

## **Complaint**

Mr H has complained that Bank of Scotland plc (trading as “Halifax”) unfairly continued applying increasing amounts of charges to his overdraft when he was in financial difficulty.

## **Background**

One of our adjudicators looked at this complaint and thought Halifax should have realised that Mr H's overdraft had become unsustainable for him in May 2014 and so it needed to refund all the interest, fees and charges it added to Mr H's overdraft from this point. Halifax disagreed, so the case was passed to an ombudsman for review.

## **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 increased Mr H's overdraft in May 2014. By this point, it ought to have been clear that Mr H was unlikely to be able to sustainably repay what he owed and the extra Halifax was agreeing to advance within a reasonable period of time.

By this stage Mr H was making his fourth request for increased borrowing in a matter of weeks. And his statements during this period also showed increased amounts of money being gambled. In these circumstances, it ought to have been apparent Mr H was unlikely to be able to repay what he already owed within a reasonable period let alone additional borrowing with overdraft interest, fees and associated charges continuously being added.

I've thought about the credits Halifax has referred to and what it has said about regulations being applied retrospectively. Halifax hasn't said what regulations it thinks we've applied retrospectively. But for the avoidance of doubt and sake of completeness, I'd like to make it clear that all of the various banking and lending codes in place since the early 2000s refer to regular requests for increased borrowing as a potential indicator of financial difficulty.

Equally Halifax has referred to it being Mr H's choice to gamble. I find this particular lack of care and empathy shown by Halifax astonishing. And it somewhat misses the point when Mr H was spending the bank's money in a way which suggested he was unlikely to repay what he owed in a sustainable manner, rather than, as Halifax appears to be suggesting, choosing to spend his own money. And the need to take account of a prospective borrower's ability to repay credit (and not lend irresponsibly) was a requirement for lenders many years prior to 2014. So I simply don't agree rules have been applied retrospectively and I don't find Halifax's arguments persuasive.

Having carefully thought about everything, I'm satisfied Halifax should have stopped providing the overdraft on the same terms in May 2014, stopped adding fees and charges and instead treated Mr H with forbearance. All of this means Halifax should have realised Mr H was experiencing difficulty, wasn't using his overdraft as intended and shouldn't have

continued offering it on the same terms. As Halifax didn't react to Mr H's overdraft usage and instead continued charging in the same way, I think it failed to act fairly and reasonably.

Mr H ended up paying additional interest, fees and charges on his overdraft and this ended up exacerbating his difficulties going forward. So I think that Mr H lost out because of what Halifax did wrong and that it should put things right.

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

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

- Reworking Mr H's current overdraft balance so that all interest, fees and charges applied to it from May 2014 onwards are removed.
- AND
- If an outstanding balance remains on the overdraft once these adjustments have been made Halifax should contact Mr H to arrange a suitable repayment plan for this. If it considers it appropriate to record negative information on Mr H's credit file, it should backdate this to May 2014.
- 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 H 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 H's credit file.

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

### **My final decision**

For the reasons I've explained, upholding Mr H'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 H to accept or reject my decision before 16 July 2021.

Jeshen Narayanan  
**Ombudsman**