repay money lent to them in a “*reasonable period*”.

The regulations oblige lenders to monitor their overdraft customers’ accounts for signs of difficulty. They tend to do this at set intervals and Mr K’s statements show a review date for the period I’m considering of March 2019 and then March 2020. So I’ve used those dates to look at Mr K’s account performance.

Our investigator went into quite a lot of detail about Mr K’s overdraft usage. I won’t repeat all of that here as it is known to both sides. That is not to be discourteous, rather, it reflects my informal role in deciding what a fair and reasonable outcome is.

April 2018 to March 2019

At the beginning of this period, Mr K’s account was around £700 overdrawn (comfortably within his limit of £2,000) and came back into credit when he received his pay. On 20 April 2018, he made a payment of £1,800 which took his account overdrawn by £1,833. But again, when he was paid, his account returned to credit and ran comfortably within the limit. He made another large payment to a jeweller for almost £1,500 on 18 June 2018 which took him overdrawn by £1,400 or so but again his account returned to credit in July when his pay was received. A few days later, he made another large payment of around £1,500 to a travel agent taking him overdrawn by £850. His pay wasn’t quite enough to return the account to credit again until December 2018. From January 2019 it stayed overdrawn to the review date.

Simply using an overdraft isn’t necessarily a sign of financial difficulties. Mr K had made some significant payments within the year which appear to be discretionary as mentioned above. So I don’t think Mr K’s overdraft usage ought to have made Halifax think he was in difficulties. Outside of the large transactions, there was a reasonable amount of discretionary spend, and his commitments were comfortably covered by his income. So I think Halifax would have felt Mr K could repay the overdraft within a reasonable period in line with the regulations if he was called upon to do so.

I don’t think Halifax ought necessarily to have taken any action with regards to Mr K’s overdraft use at this point unless he’d contacted it for help. I’ve seen nothing which suggests he did.

March 2019 to closure in February 2020

Mr K began to exceed the overdraft limit on his account during this period and direct debits would occasionally be returned unpaid – including payments to other creditors. He also began to use payday loans on a regular basis. Halifax began to contact Mr K about his overdraft and offered support from May 2019 onwards but didn’t receive any response from him.

Towards the end of 2019, Mr K began to have his salary paid to an account with another bank – his last salary received by Halifax was October 2019. From shortly after that, the account remained in excess of the limit. Halifax stopped applying charges to the account from 28 November 2019 and the account was closed on 26 February 2020.

So I think that it became evident that Mr K was struggling financially during 2019 and Halifax

intervened as I'd expect – first by attempting contact and ultimately stopping further charges from accruing.

For the reasons I've already given, I don't think Halifax treated Mr K unfairly in relation to this matter. I haven't seen anything to suggest that Section 140A would, given the facts of this complaint, lead to a different outcome here.

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 17 March 2026.

Richard Hale
Ombudsman