DRN-5294000

The complaint

Mr M has complained that Bank of Scotland plc trading as Halifax acted irresponsibly when it provided him with an overdraft facility on his current account. He has also said the bank failed in its duty of care to support him as a vulnerable consumer.

Background

Mr M has a current account with Halifax. In early 2020 Mr M was approved for an overdraft facility with a limit of £250. In April 2020 that was increased to £1,700. Two years later in March 2022 the limit was increased again to £1,800 and then finally in November 2022 it was increased for the last time to £2,500.

Mr M has said that the overdraft facility wasn't affordable for him and that Halifax acted irresponsibly when it gave him access to it. He has said that between 2021 and 2022 he developed a compulsive gambling problem which resulted in him becoming overly reliant on credit. He says he has now amassed over £15,000 of debt linked to his gambling activity which he believes Halifax is liable for. He says that if the bank had properly reviewed his account at the time he was applying for the overdraft increases, it would have realised what was going on and should have offered him support to help prevent him from experiencing further financial harm.

He has asked for the bank to refund the capital amounts lent to him over £1,700, as well as linked interest and charges and pay him £1,500 of compensation.

Halifax has said that all lending decisions made were properly considered and that it ran all the necessary checks to ensure the overdraft facility, and subsequent limit increases, were affordable. Having done so it was satisfied that it didn't make an error in its decision to lend to Mr M and didn't uphold his complaint on that basis. It also said that at no point did Mr M contact the bank and ask for help or support with gambling, so it was unaware he needed help. It said at no point did the account show evidence of financial stress and so it was unaware Mr M's spending habits were causing him harm. As it didn't think it had failed to identify a need for support it didn't uphold that aspect of Mr M's complaint either.

Unhappy with the response from Halifax Mr M brought his complaint to our service. One of our investigators looked into already. She found that by 2022 it should have been apparent to Halifax that Mr M was becoming over reliant on credit and it shouldn't have approved the final limit increase on his overdraft to £2,500. She also thought that the bank missed indicators that Mr M was becoming financially vulnerable and that it should have contacted him to offer him support. For those failings she directed the bank to rework the overdraft facility as though the limit had never been increased beyond £1,800 refunding all interest and charges above that amount. She also said the bank should pay Mr M £500 compensation in recognition of its failure to offer support. However, she didn't think a capital refund was appropriate or that the bank could be held liable for Mr M's gambling transactions.

Halifax accepted the findings of the investigator, but Mr M didn't. He maintained that he should be entitled to a capital refund of his losses and that the bank should pay him £1,500 of compensation. As he didn't agree with the investigator Mr M asked for the case to be referred to an ombudsman and so it's been passed to me.

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 done so I agree with the outcome reached by our investigator and think the suggested redress is reasonable in the circumstances of the complaint. I know Mr M will be disappointed in this, so I've set out my reasons below.

I also want to acknowledge that I've summarised the events of the complaint. But I want to assure both parties that I've reviewed everything on file. And if I don't comment on something, it's not because I haven't considered it. It's because I've concentrated on what I think are the key issues. Our powers allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts.

Our general approach to complaints about unaffordable or irresponsible lending – including the key rules, guidance, and good industry practice – is set out on our website.

The rules don't set out any specific checks which must be completed to assess creditworthiness. But while it is down to the firm to decide what specific checks it wishes to carry out, these should be reasonable and proportionate to the type and amount of credit being provided, the length of the term, the frequency and amount of the repayments, the total cost of the credit and what it knew about the consumer at the time of application.

In her view our investigator set out why she didn't think the bank had made an error in it's initial lending decision in February 2020 when it granted Mr M an overdraft facility of £250. Likewise, she didn't think an error had been made in April that year when it was increased to £1,700. Mr M accepted these findings, as did Halifax, so I won't consider them here as they are no longer being disputed by either party.

Instead, I'll look at the lending decision in March 2022 when Mr M's overdraft was increased to £1,800 which he believes was inappropriate but which our investigator thought was reasonable.

