

Complaint

Mr and Mrs R have complained about the overdraft charges Bank of Scotland plc (trading as “Halifax”) applied to their current accounts. They’ve effectively said that they shouldn’t have been provided with these overdrafts and therefore the charges applied to their account were unfair as they were applied even when they were in financial difficulty.

Background

Mr and Mrs R have three joint overdrafts with Halifax. They had agreed overdraft limits of £8,000.00, £3,740.00 and £1,000.00 at the time of their complaint. In December 2024, Mr and Mrs R complained saying that they were allowed to continue using the overdrafts, which were unaffordable, in a way that was unsustainable and which caused them continued financial difficulty.

Halifax partially upheld Mr and Mrs R’s complaint. It said that it didn’t believe that it had done anything wrong from February 2018 onwards as it had offered Mr and Mrs R a number of options that would have helped them repay the balances on their overdrafts in the period between May 2016 and February 2018. However, all of these options were rejected by Mr and Mrs R. As far as Halifax was concerned this meant that it had done what it needed to do and had acted fairly and reasonably from this point onwards.

Nonetheless, it accepted that it could have offered Mr and Mrs R assistance earlier than when it offered the options that it did and as a result it refunded the charges it applied, on all three of Mr and Mrs R’s accounts, for the period that it had records from - September 2005 - until February 2018. Mr and Mrs R didn’t think that Halifax’s offer went far enough and referred their complaint to our service. Mr and Mrs R considered that Halifax needed to refund all of the interest, fees and charges it added to their accounts.

One of our investigators reviewed what Mr and Mrs R and Halifax had told us. She reached the conclusion that what Halifax had already done to put things right for Mr and Mrs R was fair and reasonable in all the circumstances of their complaint.

Mr and Mrs R disagreed with the investigator’s conclusions 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.

We’ve explained how we handle complaints about irresponsible and unaffordable lending, including what we typically expect a lender to put things right should we consider that it failed to act fairly and reasonably, on our website. And I’ve used this approach to help me decide Mr and Mrs R’s complaint.

Halifax appears to have accepted that it should not have provided these overdrafts to Mr and Mrs R in the first place – although it seems to be relying on how the overdrafts were

used after they were provided to justify this. In any event, this means that I do not need to consider whether Halifax acted fairly and reasonably in providing these overdrafts to Mr and Mrs R. I merely need to consider whether what Halifax has already done to put things right for Mr and Mrs R is fair and reasonable in all of the circumstances of their complaint.

Having considered the available evidence, I'm satisfied that what Halifax has already done to put things right for Mr and Mrs R is fair and reasonable in all the circumstances of their complaint and I'm not requiring it to do anything more or anything further. I'll now proceed to explain why I think that this is the case in a bit more detail.

It might help for me to start by explaining that in broad terms, where I find that a business has done something wrong, I'd normally expect that business – in so far as is reasonably practicable – to put the consumer in the position they *would be in now* if that wrong hadn't taken place. In essence, in this case, this would mean Halifax putting Mr and Mrs R in the position they'd now be in if they hadn't been provided with these overdrafts in the first place.

But when it comes to complaints about irresponsible lending this isn't straightforward. Mr and Mrs R applied for and were provided with these overdrafts and they also used the funds. It's also fair to say that they had some benefit from having access to these funds as well as the difficulty they've said they experienced. They also had these overdrafts for more than twenty years. So, in these circumstances, I cannot undo what's already been done. And it's simply not possible to put Mr and Mrs R back in the position they would be in if their overdraft applications had been declined.

As this is the case, I have to think about some other way of putting things right in a fair and reasonable way bearing in mind all the circumstances of the case. As I've explained, our website sets out the main things we consider when looking at putting things right in cases where we conclude that a lender did something wrong in irresponsible/unaffordable lending complaints.

In this case, Halifax has sought to try and place Mr and Mrs R in the position that they would be if they paid no interest, fees and charges in the period between September 2005 and February 2018. I understand that Mr and Mrs R may have been provided with these overdrafts earlier than September 2005 but this is as far as Halifax's records on the charges it applied to Mr and Mrs R's accounts go.

Equally, Mr and Mrs R do not have any records going back earlier than September 2005 either. In any event, I think that it would be fair to say that any remaining dissatisfaction on Mr and Mrs R's part doesn't appear to be regarding the charges prior to September 2005 not being refunded, it is at the fact that the charges added to the overdrafts from February 2018 onwards haven't been refunded. I've carefully thought about whether Halifax acted fairly and reasonably in refusing to refund the charges added from February 2018 onwards.

