

Complaint

Mrs M is unhappy with what Bank of Scotland Plc (trading as “Halifax”) did to put things right after she complained about having been provided with seven accounts with overdrafts.

Background

In the period between the end of April 2023 and the beginning of May 2023 Mrs M opened seven Halifax accounts with overdrafts. The combined overdraft limits on these accounts totalled £2,600.00. Halifax has already agreed it shouldn't have provided Mrs M with these overdrafts and it has refunded all the interest, fees and charges it added .

Our investigator thought that what Halifax had agreed to do to put things right was fair and reasonable in all of the circumstances of the case. Mrs M disagreed and asked for an ombudsman's 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.

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

Halifax has agreed that it shouldn't have provided these overdrafts. And it has agreed to refund all the interest, fees and charges added it to Mrs M's overdrafts from then in order to put things right.

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. However, that's not possible in cases where funds that shouldn't have been advanced were advanced because typically those funds will have already been spent.

So we have to look at a way of asking a business to put things right in a fair and reasonable way. And where a business provided, 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. That's what Halifax has agreed to do here, so it has agreed to do what I'd normally expect a firm to do in these circumstances. In this case, Mrs M has been left with outstanding balances even though she's been 'refunded' all of the interest, fees and charges applied. So while Mrs M has been

left with an outstanding balance to repay and she might be unhappy with this, Halifax has done what I'd normally 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.

Mrs M believes that Halifax should do more. As I understand it, she wants Halifax to reduce what she owes to £500. She also wants Halifax to remove all of the adverse information it has recorded regarding these overdrafts from her credit file. I've started by thinking about what Mrs M has said about Halifax reducing what she owes. But as I've explained all the interest, fees and charges, Halifax shouldn't have added have already been removed from the overdraft balance and this is what I would typically expect a lender to do in circumstances where it provided credit that it shouldn't have done.

Nonetheless, I appreciate Mrs M's argument that she hasn't had the benefit of the funds. So I've considered whether the lending here was so egregious that I should depart from our usual approach to putting things right and instead direct Halifax to write off some of the capital that it advanced.

I've considered the circumstances here and in particular that Halifax provided seven accounts and seven overdrafts. While seven accounts and seven overdrafts seem a lot, I have to take into account that Halifax only gave Mrs M an overall limit of £2,600.00. I suspect that this was an overall upper limit that it was prepared to grant from the outset of Mrs M's first application. And from this point forward it wasn't focusing on the individual granularity of the transactions on Mrs M's account during the period concerned, it was merely granting increases that it had already 'in-principle' agreed based on the first application.

Furthermore, it wasn't as if these applications took place over an extended period of time or after overdraft reviews had taken place either. All of this took place in less than two weeks. So it's clear that everything happened quickly in terms of the applications and the limits granted. I accept that £2,600.00 may have been unaffordable – indeed Halifax accepts this too. But what Halifax has already done has compensated Mrs M for this. And I also suspect that Halifax would have taken steps to correct Mrs M's usage at some point in the not-too-distant future had she not complained as quickly as she did.

In these circumstances and bearing in mind the speed of Mrs M's applications meant that Halifax was unlikely to have noticed her spending habits, I don't think that its decisions to lend were so egregious that it should reduce what Mrs M owes to £500 here. I'm not persuaded that it lent funds in circumstances where it ought reasonably to have realised that there was a significant risk that they would dissipate – although I accept that Mrs M doesn't agree with this. In any event, and most importantly I'm satisfied that a refund of all the interest, fees and charges added remains the fair and reasonable remedy here.

I now turn to the adverse information. I think that removing any adverse information here would require Halifax to record that Mrs M's overdraft was settled in full and on time. And I think that it would be unfair to Halifax and Mrs M, unreasonable its logic and inaccurate if I asked Halifax to amend Mrs M's credit file in this way – as that doesn't reflect what actually happened here.

By asking Halifax to remove any adverse information here, I'd be asking it to record inaccurate information and telling it to record that the overdrafts were paid in full and on time.

I think that this wholly inaccurate information would increase the chances of Mrs M being able to access further funds – in circumstances where Mrs M has acknowledged that she has a problem and where she made so many applications quickly. This only happened a few months ago too.

Given what Mrs M has said, I think that requiring Halifax to amend Mrs M's credit file in the way she's suggested would be counterproductive and arguably not in Mrs M's best interests, or those of any potential lender. It would have the result of making her appear more creditworthy than she actually is. I think that this would increase the chances of Mrs M obtaining credit and creating even more debt that would be unsustainable and which she wouldn't have the ability to repay.

So having carefully thought about everything, including what Mrs M has told us, I'm not going to ask Halifax to amend Mrs M's credit file to remove any adverse information. This means that Halifax can and should continue to record any adverse information that it has recorded in relation to these overdrafts.

I appreciate that my findings here will be very disappointing for Mrs M – especially as she feels as though she's left with a debt she cannot pay. I appreciate her strength of feeling. But Halifax has said that it is prepared to exercise forbearance and due consideration in line with its regulatory obligations and set up an affordable payment plan with Mrs M. I would encourage Mrs M to contact and co-operate with Halifax for this to be done with her input.

Bearing in mind all of this, I'm satisfied that what Halifax has already done to put things right for Mrs M – reworking her accounts so that all the interest, fees and charges are removed – is fair and reasonable in the circumstances of this case and I'm not requiring it to do anything more. I hope that Mrs M will understand the reasons for my decision and that she'll at least feel her concerns have been listened to.

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 Mrs M is fair and reasonable in the circumstances of her complaint. And I'm not requiring it to do anything further.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 28 December 2023.

Jeshen Narayanan
Ombudsman