

## The complaint

Mrs P is complaining about Bank of Scotland plc trading as Halifax because she says it lent to her irresponsibly when providing her with an overdraft facility.

## What happened

The precise sequence of events is unclear as Halifax says it has limited records due to the passage of time. But what we do know is that the bank provided Mrs P with an overdraft facility on her current account in 2013. The overdraft remained in place until the account was closed in 2021. At that time, Mrs P owed approximately £700. When this wasn't repaid, the account was defaulted and the debt sold to a third party.

Halifax upheld Mrs P's complaint in part, accepting it should have supported her more when the overdraft was renewed in November 2019. To put things right, it refunded all fees and charges arising from the overdraft after that date and paid this amount to the third party debt purchaser to reduce the balance owed. Halifax also confirmed it was backdating the default to November 2019, meaning this will be removed from Mrs P's credit file sooner.

Mrs P wasn't satisfied with this outcome. She maintains the overdraft shouldn't have been provided in the first place.

After the complaint was referred to me, I issued my provisional decision setting out why I wasn't upholding the complaint about the initial decision to offer the overdraft facility. But I did say I'd look further into whether the overdraft should have been withdrawn before November 2019 if the parties provided further relevant evidence. The reasons for my provisional decision were as follows:

*An overdraft is a form of running credit that's repayable on demand. This means a bank can ask its customer to repay the full balance at any time. Overdrafts can be an expensive form of credit and are for short-term emergency borrowing needs. They're not intended to be an appropriate means of long-term borrowing. As an overdraft is a form of lending, banks are required to ensure they don't lend irresponsibly.*

*Before offering Mrs P an overdraft facility in 2013, Halifax was required to carry out appropriate checks to ensure the repayments were affordable and sustainable. To decide whether this requirement was met, the key questions I need to consider are:*

- *Did Halifax complete reasonable and proportionate checks to establish that Mrs P would be able to repay the credit in a sustainable way?*
- *If so, was the decision to lend fair and reasonable?*
- *If not, what would reasonable and proportionate checks have discovered, and would the decision to lend have been fair and reasonable in light of that information?*

*In respect of its initial decision to offer the overdraft in 2013, Halifax says it no longer holds records of its decision. Since it can't evidence it completed a proportionate affordability assessment, I think it's fair that I proceed on the basis it didn't do so. I can't know exactly what checks Halifax might have carried out at the time, but I think a consideration of Mrs P's actual income and expenditure would have been reasonable. This is why the investigator asked for copies of her bank statements from the time, to establish what information could reasonably have been discovered.*

*Halifax has provided copies of statements for the account at the centre of this complaint, but it's not the account Mrs P used for her everyday expenditure. Mrs P has provided considerable evidence from the time, including HMRC tax summaries and statements from various credit cards. But unfortunately, she's been unable to provide statements from her 'main' account that would allow me to fully review her income and expenditure and assess whether further credit was affordable.*

*I do understand Mrs P's disappointment on this issue and why she may feel the outcome is unfair, and I have considered the information she's been able to provide from the time very carefully. But without the requested bank statements I simply don't have sufficient evidence to demonstrate the credit provided by Halifax was unaffordable and I'm not in a position to conclude it shouldn't have been offered.*

*This notwithstanding, Halifax's responsibility to ensure lending was affordable went beyond simply carrying out appropriate checks at the outset. It also had a responsibility to monitor and review the overdraft facility to ensure it remained affordable and that the debt could be repaid within a reasonable period of time.*

*The rules don't prescribe a specific timeframe when reviews should be carried out. But most lenders terms and conditions state an overdraft facility will be reviewed annually and I think this is a reasonable approach that I consider to be good industry practice. Halifax has confirmed it reviewed the overdraft facility in November 2019 and I think it's reasonable to believe it should also have carried out reviews around the same time each year from 2014.*

*As far as the actual November 2019 review and the subsequent review that should have been completed around November 2020, I don't propose to consider these further. Halifax has already refunded all fees and charges associated with the overdraft from November 2019 and that's what I'd expect to award if I concluded it should have been withdrawn at this point. I'd also recommend the default be backdated and Halifax has confirmed it's done that also.*

