

## **Complaint**

Mr J has complained that Bank of Scotland plc (trading as "Halifax") unfairly added interest, fees and charges to his overdraft which caused financial difficulty and his account to close.

## **Background**

Mr J has also complained about a payment not been returned to the sender when his account was closed. But we've already told him that's a separate issue he'll need to take up with Halifax and so it won't form part of this decision.

One of our adjudicators looked at this complaint and thought Halifax should have realised Mr J's overdraft had become unsustainable for him in June 2017. Halifax didn't respond and Mr J disagreed. So the complaint was passed to an ombudsman for a final 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.

Halifax will be familiar with all the rules, regulations and good industry practice we consider when looking at whether a bank treated a customer fairly and reasonably when applying overdraft charges. So I don't consider it necessary to set all of this out in this decision. Having carefully considered everything provided, I also think Halifax acted unfairly when it continued charging overdraft interest and associated fees after it renewed Mr J's overdraft in June 2017.

By this point, Halifax would have seen that Mr J had been 'hardcore borrowing' for a number of months. In other words, Mr J's account remained persistently overdrawn for lengthy periods without returning to credit. Equally Mr J had moved further away from being able to return to a credit balance in the period since the last review had been carried out. It's also clear that Mr J was resorting to payday and other high-cost forms of credit in order to repay existing creditors and make ends meet.

So I think that by June 2017, Halifax should have stopped providing the overdraft on the same terms and treated Mr J with forbearance rather than adding even more fees and charges on the overdraft.

As Halifax didn't react to Mr J's overdraft usage and instead continued charging in the same way, I think it failed to act fairly and reasonably towards him. Mr J ended up paying additional interest, fees and charges when he was already experiencing difficulty. So I'm satisfied that he lost out as a result of Halifax failing to act fairly and reasonably towards him.

In reaching my conclusions, I've also thought about Mr J's unhappiness at his facility being withdrawn and his account being sold to third-party debt purchasers.

However, I'm upholding Mr J's complaint because I think that Halifax should have started the process of withdrawing his overdraft, in June 2017, because it ought to have realised that he was already in financial difficulty. As I've found that this is the case, I'm satisfied that it wasn't unreasonable for Halifax to take this action a year later.

I've also looked at what Mr J has said about being pursued for the wrong account. It is accurate to say that one of the third-party collection agents used a different account number from that of Mr J's previous Halifax account number. However, this is because it assigned its own reference/account number for the account. And having looked at everything, I'm satisfied that the payments Mr J was asked to make did relate to his account.

### **Fair compensation – what Halifax needs to do to put things right for Mr J.**

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

- Reworking Mr J's overdraft balance so that all interest, fees and charges (not already refunded) applied to it from June 2017 are removed.

AND

- If an outstanding balance remains on the overdraft once these adjustments have been made Halifax should contact Mr J to arrange a suitable repayment plan for this. If Halifax considers it appropriate to record negative information on Mr J's credit file, it should reflect what would have been recorded had it started the process of taking corrective action on Mr J's account in June 2017.

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 Mr J 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 Mr J's credit file.

† HM Revenue & Customs requires Halifax to take off tax from this interest. Halifax must give Mr J a certificate showing how much tax it has taken off if they ask for one.

At this stage it's unclear whether Halifax still owns the debt on Mr J's account. If Halifax did sell any outstanding balance on this account to a third-party debt purchaser, it will need to either buy the account back from the third-party and make the necessary adjustments, pay an amount to the third party in order for it to make the necessary adjustments, or pay Mr J an amount to ensure that it fully complies with this direction.

### **My final decision**

For the reasons I've explained, upholding Mr J's complaint. Bank of Scotland plc should put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 10 October 2021.

Jeshen Narayanan  
**Ombudsman**