

The complaint

Mr and Mrs C have complained that Bank of Scotland plc trading as Halifax ("Halifax") irresponsibly agreed an overdraft for them when Mr C was going through treatment for a serious health condition.

What happened

Mr and Mrs C were granted an overdraft with Halifax in 2016 when Mr C was undergoing treatment for a serious health condition. In late 2019 Mr and Mrs C complained that the overdraft charges applied to their account had caused them financial difficulty and that they had previously raised this but hadn't received a response. Mr and Mrs C wished to set up a repayment plan for the overdraft.

Halifax issued a final response to this complaint on 18 November 2019. It didn't uphold the complaint but agreed to refund charges of £100 and compensated them £25 for any inconvenience caused. Mr and Mrs C were dis-satisfied with this and raised a further complaint regarding the lack of assistance they'd received and at the same time informed Halifax about Mr C's health condition. Halifax issued a further final response in December 2019 – again it didn't uphold Mr and Mrs C's complaint and provided their referral rights to this service.

Mr and Mrs C raised a further complaint about the overdraft lending in September 2021 - in particular, they felt the lending had been irresponsible. Halifax didn't uphold their complaint and again issued Mr and Mrs C with their referral rights to this service.

Mr and Mrs C continued to have concerns with the lending and raised a further complaint in September 2022. Halifax reinvestigated Mr and Mrs C's complaint and agreed that it had failed to review whether the overdraft had been irresponsibly lent. On review Halifax agreed the overdraft granted in 2016 may not have been suitable as in the months leading up to the application if it had reviewed the account usage it would've seen they had missed 16 direct debits in a short space of time. Halifax upheld this element of their complaint and to put things right it:

- Refunded all overdraft fees paid since July 2016 amounting to £8,302.20; and
- Paid 8% interest on this for the time they didn't have the money amounting to £554.90; and
- Paid £50 compensation for the inconvenience caused;
- Removed the overdraft facility and restricted any further lending for 12 months.

Mr and Mrs C were dis-satisfied with this and brought their complaint to this service. They don't feel £50 compensation was enough.

One of our adjudicators looked at this and thought that what Halifax had offered is in-line with what we'd recommend and thought the compensation of £50 was enough and didn't think it needed to do anything more.

Mr and Mrs C disagreed, and asked for an ombudsman's decision.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I hope that Mr and Mrs C won't take it as a discourtesy that I've condensed their complaint and the background to it in the way that I have. Ours is an informal dispute resolution service, and I've concentrated on what I consider to be the crux of the complaint. Our rules allow me to do that.

Having carefully considered everything, I think that what Halifax has already agreed to do to put things right for Mr and Mrs C is fair and reasonable in all the circumstances of this complaint. I'll explain why I think this is the case.

It might help for me to start by explaining that where a business accepts (or we decide) it did something wrong, we'd expect the business to put the consumer in the position they would be in if that wrong hadn't taken place. And in an ideal world, we'd tell a business to put a consumer in the position they'd now be in if they hadn't been given the credit they shouldn't have. But for complaints about funds which shouldn't have been provided this isn't straight forward as the funds were provided and, in most cases – such as here, have long since been spent.

So we look to try and find some other way to put things right. And where a business increases or continued to allow a consumer to use a credit facility which it should have realised was unsustainable, we'd typically expect it to put the consumer in the position they'd be in now if they hadn't paid any further interest and charges on that credit. This means we'd normally expect a lender to refund the interest and charges added to any credit from the point the lender ought to have realised it was unsustainable. And if those interest and charges were paid also add 8% simple interest per year.

In this case, on review Halifax agreed to refund all interest and charges applied to Mr and Mrs C's overdraft facility following it being granted in 2016 and pay interest on top of this for the period they didn't have the money. This is in-line with what I'd recommend if I'd made a finding that the overdraft was lent irresponsibly, so Halifax has done what I'd expect it to do here.

That said, we do look at each case individually and on its own particular merits. And while we have a general approach to how we might tell a lender to put things right where it continued to provide credit it shouldn't have (such as here), we can and will tell it to do something different and/or something more if there's a strong reason to say that's what would be fair and reasonable to do in the circumstances of that individual case.

Mr and Mrs C say Halifax should do something different here. They don't think the compensation is enough considering the time it has taken to get their complaint settled and the stress and anxiety caused all while Mr C was still undergoing medical treatment.

I've thought about what Mr and Mrs C have said and I sympathise with all they have been through, but what they've said is a reason for upholding their complaint rather than a reason for departing from our normal approach to putting things right in cases such as theirs.

I'm also conscious that the very difficult medical condition that has impacted their lives – was independent of the lending decisions made by Halifax. And it must also be noted that Halifax

provided Mr and Mrs C with their referral rights to this organisation on a number of occasions but that they chose to continue to raise their concerns with Halifax on the matter.

Halifax has already compensated Mr and Mrs C £50 on top of the interest, fees and charges Halifax shouldn't have added - as well as paying interest on this for the period they didn't have the money. Bearing all of this in mind I'm not persuaded further compensation is warranted here or that it would make a material difference to Mr and Mrs C's circumstances.

So it follows that I think what Halifax have already done to put things right for Mr and Mrs C is a fair way to settle their complaint and I'm not requiring it to do anything more.

My final decision

For the reasons I've explained, I'm satisfied that what Bank of Scotland plc has already agreed to do to put things right for Mr and Mrs C is fair and reasonable in the circumstances of this case. So I'm not requiring it to do anything more.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C and Mrs C to accept or reject my decision before 4 October 2023.

Caroline Davies
Ombudsman