Mr M has said that by this time his gambling, which was manifesting in trading transactions across two investment platforms, was obvious and out of control. He believes these transactions would have been visible to the bank because his account was consistently overdrawn in the months leading up to the limit increase in March 2022. So, he believes the bank should never have approved for a limit increase above £1,700.

I've looked at Mr M's statements and agree the volume of trading transactions was very high during this time. However, it's important to clarify that banks don't necessarily review the individual transactions on an account when considering overdraft limit increases. Rather it's more likely to look at the high-end management of the account itself, in other words check for missed payments, returned direct debits or failure to bring the account back into credit. Looking at Mr M's statements between January and March 2022 I can see he regularly used the overdraft facility but there were also periods of time where the account remained in credit and I can't see anything about how the account was being managed, without looking at the individual transactions, that would have alerted Halifax that Mr M was becoming financially vulnerable.

Mr M has mentioned that at the time he was also applying for credit elsewhere and that there was evidence in his account of loans both from other lenders as well as family members. However, as I mentioned above these would only have been apparent had someone physically reviewed the individual credits into Mr M's account and there's no obligation on the bank to do that so I can't say it was wrong that such a review didn't take place. And any other forms of credit taken out around this time wouldn't have shown on Mr M's credit file when Halifax reviewed it and so I can't say the bank was wrong not to realise he was applying for loans elsewhere.

All of which means I don't think the bank was wrong to increase the overdraft facility in March 2022. Mr M's account was well maintained, it wasn't showing any signs of financial vulnerability, and it was regularly being brought back into credit. Mr M's credit file likewise was well maintained with no evidence of missed payments or arrears elsewhere and the increase was only for £100 at that time and so I think the bank did enough to ensure the lending was affordable and I don't think it was wrong to increase the limit at this time.

That said I do think that by the time the final limit increase took place in November 2022, there were more signs that Mr M was becoming overly reliant on credit and mismanaging his account in such a way that it was causing him harm. I note that the bank had issued letters to Mr M about his overdraft usage in July 2022 as it had concerns about how he was managing it. Looking at Mr M's account in the six months prior to the lending decision I can see it overdrawn more often than it was in credit. And while he did have periods of time when he brought the account back into credit these rarely lasted a long time. In addition, Mr M had applied for two loans with other lenders in May and September that year and had several open active credit cards as well. All of which would've been evident on this credit file by the time he applied for this significant limit increase.

So I think that by the time Mr M applied for the limit increase in November 2022 the bank should have realised that he was showing signs of financial vulnerability and shouldn't have approved the increase. And so I am upholding his complaint from the final limit increase.

Mr M has also said that the bank should refund the capital amount he borrowed through the overdraft as it was all spent, and subsequently lost, on trading platforms and access to the credit caused him foreseeable harm. He has referenced a case study on our website which he believes is similar his complaint where a capital refund was deemed appropriate due to the foreseeability of harm.

I appreciate why Mr M feels so strongly about this point and the devastating impact his compulsive spending has had on him. However, we consider each case on its own individual merits, and I don't think a capital refund is appropriate here. Mr M did borrow the funds and he is liable to repay them. The circumstances of the other complaint, which has been simplified and summarised on our website, were considerably different to those in Mr M's complaint and so I don't think it's useful to try to draw comparisons between the two.

Mr M has also said that Halifax failed to identify him as a vulnerable consumer and offer him real and genuine support. He has asked why trading transactions are barred on his Halifax credit card but permitted via his debit card. He has also queried why the bank can't, or won't, block transactions to individual websites to help prevent compulsive gamblers from spending money in a harmful way.

As mentioned previously, I think it is important to highlight that banks don't review individual account transactions in the way many customers assume they do. Even when we call to speak to bank representatives on the phone the people we speak to may only have access to limited information linked to the specific question we ask and not sight of the entire account, or individually listed transactions.

