

## **complaint**

Mr L complains Bank of Scotland plc trading as Halifax ("Halifax") were irresponsible when they approved multiple applications for an increase in his arranged overdraft.

## **background**

Mr L brought his complaint to us as he was unhappy with the responses he received from Halifax in relation to his concerns on 19 September and 3 October 2019.

Halifax told him they were unable to review his concerns about the overdraft facilities they'd agreed to provide – or the fee's Mr L paid for using them – before August 2012 as they received his complaint outside the time limit for the submission of such a complaint. Halifax didn't uphold the complaint about the overdraft or charges after August 2012. They told Mr L despite his concerns about the frequency with which he applied to increase his overdraft they thought the important question was whether he could afford the borrowing, not how frequently he applied. They said on each application they reviewed the information both Mr L had provided and on his credit score. Based on that information Halifax were satisfied Mr L should have been able to afford the overdraft fees payable on the account and, if he chose to, gradually reduce the overdraft borrowing.

Halifax told Mr L they felt the main reason for his difficulties was his spending on gambling. They said as it was a legal activity they didn't normally check customer's accounts for it and weren't obliged to. Halifax said they also had no evidence of being informed of Mr L's gambling problem. But Halifax told Mr L that in view of his situation - without any admission of liability - they offered to refund all of the unplanned overdraft fees he's paid on the account since 1 August 2012 which totalled £160.

In her first view the adjudicator dealt with both what aspects of the complaint we could deal with and the merits of the complaint itself. She found his service could only consider the complaint for the time period of August 2012 onwards. She then looked at, in considerable detail, the three factors Halifax said they took into account when approving limit increases on an account.

Overall she thought Halifax didn't behave responsibly when they approved the additional lending – by way of three overdraft limit increase applications – of £350 on 8 October 2012. She found the earlier applications to increase the overdraft between 30 August weren't irresponsibly lent and the checks undertaken on those to be proportionate to the requests. And – as Mr L's statements didn't indicate he had a persistent balance owing against his overdraft - she didn't agree with his concerns that Halifax should've taken action to remedy that he was in persistent debt. She thought Halifax should refund any interest, fees or charges relating to any usage of the overdraft above the limit of £2,950 from 8 October 2012 until the date of closure of the overdraft. In the second view, after considering Mr M's additional information, the adjudicator remained of the same view.

Halifax were willing to accept, without admission of liability, refunding charges relating to the extra amount borrowed over £2950, as they thought the charges for the initial £2950 borrowed would stand. They later agreed with the new investigators revised calculations of charges, namely £274.00. This was due to the higher tier of overdraft being used after the approval on 8 October 2019 at an extra charge of £1 a day for 209 days along with 13 unplanned £5.00 charges amounting to £65.

Mr L told us he appreciated this service couldn't address any complaint in this matter prior to August 2012 but he didn't think any prior facts should be excluded from influencing the decision. Mr L said since no eligible complaint prior to August 2012 can be considered, he believed Halifax acted irresponsibly with the overdraft increases it allowed on 30th August 2012. He based this on the loans he taken for a total of £9000 on 11 April 2012 and 7 August 2012 along with the increase in his overdraft from £2000 to £2500 in July. He said this was three requests for credit totalling £9500 additional debt in a four month period. And she said, ultimately, between April and October 2012, he'd made nine applications for credit and thought Halifax should've realised earlier than 8 October 2012 that something was wrong. The case has now come to me 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.

The adjudicator has given a full summary of the background to this complaint in the letter giving her first opinion. So I shan't repeat that here. I'm afraid there's not a great deal I can add to what the adjudicator's already told Mr A. I think she's covered most points quite clearly. I agree with her detailed analysis of the evidence and her overall conclusions both in relation to how far back we can look into this complaint which we can consider and to the merits.

Everyone accepts we can only look at this complaint going back to August 2012. And there's no disagreement amongst the parties that fees and charges relating to the increases on 8 October 2012 will be refunded. But Mr L thinks Halifax's decisions in approving his applications for increases to his overdraft were irresponsible from *earlier* than the adjudicator found. He thinks the increases from 30 August 2012 onwards were irresponsible and the bank should refund fees and charges from then. But I disagree and I'll explain why.

Ultimately it's for a bank to decide what affordability criteria to apply and what risk it was willing to take when it lends money. But the industry rules and guidance for lenders – although not giving a set list of checks – says checks must be proportionate and give examples of factors to be considered. So I've gone on to consider whether Halifax completed reasonable and proportionate checks back in 2012 to satisfy itself that Mr L would be able to repay his overdraft in a sustainable way.

The information from Halifax, which the adjudicator has referred to in detail in her first view, satisfies me that when these earlier overdraft increases were approved – on 30 August 2012 from £2500 to £2800, 14 September 2012 to £2900 and 16 September 2012 to £2950 – the checks were proportionate to the requests. To Mr L's credit he's since repaid the overdraft. But he didn't make Halifax aware of his gambling problem at the time. And, whilst I don't doubt Mr L was in a difficult situation back then, he has chosen to spend the money he borrowed and has had the benefit of it.

I'm aware Mr L feels strongly about Halifax's conduct. But I hope I've explained why, on the information before me, up and until his final applications for an increase on 8 October 2012, I think Halifax's checks were reasonable and proportionate and their decisions to approve his applications before this point were fair. In respect of the decisions on 8 October 2012 I uphold his complaint and require Halifax to refund the fees and charges amounting to £274.

**my final decision**

My final decision is that I uphold this complaint in part. In respect of the decision to increase the overdraft on 8 October 2012 Bank of Scotland plc trading as Halifax should refund Mr L £274 compensation for fees and charges.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 18 March 2020.

Annabel O'Sullivan  
**ombudsman**