

The complaint

Mrs R complains that Bank of Scotland plc trading as Halifax allowed a current account with overdraft facility and two loans to be taken out in her name by a third party. And she's unhappy it's now chasing her for two of these debts.

What happened

The details of this complaint are well known to both parties, so I won't repeat them again here in detail. Instead I'll focus on giving the reasons for my decision.

In summary, in 2017 a current account was opened with Halifax in Mrs R's name. This account was granted an overdraft facility and in September 2017 a £24,000 loan was also taken out with Halifax and paid into this account. In September 2018, a £10,000 loan was also applied for and granted, but Mrs R then repaid this loan within a few days. Both the loan and the overdraft later stopped being repaid and the debts were sold on in 2022.

Mrs R has explained she discovered the debts in November 2022 when she received debt collection letters. She spoke to Halifax at this time and explained that the debts were taken out by someone else, Mr R. She said it was also him that took out the loan in 2018, but she discovered this at the time and that's why it was repaid. She acknowledged she did allow him to take out a car lease in her name in 2017 with a different company, but said she hadn't agreed for him to borrow any other funds.

Halifax investigated the current account, overdraft and 2017 loan, but found Mrs R liable for them. Mrs R disagreed and brought her complaint to our service. Our investigator didn't uphold her complaint, so Mrs R asked for an ombudsman to review her case.

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 would like to reassure Mrs R that I have read all her submissions in detail and do appreciate the complexities of this case. I understand that the contemporaneous evidence held in this case doesn't represent the full picture of what was happening at that time or in the months/years around it. But I have to make a decision about whether or not Halifax has acted unfairly. And so I do have to place weight on what it knew and could reasonably understand, based on the information it held at the time.

Ownership of the current account with overdraft and the 2017 loan

Mrs R wants Halifax to remove the overdraft and loan from her credit report and pursue Mr R for this debt instead. It's important to state that in this type of case, our service wouldn't be able to direct Halifax to pursue Mr R, as he is not party to this complaint. We can only decide if Mrs R should be pursued for the debts.

When Mrs R first came to us, she explained that Mr R had taken out both a current account

with an overdraft and a loan in her name without her knowledge. She explained she discovered these in November 2022, when she was pursued for the outstanding debts.

As Mrs R is aware, Halifax has provided us with a call recording from September 2018 with her. Mrs R is in branch during the call because a payment requested from the current account in question has been stopped for fraud checks. The advisor tells Mrs R there was a payment request made for £1,800 and asks Mrs R if she made this payment. The call then goes as follows:

Mrs R: Yeah that's right

Advisor: You did yes, ok. And what was the nature of that payment, where was that going to?

Mrs R: Erm, for the car

Advisor: Err yes, but whose account was that going to? Who were you transferring it to?

Mrs R: It was to [Mr R]

Advisor: Ok, bear with me just a moment here. [short silence in the call]

Advisor: Right ok. So I just want to check as well, did you recently request to increase your overdraft as well?

Mrs R: Yes, but I'm going to cancel it. I'm going to cancel the loan as well

Advisor: Ok no that's fine. We just wanted to check you know, make sure you're aware of that recent activity as well, erm

Mrs R: Yeah no, yeah I'm aware of that. I'll have to go back online to cancel it all

In response to hearing the call, Mrs R has acknowledged it is her. But she doesn't recall the specific conversation. This isn't surprising given the time that's past and what she has dealt with since. But, as I know she understands, this call is key evidence.

Within days of this phone call, the 2018 loan was repaid. However the overdraft wasn't cancelled, and the current account remained open and actively being used. And online banking continued to be accessed for this account, despite Mrs R saying to us she never used it. I accept Mrs R can't give us an explanation now for these things, and I consider it's possible, even likely, she was misled to a degree about them at the time. But that was not by Halifax and so I can't hold it responsible for this.

Mrs R has raised that the contact details held by Halifax were in fact those for Mr R. And that her year of birth was wrong on the system. However, I can see that the same contact details have been used on the car lease in 2017. Mrs R has confirmed she was aware of this agreement being taken out in her name and she agreed with Mr R for him to do this. And while her year of birth should've been accurate, this didn't prevent Halifax accessing necessary information on her. So this in itself doesn't change my decision here.

By late 2018, Mrs R was aware of the current account and overdraft facility. By going into branch with her ID and speaking to the advisor, she's confirmed that she was the account holder. She may not have registered for this account or agreed to it in 2017, but in 2018 she was aware of it. By not cancelling the overdraft and closing the account, she then fairly assumed responsibility for its use. At the time of Mrs R's branch visit the account was in credit, so had it been closed, there wouldn't have been an overdraft debt to repay.

I don't know why Mrs R didn't cancel the overdraft in 2018 and close the account, but as she didn't do this, I can't say it's unfair for Halifax to now pursue her for the debt. Had she not wanted this account, on becoming aware of it, she needed to take steps to close it.

I've then considered the £24,000 loan. I do believe Mrs R when she tells us she wasn't aware of this loan being applied for. The usage of the current account and her actions around the loan applied for in 2018 support her testimony that her details and the account were being used by someone else. But I then have to consider Mrs R's other actions and what happened in branch in 2018. Halifax's stance is that Mrs R was either party to the lending/applications; or was at least aware of them and so gave authority for them.

