

The complaint

Mr I complains Bank of Scotland plc trading as Halifax lent to him when it shouldn't have.

What happened

Mr I applied for a Halifax credit card in 2014. Halifax approved his application and gave him a £1,000 credit limit. In 2020 Mr I complained to Halifax. He said it shouldn't have lent to him because he had other borrowing at the time and his income varied because he was self-employed. Mr I was dissatisfied with Halifax's response, so he asked our service for an independent review.

The investigator thought the complaint should succeed. This was because she wasn't persuaded Halifax had done enough to ensure Mr I could afford the credit he was given. She thought had Halifax done more, it would have realised lending to Mr I could cause him financial difficulties. Mr I accepted the investigator's recommendation. Halifax didn't respond by the deadline we set. So, the complaint has been passed to me to decide.

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.

The investigator made the following findings:

"When considering these types of cases, I'd need to be satisfied that the checks Halifax conducted prior to inception were sufficient and proportionate to the amount lent. There isn't a set list of checks that a business must carry out, and it isn't for our service to tell them what information they should and shouldn't consider either.

Our approach would generally consider a less detailed affordability assessment, without the need for verification, to be fair where the amount borrowed is relatively small and the consumer's financial situation is stable and when they'd be indebted for a relatively short period of time.

But in circumstances where the consumer's finances are likely to be less stable or they're being expected to repay a larger amount and over a longer period of time, I'd consider a more detailed affordability assessment to be conducted – along with a greater degree of verification.

In this case, the credit limit was set at £1,000 which I wouldn't consider particularly high, but this needs to be considered in conjunction with Mr I's income and other debts.

And Halifax are responsible for assessing if Mr I could afford the account in a sustainable way. If the proportionate checks were completed, then I'd need to be satisfied the bank made a fair lending decision bearing in mind the information they'd gathered as a result of the checks.

Halifax have explained that due to the time that's passed, and that Mr I's application was made via a third party they no longer have the data to show what checks were completed or what information was provided. Halifax have said however as the application was accepted; Mr I must have passed the checks they had in place at the time. This would've involved gathering information from credit reference agencies which would include Mr I's other debts such as overdrafts and credit cards. As the application isn't available, we're unable to say what Mr I declared as his income.

But I've looked at Mr I's bank statements from around the time of his application and his average monthly income (into his account) was around £775. As Mr I has told us, this did fluctuate, the highest week I've seen was £270 and the lowest £50. Mr I provided our service with a copy of his credit file in September 2020 which I acknowledge doesn't go back to the time of his application, but I do think it shows a reasonable amount of applicable information.

I can see that at the time of the credit card account opening in February 2014, in addition to Mr I being slightly over his overdraft limit of £3,000 on his current account he had two credit card accounts. Mr I had a [credit card] account that had opened in April 2005, his credit file shows from September 2014 it was near the limit of £3,100 with minimum payments being made. And he also had a [credit card] account that had opened in October 2013, which again in September 2014 was near the limit of £2,500 with minimum payments being made. I think it's more than likely the situation with these accounts was the same in February 2014. This means Mr I's level of borrowing before the account was opened was nearing his annual income.

Given the evidence I've seen, I don't think Halifax carried out the appropriate level of checks before issuing the credit card account with a limit of £1,000. If they'd have done so, I think it's likely they would've realised Mr I had a substantial level of borrowing already and that further borrowing could cause financial difficulties and wouldn't be sustainable."

I have nothing meaningful to add. Based on the evidence available to me, and in the absence of any further comments/evidence from Halifax, I agree with the conclusions reached by the investigator and the reasoning for them. It follows I uphold this complaint.

Putting things right

Halifax should put Mr I in the financial position he'd be in now if he hadn't been given the credit card account, albeit he's had the benefit of the money borrowed and so will need to repay the principal amount. This means Halifax will need to:

1. Refund any interest charged on the account plus all late payment and over limit fees. Any refund should be used to reduce the outstanding balance on the account. And it shouldn't apply any interest on any outstanding balance.
2. If – when Halifax works out what Mr I would have owed each month without the interest, charges and fees – he paid more than enough to clear his balance, Halifax should also pay simple interest on the extra Mr I paid. And it should carry on paying interest until the point when Mr I would have owed Halifax something on his credit card. The interest rate should be 8% simple a year. †
3. Halifax should tell Mr I what it's done to work out 1 and 2. Halifax should also remove any adverse information it's recorded against Mr I on his credit file as a result of it offering the credit card account.

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

My final decision

For the reasons given, I've decided to uphold this complaint. I require Bank of Scotland plc trading as Halifax to put things right for Mr I as explained above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr I to accept or reject my decision before 27 April 2022.

James Langford
Ombudsman