In the first instance, there is no dispute that Halifax has records on the charges that were applied to Mr and Mrs R's overdrafts from February 2018 and that it is not the reason it has limited its refund to this point. Halifax has limited its refund to February 2018 because by this stage Mr and Mrs R had been offered options that would have helped them exit their overdrafts, but these had been refused.

From the information I've been provided with, I can see that Mr and Mrs R were first referred to Halifax's Money Management team in May 2016. This was because Mr and Mrs R had said their circumstances had changed and they were struggling financially. Once a lender is told, or it realises, that a borrower is experiencing financial difficulties we would expect it to exercise forbearance and due consideration, in line with its regulatory obligations.

At this point, Halifax halted some fees being added and offered to consider applying a repayment plan in order to reduce what was owed. Mr and Mrs R didn't take up this offer at this point and instead said they would get back in contact at a later date. Mr and Mrs R didn't get back in contact with Halifax until May 2017.

In May 2017, some of the interest, fees and charges due to be added to the account were refunded. However, Mr and Mrs R were told that this was not a viable long-term solution and a repayment plan needed to be considered as this was the only way to reduce what was owed over a sustainable period. Mr and Mrs R declined this option as they didn't want adverse credit information recorded against Mr R.

I can understand why Mr and Mrs R may have been concerned at the implications of adverse information being reported by Halifax. However, while repayment plans, overdraft facilities being withdrawn and the associated adverse information, might be viewed negatively by other lenders, it does offer the borrower certain protections in relation to the overdraft debt – for example it stops interest and further charges being added. Furthermore, Halifax had and still has a duty to report accurate information.

So I don't think that it would have been unreasonable for Halifax to have insisted that it would report the overdrafts being in repayment plans, or having been terminated, as a condition of taking such action. After all it would simply have been reflecting the position as it was. Indeed, I would have expected Halifax to accurately report the result of any solution as reporting any overdraft debt inaccurately would arguably have been counterproductive and not in Mr and Mrs R's interests or that of any future lender.

It's clear that Mr and Mrs R weren't especially keen on the options that Halifax offered. They preferred to remove Mr R as a joint party on these accounts before taking any action. However, these balances had built up while Mr R was a joint party and was liable for the debt that had accrued. Equally, any assessment of affordability, for these overdrafts, was based on both Mr and Mrs R's circumstances and Halifax lent to both of them. As this is the case, I don't think that it was unreasonable for Halifax to refuse to remove Mr R from the accounts, unless and until what was owed had been repaid.

I appreciate that Halifax might not have gone as far as Mr and Mrs R had hoped. And it is clear that they wanted an option that would not have reflected the fact that they were finding it difficult to repay what they owed. However, the help and support offered – repayment plans and/or terminating the facilities as well as reporting this to credit reference agencies – was in line with what I would typically expect an overdraft provider to do when a customer asks for help and support. As this is the case, I do think that Halifax's responses to Mr and Mrs R's requests for help – in the period between May 2016 and February 2018 - were appropriate.

Given Mr and Mrs R refused all offers of help in this period and instead chose to continue using their overdraft, I don't think that it would be fair and reasonable for me to now require Halifax to place them in the position that they would now be in had they accepted the assistance they refused at this time. This is especially as Mr and Mrs R now complaining so far after events they were aware of and could have complained to us about at that stage, means that any attempt to reflect what have happened in terms of reporting what was owed cannot now happen.

In these circumstances, I don't think that it is unreasonable for Halifax not to refund the charges added to Mr and Mrs R's accounts from February 2018 onwards. In my view, Mr and Mrs R's actions in refusing the assistance offered saw them instead choose to use their overdrafts (instead of accept a plan that would have seen them exit them) and I think it

would be unfair to hold Halifax responsible for this, or require it to compensate them from this point onwards, given these circumstances.

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

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 Mr and Mrs R's complaint. I hope that Mr and Mrs R 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 (trading as Halifax) has already done to put things right for Mr and Mrs R is fair and reasonable in all the circumstances of their complaint. And I'm therefore not requiring it to do anything further or upholding this complaint.

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

Jeshen Narayanan
Ombudsman