As above, Mrs R has told us that in 2017 she allowed Mr R to use her details to take out a lease agreement for a car, as his credit score prevented him from doing so. I understand he was responsible for making the car loan payments and these were maintained by him for the majority of the lease. It was only after the agreement ended that some missed payments came to light. In the same respect, the 2017 loan payments were maintained for a long period of time, until it seems a change in personal and financial situation meant that the debts stopped being paid. So a considerable amount of the 2017 loan has been repaid, albeit some of which was done with the current account overdraft.

It isn't clear exactly what happened in 2018 when Mrs R discovered the current account, overdraft and loan. But I can't safely say that, at that time, Mrs R didn't become aware of the full extent of the situation, including the 2017 loan. I think it's most likely she did discover everything at this point in time, I'll explain my reasons.

We know Mrs R became aware of the 2018 loan at the time it was granted, so the funds hadn't been spent and it was quickly repaid. And the branch phone call proves she was aware of the current account and overdraft and planned to cancel these. But by then, the 2017 loan had been active for over a year, so it seems very likely the money had been spent. Mrs R wouldn't have been able to cancel or fully repay this loan. So the only options would be to report Mr R to Halifax and likely the Police/Action Fraud; or to maintain the monthly repayments, which is what the account shows happened.

In September 2018, Mrs R had all the information she needed to discover the £24,000 loan. She was aware of the current account, that it had online banking and that Mr R had taken out an overdraft and a loan in her name. So it's difficult to place weight on Mrs R's testimony and recollections from that time that she didn't know about the loan, when her recollections on the overdraft and current account have been disproved. Mrs R told the advisor she was going to go online and cancel the overdraft, but she didn't, which suggests a further conversation took place around the account following her branch call.

I don't believe Mrs R was aware of the £24,000 loan being taken out in 2017. But I can't safely say she didn't become aware of it in 2018. We know she let Mr R take out other borrowing in her name. And we know she became aware of the current account and overdraft in 2018 and didn't close the account, allowing the overdraft facility to be used.

Mrs R seems to have trusted Mr R to run the current account going forward, in the same way she trusted him to repay the car lease. And so I can't say it's improbable that she found out

about the 2017 loan at this time and also trusted him to repay it. The funds were most likely gone and so she had limited options. And she's explained to us more generally how at that time she trusted Mr R and his intentions – and that she hadn't wanted to get him in trouble when she discovered the 2018 loan he'd taken out. It follows that instead of reporting his actions to Halifax at the time, they reached an agreement together on what to do next. And this involved keeping the current account, so it appeared she was maintaining the loan – Mrs R has mentioned, a loan in her name should be paid from an account in her name.

Ultimately, where parties disagree, I have to decide this case on what's most likely to have happened in the circumstances presented. I think it's most likely Mrs R did become aware of the 2017 loan in 2018 and agreed with Mr R for him to repay it via her current account at that time. She's been left with this debt when he's breached the terms of what was agreed between them. But those terms were not agreed with Halifax and so I can't say it has acted unfairly by holding Mrs R responsible for the outstanding sums.

I appreciate Mrs R is in a very difficult situation now and this isn't a situation she ever wanted or expected to be in. But I can't fairly say that Halifax has done something wrong by holding her responsible for both the overdraft facility and the 2017 loan.

Affordable lending

I've then considered whether Halifax should've agreed for the overdraft or loan to be lent to Mrs R in the first place. I haven't gone into the 2018 loan, as while this was set up, it was repaid within a few days and I can't see this had a detrimental impact on Mrs R. There is nothing to 'put right' in terms of this loan, so I don't consider there is anything for me to decide.

Looking at the Halifax current account, a month after it's opened, weekly salary payments start to be received. Two payments are received in August 2017, and in September 2017, a total salary of £2,883.07 is paid in over the month. These specific weekly salary payments continue until January 2018, and then weekly salary payments from two different employers start. I accept none of these are Mrs R's employers, but Halifax was under the impression this was Mrs R's account and that she was operating it.

The 2017 salary paid into the current account is greater than the figures disclosed on the 2017 overdraft and loan application data we hold. I also note that at that time, Mrs R had a good credit score and a current account elsewhere that her actual salary was being paid into. So while I accept that her true income was far lower than what was disclosed, the operation of her account suggested the income figure provided was accurate, if not under her actual take home salary.

We don't have the full lending assessment that Halifax carried out due to the time passed, but I can't see there would've been any reason not to agree to this lending, considering the information available and what Halifax understood about Mrs R at that time. I appreciate Mrs R's frustration that Halifax didn't contact her about the overdraft or loan applications. But I'm satisfied it held enough data on her to approve this borrowing in 2017, so it didn't need to speak to her.

As Mrs R is aware, Halifax was required to carry out proportionate checks before agreeing to the lending. And I consider it did that in this case. I accept that the data Halifax was relying on was inaccurate, but I don't think Halifax missed an opportunity to discover this. It was entitled to accept an online application from Mrs R, so there isn't an issue with her not physically signing the paperwork and it used the details it held for her at the time to make a reasoned lending decision. So I can't agree the lending was unaffordable or irresponsible.

My final decision

For the reasons set out above, I don't uphold Mrs R's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R to accept or reject my decision before 2 May 2024.

Amy Osborne
Ombudsman