

complaint

Miss W complains about changes Bank of Scotland Plc (trading as Halifax) made to its overdraft pricing structure. She says this caused her financial difficulty and left her in permanent debt for several years.

background

Miss W has held two current accounts with Halifax for several years, both with an arranged overdraft facility in place. In November 2018, she complained to Halifax after it said it was about to change its overdraft pricing structure. She said the extra cost would make her overdraft more difficult to repay. Halifax didn't uphold the complaint. And as Miss W was dissatisfied, she referred the complaint to our service.

Miss W's complaint was considered by one of our adjudicators. She thought Halifax ought to have realised Miss W was experiencing financial difficulty as early as 2013, so shouldn't have added any more interest, fees and charges from then. Specifically, the adjudicator recommended Halifax to reword Miss W's accounts to remove all the interest and charges added to account ending 4310 from 15 February 2013, and between 1 September 2014 and 17 April 2019 between for account ending 7184.

I issued a provisional decision in July 2021. I set out I was intending to uphold Miss W's complaint. I thought it ought to have been clear to Halifax by July 2013 that Miss W wasn't in a position to sustainably repay what she owed on both accounts within a reasonable period of time.

From the earliest available statement for account ending 7184, I found Miss W took out payday loans each month to cover her outgoings. In the four weeks leading up to and including 1 July 2013, I noted Miss W had taken out four payday loans. I considered this showed she was in a cycle of repeated payday borrowing. I thought in these circumstances, Halifax ought to have realised Miss W was at a significant risk of being unable to repay what she already owed.

I also noted Miss W hadn't seen or maintained a credit balance on either account for an extended period of time. I explained Halifax's own literature suggested overdrafts are for unforeseen emergency borrowing not prolonged day-to-day expenditure. So, I thought Halifax should have stopped providing the overdraft on the same terms and treated Miss W with forbearance rather than charge even more interest, fees and charges on the overdraft.

I explained Miss W ended up paying additional interest, fees and charges on her overdraft on both accounts and this ended up exacerbating difficulties she already had in trying to clear it. I thought Halifax didn't treat Miss W fairly and she lost out because of what it did wrong.

I invited both parties to make any final comments ahead of my final decision.

Miss W accepted my provisional decision and didn't provide further comments for me to consider.

Halifax said it was minded to accept my provisional decision and made further comments:

- it thought I'd used some of the current regulations retrospectively – it gave an

example of Miss W's use of payday lending which it said wasn't an activity it was required to consider in 2013;

- it questioned the date of July 2013 I'd said the refund needed to be from – it asked if this was an error on my part as the statement for account ending 7184 showed the overdraft renewal date of 1 September 2013;
- it said it would remove the overdraft facility on both accounts immediately after providing a refund in settlement of this complaint. Halifax said it didn't feel the usual notice period was required in this instance; and
- it wanted us to check with Miss W if account ending 7184 can be closed at the point of settlement. Any overpayments due on this account would be paid into account ending 4310.

my findings

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I thank both parties for their responses. I've considered the additional comments Halifax has made and respond as follows.

I don't agree with Halifax's assertion I've retrospectively applied current regulations when considering Miss W's complaint. The relevant regulator may have changed over time, but the requirement to take reasonable steps to assess whether a prospective borrower is likely to be able to meet repayments in a sustainable manner – it's important to mention overdrafts are repayable on demand – was present even in 2013. So, consideration ought to have been given to how Miss W was funding her accounts and the risk of being unable to pay what she already owed.

In relation to the refund date, I'd like to reassure Halifax there hasn't been any oversight on my part. Perhaps I can provide a clearer explanation. Although statements issued at the start of 2013 on account ending 7184 show a renewal date of 1 September 2013, the statement issued on 1 August 2013 shows a revised renewal date of 1 September 2014. This indicates a review of Miss W's overdraft arrangements for 2013 took place earlier than expected, most likely at some point in July 2013. This is the reason why I consider July 2013 to be the point at which Halifax ought to have started taking corrective action.

I've carefully considered Halifax's reasons for suggesting removal of the overdraft facility on both of Miss W's accounts immediately, and closing account ending 7184. Any changes of this nature should be carried out in line with the terms and conditions of the account, and appropriate notice given. So, Halifax needs to discuss Miss W's future arrangements with her directly. And if it wishes to exercise its rights under the terms and conditions of the account, it needs to give due notice to Miss W to give her time to make alternative arrangements. Of course, if in response to this decision Miss W says she's agreeable to Halifax's proposal, our service will let Halifax know accordingly.

Fair compensation – what Halifax needs to do to put things right for Miss W.

Having thought about everything, I think that it would be fair and reasonable in all the circumstances of Miss W's complaint for Halifax to put things right by:

- Reworking Miss W's current overdraft balance on account ending 4310 and account ending 7184 so that all interest, fees and charges applied to it after the renewal in July 2013 are removed.

AND

- If an outstanding balance remains on the overdraft once these adjustments have been made Halifax should contact Miss W to arrange a suitable repayment plan for this. If it considers it appropriate to record negative information on Miss W's credit file, it should reflect what would have been recorded had it started the process of taking corrective action on the overdraft in July 2013.

OR

- If the effect of removing all interest, fees and charges results in there no longer being an outstanding balance, then any extra should be treated as overpayments and returned to Miss W along with 8% simple interest† on the overpayments from the date they were made (if they were) until the date of settlement. If no outstanding balance remains after all adjustments have been made, then Halifax should remove any adverse information from Miss W's credit file.

† HM Revenue & Customs requires Halifax to take off tax from this interest. Halifax must give Miss W a certificate showing how much tax it has taken off if she asks for one.

my final decision

For the reasons given above and in my provisional decision, I uphold Miss W's complaint and direct Bank of Scotland Plc (trading as Halifax) to put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss W to accept or reject my decision before 3 October 2021.

Gagandeep Singh
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