*What hasn't been fully addressed in respect of this complaint so far is whether Halifax should have withdrawn the overdraft sooner following reviews that should have been completed around November 2014, 2015, 2016, 2017 and 2018. So I can fully consider these points before reaching a final decision on this complaint, I ask Halifax to:*

- confirm the dates of all reviews it completed to ensure the overdraft remained affordable for Mrs P between 2014 and November 2019;*
- provide the information it obtained at the time of each review and took into account in concluding the overdraft remained affordable; and*
- provide copies of statements for Mrs P's Halifax account from 2014 to November 2019.*

*I also ask Mrs P to provide:*

- *statements from her 'main' bank account(s), that is the account(s) from which her day-to-day expenditure was facilitated, from as close to 2013 as this information is available up to November 2019; and*
- *a copy of her credit file going back as far as possible.*

*We've already established Mrs P can't obtain bank statements from as far back as 2013. But any statements she can obtain from before November 2019 will help me to consider whether Halifax should have withdrawn the overdraft at an earlier date. For the same reasons I've outlined above, I may not be able to conclude Halifax should have withdrawn the overdraft sooner if Mrs P is unable to provide copies of the relevant bank statements.*

*As things stand, I'm satisfied Halifax has already taken the right steps to put things right after it failed to step in when it accepts it should have in November 2019. Prior to that, I don't believe I currently have sufficient evidence to show Halifax acted inappropriately in granting the overdraft originally or allowing it to continue until 2019. But I will review this further once the parties have had the chance to provide the additional evidence I've requested.*

In response, Halifax said it reviewed Mrs P's overdraft facility in August 2014, November 2014, November 2015, November 2016, November 2017 and November 2018. It also provided statements for Mrs P's Halifax account from the start of 2014.

Mrs P provided extensive further information, including statements from her 'main' account, historic statements from her credit card with another lender and extracts from her credit file.

### **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.

Having done so, my findings haven't changed from those I set out previously. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome. In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and what I consider was good industry practice at the time.

No further information has been provided from 2013 and it therefore remains my view that there's insufficient evidence to show Halifax shouldn't have offered the overdraft facility in the first place. But the additional evidence provided does allow me to comment on Halifax's decision to continue offering the facility following subsequent reviews.

As I said previously, an overdraft can be an expensive way of borrowing and is only ever intended to be for emergency and short-term borrowing needs. To assess whether the bank should have stepped in earlier to withdraw the overdraft facility. I've reviewed the statements from Mrs P's Halifax account between each of the review dates listed above.

The statements show the following:

- 2014 – the account was overdrawn on one occasion for nine days.
- 2015 – the account was overdrawn on four occasions, but never for longer than nine

days.

- 2016 – the account maintained a positive balance throughout the year.
- 2017 – the account maintained a positive balance throughout the year.
- 2018 – the account was overdrawn on two occasions, but only for one day.

In my view, this evidence shows the overdraft was being managed well and was only used for occasional and short-term borrowing needs as intended.

In considering whether to continue offering the overdraft, Halifax was required to carry out proportionate checks to assess whether this was appropriate for her. From the evidence above, I'm satisfied a review of Mrs P's Halifax account would have constituted a proportionate assessment. On that basis, I don't think it was required to make further enquiries about Mrs P's wider financial position and, on balance, it's my conclusion that Halifax acted reasonably in continuing to offer the overdraft facility up to the review in 2019.

Even if I were to conclude Halifax should have stepped in before 2019 and withdrawn the facility sooner, the minimal use of the overdraft means any refund of associated interest and charges due to Mrs P would be negligible.

In conclusion, I'm satisfied Halifax has already taken appropriate steps to address this complaint in respect of its failure to remove the overdraft in November 2019 when it now accepts it should have done so. Prior to that, I don't think there's sufficient evidence to show it shouldn't have offered the overdraft in the first place and I'm satisfied it was reasonable to continue offering the facility up to November 2019 based on a review of how Mrs P was managing her account.

### **My final decision**

For the reasons I've explained, I'm not upholding Mrs P's complaint and I'm satisfied Halifax has already taken appropriate steps to address its failings.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 19 June 2024.

James Biles  
**Ombudsman**