

Complaint

Mr L has complained that Halifax irresponsibly provided him with an overdraft and a loan in 2017. He says that Halifax ought to have realised he was a gambler and that's what he would be using the funds advanced for.

Background

I attach my provisional decision of 16 February 2021, which forms part of this final decision. In my provisional decision, I set out why I was intending to uphold Mr L's complaint and invited both parties to make any final comments ahead of my final decision.

Following this, Halifax confirmed having received my decision. But it didn't provide anything for me to think about or ask for any additional time to do so.

Mr L queried whether my decision only covered the overdrafts he was provided with in 2017. He also queried whether I was only telling Halifax to refund the interest he paid on the loan while it was with Halifax and before he refinanced it with another lender.

My findings

I have reconsidered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

I set out in some detail why I intended to uphold Mr L's complaint in my provisional decision.

Mr L has queried the scope of my provisional decision. I can confirm that Mr L's initial complaint to Halifax was about the overdraft and loan he was provided with in 2017. As this is the case, my decision only looked at whether it was fair and reasonable for Halifax to have provided Mr L with an overdraft with an initial limit of £500 in April 2017 and the subsequent decisions to increase the limit to £1,000.00 in May 2017, £1,500.00 in July 2017 and £3,000.00 in October 2017.

I am aware that Mr L had an overdraft with Halifax before this. But as this didn't form part of his initial complaint to Halifax, I wasn't able to look into this. Mr L needs to complain to Halifax in the first instance should he be unhappy with its earlier decision to provide him with an overdraft. And depending on the circumstances, Mr L may then be able to refer the matter to us should he be unhappy with Halifax's response.

I now turn to Mr L's comments regarding the compensation on the loan I concluded he shouldn't have been provided with in my provisional decision. I do think that Halifax only needs to refund any interest and charges that it applied to Mr L's account. As far as I'm concerned Mr L's decision to refinance with another provider was an intervening act, which limited Halifax's responsibility here.

If Mr L is unhappy with the later lender's decision to lend to him, bearing in mind his circumstances at the time, then this is a matter he'll need to take up with that lender. But I'm satisfied that Mr L refinancing his loan, ended Halifax's responsibility for *its* decision to lend to him. And as this is the case, I'm satisfied that it is fair and reasonable for it to only refund the interest it charged Mr L while his loan was with Halifax.

Overall and having considered Mr L's further points, I've not been persuaded to alter the conclusions that I reached in my provisional decision of 16 February 2021. So I'm still partially upholding Mr L's complaint and directing Halifax to put things right in the way I've set out below.

Fair compensation – what Halifax needs to do to put things right for Mr L

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

Overdraft

- Rework Mr L's overdraft balance to ensure that from July 2017 onwards interest is only charged on the first £1,000.00 outstanding to reflect the fact that no further credit limit increases should have been provided. Any additional fees levied should also be removed; and

AND

- If an outstanding balance remains on the overdraft once these adjustments have been made Halifax should contact Mr L to arrange a suitable repayment plan for this. If it considers it appropriate to record negative information on Mr L's credit file, it should backdate this to October 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 L 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 L's credit file.

Loan

- removing all interest, fees and charges applied to Mr L's loan from the outset. The payments Mr L has made should be deducted from the £2,000.00 he was originally lent. Halifax should treat any payments made if and when the £2,000.00 has been cleared as overpayments. And any overpayments should be refunded to Mr L along with 8% simple interest †;
- remove any adverse information recorded on Mr L's credit file as a result of this loan.

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

Should an outstanding balance (or balances) remain on the accounts in question after all adjustments have been made Halifax can use any compensation due to Mr L to reduce what he owes. I'd also remind Halifax of its obligation to exercise forbearance should outstanding balances remain after all adjustments have been made to Mr L's accounts and it's the case that he is experiencing financial difficulty.

My final decision

For the reasons set out above and in my provisional decision of 16 February 2021, I'm upholding Mr L'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 am required to ask Mr L to accept or reject my decision before 3 April 2021.

Jeshen Narayanan
Ombudsman

COPY OF PROVISIONAL DECISION

Complaint

Mr L has complained that Halifax irresponsibly provided him with an overdraft and a loan in 2017. He says that Halifax ought to have realised he was a gambler and that's what he would be using the funds advanced for.

Background

Halifax provided Mr L with an overdraft with an initial limit of £500 in April 2017. This limit was increased to £1,000.00 in May 2017, £1,500.00 in July 2017 and £3,000.00 in October 2017. Halifax also provided Mr L with a loan for £2,000.00 in October 2017. The loan had an APR of 28.7% and was to be repaid in 36 instalments of £80.05.

In November 2017, prompted by Halifax's changes to its overdraft pricing structure, Mr L complained that Halifax irresponsibly lent to him. Halifax didn't think that it had done anything wrong and so didn't uphold Mr L's complaint. Mr L remained dissatisfied and referred his complaint to our service.

One of our investigators looked at this complaint and didn't think that Halifax had done anything wrong or treated Mr L unfairly. So he didn't recommend the complaint be upheld. Mr L disagreed with our investigator and asked for an ombudsman to review his complaint.

My provisional 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 set out our general approach to complaints about unaffordable/irresponsible lending - including the key rules, guidance and good industry practice - on our website. And I've referred to this when deciding Mr L's complaint.

