

complaint

Mr W has complained Bank of Scotland plc, trading as Halifax, lent to him irresponsibly by allowing him a large overdraft which he couldn't afford to repay.

background

Mr W complained to Halifax in 2017 about the charges they'd applied to his account from 2010 to 2015. He was also concerned he'd been allowed to increase his overdraft to £5,000 when he was earning considerably less. He was gambling a lot at the time and this meant he was reliant on borrowing from Halifax and payday loans.

Halifax didn't believe the charges were unfair as they were in line with their terms and conditions. They felt they'd considered Mr W's overdraft requests in line with their criteria at the time. They'd refunded charges in 2015 when Mr W told them about his financial difficulties and provided advice about minimising charges. Mr W hadn't paid any charges from 2015 onwards. Mr W didn't agree this was fair and brought his complaint to the ombudsman service.

Our adjudicator reviewed the evidence. This confirmed Halifax had considered Mr W's overdraft requests in line with their criteria. He didn't think it would be fair to ask Halifax to refund any further charges.

Mr W didn't agree with this outcome. He felt that he'd twice been allowed to increase his overdraft to £5,000 but had always struggled to repay this and the fees he'd been charged. He's asked an ombudsman to consider 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 done so, I've reached the same conclusion as our adjudicator. I'll explain why.

Firstly it's worth repeating what I know Halifax told Mr W. The Supreme Court decision in 2009 about bank charges and fees means I have no power to say these are either high or unfair. However I can decide to reimburse these. But only if there's evidence Halifax ignored Mr W's financial difficulties or didn't treat him sympathetically and positively.

I've reviewed Mr W's statements for the period from 2010 to 2017. These show the detail of his expenditure. As he's told us, he was gambling a lot for long periods but at some times was winning as much as he was losing. This fact alone wouldn't disqualify him from being granted an overdraft.

There were a limited number of unplanned overdraft fees of £5 in 2010. Generally at that time Mr W was managing his account without the need for an overdraft.

When he first started to apply for overdraft facilities late in 2011, he'd spent most of the year with his account in credit. In part his balance exceeded £10,000. So Halifax would have reviewed the state of his account, how he managed his money along with what his credit report told them. There was no requirement on Halifax at the time to consider Mr W's income or his expenditure. Mr W made all his overdraft applications online – some of them within a short timescale of others – but I can't see Halifax did anything wrong.

Although Mr W had an overdraft of £5,000 by the end of 2011, this reduced to £2,500 in the middle of 2012. He then applied to increase his overdraft again back to £5,000. In 2013 Mr W cancelled his overdraft after transferring in a large amount of money to his account. It wasn't until 2014 that the overdraft was increased again. And in 2015 Mr W complained to Halifax about his charges and his financial situation.

Mr W has said he was relying on payday loans during this period. Halifax shouldn't have allowed him to increase his overdraft. But I've reviewed his credit record which is what Halifax would also have considered. This only shows five loans taken out in 2013 and three loans in 2015. It's only in 2016-17 that his credit record shows payday loans being taken out regularly.

I appreciate his bank statements show payday loans being taken out earlier – in 2012 for example – but payday loan companies were not always showing this lending on credit files. So I don't think it would be fair to say Halifax has done anything wrong here.

I know Mr W is concerned Halifax allowed him to run up an overdraft greatly in excess of his monthly income. But for most of this period, there was no requirement on Halifax to consider his income separately. But I'm satisfied they would have considered Mr W's ability to repay his overdraft.

Based on the evidence I've not seen any reasons why Halifax would have proactively noted Mr W's financial situation. Nor was there any obligation on them to do this.

I've reviewed Halifax's customer contact notes. These don't show Mr W telling them about his financial situation prior to 2015. When he called Halifax in July 2015 he mentioned he was struggling paying these fees.

At that time Halifax refunded £89 as a gesture of goodwill. They also told Mr W what he could do to prevent further charges. From that time I don't think Mr W has had any further charges. It's not always the case that refunding charges or not levying charges is the only thing a bank can do to help a customer.

There's no dispute Halifax charged Mr W for unauthorised and authorised overdraft use. But I've seen nothing to suggest these weren't in line with their terms and conditions.

The central aspect of Mr W's complaint is that Halifax allowed him to increase his overdraft which led to her further financial difficulties. I don't believe this was the case. Nor can I see Mr W told Halifax about his financial situation so it wouldn't be fair to ask them to make any further refunds to him.

my final decision

For the reasons I've given, my final decision is not to uphold Mr W's complaint against Bank of Scotland plc, trading as Halifax.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 30 April 2018.

Sandra Quinn
ombudsman