

The complaint

Mr M complains that Bank of Scotland plc trading as Halifax ("Halifax") irresponsibly provided him with an overdraft when he had debt elsewhere and didn't have the mental capacity to understand the implications of having an overdraft.

What happened

Mr M suffers from a number of mental health conditions. Mr M says that between 2006 and 2010 he was staying in a secure psychiatric hospital and that by November 2011 he'd reduced the time spent at the hospital and increased the time spent at a hostel. Mr M has told us that at this time his mother held a general power of attorney to assist him with his financial affairs but that most decisions are made independently with support from friends and family.

Mr M says in April 2010 on a day when he was allowed out of the hospital to visit a park he visited a branch of Halifax and opened a bank account with an overdraft facility. Mr M says that he told staff that he was detained under the Mental Health Act and gave them his hospital address at the time. Mr M says he didn't apply for an overdraft on the account, but that he was offered one.

Halifax internal records show that it was made aware of Mr M's mental health conditions and diagnosis in 2019 some years later. Its records show the account was opened in April 2010 and that Mr M applied and was approved for an overdraft of £250 in October 2010, £1,000 in January 2011 and £1,600 in March 2012. All further overdraft applications were declined. Mr M's account eventually went into an unauthorised state and was transferred to Halifax's collections team in September 2018 and closed to recoveries in December 2019.

In a supporting statement Mr M's sister agrees that the overdraft shouldn't have been approved and that Mr M had a tendency to make decisions that others considered unwise. She says Mr M has been good at hiding the extent of his financial problems from others as he didn't want to appear weak or incapable and that although Mr M's account may look well managed, since Mr M was discharged from hospital he has ignored priority bills and has accrued debts and charges elsewhere.

Mr M's sister now holds a lasting power of attorney for Mr M in relation for his care and welfare when he loses capacity but a deputyship application in relation to Mr M's finances failed as it was thought that when well Mr M had capacity in most decisions and should be given support to be as independent as possible.

Mr M complained to Halifax about the overdraft lending. He says he lacked the mental capacity to have an overdraft and understand the implications of it and that the overdraft was unaffordable.

Halifax says it had no record of Mr M's personal difficulties prior to May 2019. Halifax didn't think it could look at the overdraft lending aspect of Mr M's complaint as it thought Mr M had raised the complaint too late and was out of time.

Mr M was dis-satisfied with this and brought their complaint to this service.

One of our investigators looked into Mr M's concerns and reached the conclusion that there was no evidence Halifax was made aware of Mr M's mental health diagnosis prior to being granted the overdraft and limit increases. And that the guidance in place at the time for banks was to presume the customer had mental capacity. And based on the information Halifax had about Mr M's finances and how he managed his account with it, they thought the overdraft was affordable and that Halifax hadn't acted unfairly in granting it.

Mr M disagreed and has 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 M won't take it as a discourtesy that I've condensed his complaint in the way that I have. Our investigator has already given a detailed account of the background in their view and I don't see any merit in repeating that here. 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.

And the crux of Mr M's complaint is that Halifax irresponsibly provided him with an overdraft when he didn't have the mental capacity to understand the implications of the lending and that the overdraft wasn't affordable for him.

Having considered everything provided, I've decided not to uphold Mr M's complaint.

I sympathise with Mr M in that he clearly has had some struggles with his mental health over the years which has no doubt impacted him and his ability to manage his affairs. However, from the evidence I've seen, I'm satisfied and I think it's likely that Mr M understood what he was doing when he opened the bank account with Halifax. I say this as I think some level of pre-meditation would've been involved when Mr M decided to use his day out to open a bank account – rather than visit the park as he has told us he was meant to do. And I don't think Mr M would've been let out of the hospital by himself if it wasn't deemed he had sufficient mental capacity.

It is also noteworthy that prior to this Mr M has told us he'd had loans and credit cards granted to him by other providers and from the correspondence I've seen, his surname and address are different to what Halifax has.

So I'm not persuaded that Halifax ought to have questioned Mr M's capacity to operate a bank account as it has no record of Mr M's diagnosis until 2019 and the guidance in place to lenders at the time was for it to presume capacity. Indeed, in Mr M's own words he didn't make Halifax aware of his condition initially as he was ashamed about his diagnosis. And in any case suffering from a mental health condition doesn't mean that one can't have a bank account or for that matter take out any form of credit.

So I don't think Halifax made an error in opening a bank account for Mr M. And I also don't think based on what I've seen that Halifax irresponsibly provided Mr M with an overdraft.

The guidance in place at the time for assessing affordability was not prescriptive as to the types of checks to be carried out but banks could look at for example evidence of income and expenditure, how a customers managed their account with it or a customer's credit

score. So in assessing Mr M's overdraft applications we would have expected Halifax to consider the information it had on Mr M available to it.

In Mr M's case Halifax have said and Mr M's statements show that leading up to the first overdraft application (around six months after opening the account) that Mr M was managing his account well and had credited over £4,500 to his account. And as there were no indications of financial difficulty the overdraft of £250 was granted.

Halifax's address history for Mr M shows him as living at a residential address when his overdraft limit was increased around three months later in January 2011 to £1,000. Prior to this increase Mr M had only briefly used the overdraft and was maintaining all monthly direct debits and receiving healthy credits to the account of around £1,000 a month. And based on this information Halifax deemed the new limit affordable.

The final limit increase was around a year later when Mr M's limit was increased to £1,600. Mr M's statements showed that even though he was using his overdraft more, he continued to receive healthy credits into the account, stayed within his limit, managed to maintain a credit balance in the months leading up to the limit increase and there was no indication he was relying on the overdraft to live or that he was in financial difficulty. Indeed, Mr M's sister has indicated that Mr M effectively made his account look like it was well managed as he understood this would mean it would be more likely that Halifax would increase his overdraft limit.

I accept that Mr W's financial position outside of his banking relationship with Halifax may well have been worse than any information he disclosed to it and it is possible that further checks might have told Halifax this. But Halifax was reasonably entitled to rely on the affordability assessment it carried out and the information Mr W provided it. And even if it had done further checks – from what I've seen both Mr M's surname and address differ on correspondence from other creditors to what Halifax has, so I'm not sure further checks would've provided any further useful information on Mr M's financial affairs.

So based on the information Halifax had, I don't think it was irresponsible in its lending decisions or treated Mr M unfairly when it granted him an overdraft and increased his limit. He was receiving healthy credits into the account, staying within his limit and there was nothing from the transactions on the account that would've been cause for concern prior to the overdraft being granted.

And so it follows that I don't uphold Mr M's complaint as I don't think Halifax treated Mr M unfairly by opening an account for Mr M or by granting an overdraft for him.

My final decision

For the reasons I've explained I've decided not to uphold Mr M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 10 August 2023.

Caroline Davies
Ombudsman