Halifax needed to make sure that it didn't lend irresponsibly. In practice, what this means is Halifax needed to carry out proportionate checks to be able to understand whether Mr L would be able to repay what he was being lent before providing any credit to him. Our website sets out what we typically think about when deciding whether a lender's checks were proportionate. Generally, we think it's reasonable for a lender's checks to be less thorough – in terms of how much information it gathers and what it does to verify it – in the early stages of a lending relationship.

But we might think it needed to do more if, for example, a borrower's income was low or the amount lent was high. And the longer the lending relationship goes on, the greater the risk of it becoming unsustainable and the borrower experiencing financial difficulty. So we'd expect a lender to be able to show that it didn't continue to lend to a customer irresponsibly.

I've kept this all in mind when having looked at Mr L's complaint and having done so I'm partially upholding it.

Halifax's initial decision to provide an overdraft for £500 and then increase the limit to £1000

Halifax appears to be arguing that it agreed to these applications after Mr L provided details of his monthly income of £2,500.00. It says this showed Mr L would be able to comfortably repay this amount. And, in these circumstances, it was reasonable to lend.

I've carefully thought about what Mr L and Halifax have said. The first thing for me to say is that this appears to be Mr L's first credit with Halifax for some time. And while I do have some concerns that Halifax's records appear to show that Mr L complained that he shouldn't have been provided with an

overdraft in December 2012, this was more than four years earlier. And I don't think that this in itself means Halifax shouldn't have considered any applications from Mr L.

Equally while I also think that there was a pattern of gambling developing after Mr L was initially provided with the overdraft, I don't think that this can reasonably be described as an established pattern by this stage. Especially bearing in mind the limit increase was only a matter of weeks after the initial decision to provide the overdraft in the first place.

As this is the case and bearing in mind what it did know about Mr L at that stage, I don't think that it was unfair for Halifax to conclude that Mr L would be able to sustainably repay £500 and £1000.00 within a reasonable period of time. So I'm satisfied Halifax didn't treat Mr L unfairly when it initially gave him an overdraft or when it increased the limit to £1,000.00.

Halifax's decisions to increase Mr L's overdraft limit to £1,500.00 and £3,000.00 and then also provide a loan for £2,000.00

I've already explained that while I'm not intending to uphold Mr L's complaint about the initial decision to provide the overdraft and the first limit increase, I am concerned that there was a developing pattern of Mr L using his overdraft to gamble. And I think that by the time Mr L's overdraft limit was increased to £1,500.00 in July 2017 it was evident that this emerging pattern I was concerned about had become established.

A cursory look at Mr L's statements show that he was gambling significant sums and this had been happening since the overdraft was first provided. Indeed, I note that Halifax's records indicate that while Mr L was within his limit at the time he applied for the increases in question, he was already likely to exceed his existing limit because of his account activity. In these circumstances, it ought to have been apparent that Mr L was struggling to manage what he already owed and was therefore unlikely to have been able to repay any additional credit without undue difficulty or borrowing further.

Bearing this in mind, I'm currently minded to find that Halifax shouldn't have increased Mr L's overdraft limit in July 2017 and October 2017 and shouldn't have provided him with a loan in October 2017 either. Its decision to provide additional credit in these circumstances meant that it increased Mr L's indebtedness in a way that it ought to have realised was unsustainable or otherwise harmful.

As this is the case, I think that Halifax treated Mr L unfairly when it increased his overdraft limit to £1,500.00 and £3000.00 and provided him with a loan for £2000.00. Mr L ended up having to pay additional interest and charges on credit he shouldn't have been provided with in the first place. So I'm intending to find that he lost out because of what Halifax did wrong and it needs to put things right.

Fair compensation – what I think Halifax needs to do to put things right for Mr L

Having thought about everything, I'm intending to issue a final decision saying that it would be fair and reasonable in all the circumstances of Mr L's complaint for Halifax to put things right by:

Overdraft

- Rework Mr L's overdraft balance to ensure that from July 2017 onwards interest is only charged on the first £1,000.00 outstanding to reflect the fact that no further credit limit increases should have been provided. Any additional fees levied should also be removed;

AND

- If an outstanding balance remains on the overdraft once these adjustments have been made Halifax should contact Mr L to arrange a suitable repayment plan for this. If it considers it appropriate to record negative information on Mr L's credit file, it should backdate this to October 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 L 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 L's credit file.

Loan

- removing all interest, fees and charges applied to Mr L's loan from the outset. The payments Mr L has made should be deducted from the £2,000.00 he was originally lent. Halifax should treat any payments made if and when the £2,000.00 has been cleared as overpayments. And any overpayments should be refunded to Mr L along with 8% simple interest †;
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† HM Revenue & Customs requires Halifax to take off tax from this interest. Halifax must give Mr L a certificate showing how much tax it has taken off if he asks for one.

Should an outstanding balance (or balances) remain on the accounts in question after all adjustments have been made Halifax can use any compensation due to Mr L to reduce what he owes. I'd also remind Halifax of its obligation to exercise forbearance should outstanding balances remain after all adjustments have been made to Mr L's accounts and it's the case that he is experiencing financial difficulty.

My provisional decision

For the reasons I've explained, I'm intending to uphold Mr L's complaint and tell Bank of Scotland plc (trading as Halifax) to put things right in the way I've set out above.

So unless the comments and evidence I get by 2 March 2021 changes my mind, that's what I'll tell Halifax to do in my final decision.

Jeshen Narayanan
Ombudsman