Which means no one in Halifax was reviewing the information on Mr M's account in the way he might assume they were. Manual reviews, where a staff member actively reads account statements and sees the types of transactions that are taking place, only happen when there is a specific risk identified that prompts the business to think such a review is necessary. Or where a consumer asks for a review directly or has an agreement in place with the business that such a review will take place.

Instead, for most of the time, businesses rely on algorithms to identify risk to the account and the account holder. And those algorithms are primarily designed to look for things like evidence of financial harm, such as direct debits going unpaid, or people going into unarranged overdrafts or exceeding agreed overdraft limits. Or fraud and scams, where unauthorised third parties access funds without permission. And none of those sorts of issues were flagged on Mr M's account.

Mr M has also queried why it's possible for the bank to block trading transactions on a credit card but not a debit card. I understand Mr M's frustration here, as he was using trading platforms as opposed to gambling sites, the gambling block offered by Halifax wouldn't have stopped the sorts of transactions he was making. However, there's no obligation on the bank to offer these sorts of blocks at all. And while I can understand why Mr M would have found it useful, I can't say the bank has made an error under any regulatory requirement or industry standard by not offering the service Mr M wanted it to.

However just because I don't think that Halifax was obliged to provide Mr M with the specific type of support he wanted, doesn't mean it shouldn't have offered some sort of support. And while I accept no one was manually reviewing the transactions on Mr M's account, I do think that by November 2022, when he asked for the final limit increase on his overdraft, Halifax ought to have picked up on signs that he was becoming overly reliant on credit and should have checked in with him at that point. And while Mr M has said that it wasn't until 2023 he was able to admit he had a problem and actively seek help, there was an opportunity before that for Halifax to offer support to him. So I agree with our investigator that it should pay Mr M some compensation in recognition of its failure to offer him support earlier.

Mr M has said that £500 isn't sufficient as the level of harm he experienced was extreme and he has been left with over £15,000 of debt to repay. He thinks the bank should pay him £1,500 in compensation. I don't doubt that Mr M is in an extremely difficult position following years of compulsive spending. However, this purpose of this service isn't punitive, and I don't think the bank is liable for the debt Mr M has amassed. And Mr M has said he was unable to accept he had a problem until 2023. So overall, while I understand the enormous impact compulsive spending has had on him, I can't hold the bank responsible for that. And it would be unreasonable to increase the compensation award as a means of punishing the bank. So, I think the £500 suggested by the investigator is reasonable in the circumstances.

Putting things right

Therefore, in order to put things right Bank of Scotland plc trading as Halifax should:

• Re-work Mr M's current overdraft balance so that any additional interest, fees and charges applied as a result of the overdraft limit increase from 2 November 2022 onwards are removed. This means that from 2 November 2022 onwards interest can only be charged on first £1,800 of any overdrawn balance.
AND
• If an outstanding balance remains on the overdraft once these adjustments have been made Bank of Scotland plc trading as Halifax should contact Mr M to arrange a suitable repayment plan for this. If it considers it appropriate to record negative information on Mr M's credit file, it should backdate this to 2 November 2022.

OR
• If the effect of removing all interest, fees and charges results in there no longer being an outstanding balance, then any extra should be treated as overpayments and returned to Mr M, along with 8% simple interest on the overpayments from the date they were made (if they were) until the date of settlement. If no outstanding balance remains after all adjustments have been made, then Bank of Scotland plc trading as Halifax should remove any adverse information from Mr M's credit file. †
AND
• pay Mr M £500 compensation in recognition of its failure to offer support in November 2022 when there were signs that Mr M was becoming overly reliant on credit

† HM Revenue & Customs requires Bank of Scotland to take off tax from this interest. Bank of Scotland plc trading as Halifax must give Mr M a certificate showing how much tax it's taken off if he asks for one.

My final decision

For the reasons set out above I partially uphold Mr M's complaint against Bank of Scotland plc trading as Halifax.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 28 March 2025.

Karen Hanlon
Ombudsman