DRN-3464412

The complaint

Mr J complains that Bank of Scotland plc trading as Halifax ("Halifax") irresponsibly increased his credit card limit when he was struggling with his finances.

What happened

Mr J applied for and was provided with a Halifax credit card account in 2009. Halifax agreed an initial credit limit of £900. Halifax then increased the credit limit on Mr J's account to £1,650 in April 2010.

Halifax increased Mr J's credit limit again in November 2011 – this time to £2400. By December 2011, Mr J was fully utilising the new credit limit available to him and continued to only make minimum payments by direct debit. In 2015, Mr J was struggling to maintain his payments. Halifax reduced his credit limit to £2,300. But as regular payments weren't being made, Mr J's account defaulted, and the debt was eventually sold to a third-party debt collection company.

Mr J says that at the time Halifax increased his limit, he was only making minimum payments to the account and was using a very high level of the credit limit available to him. He also had debts with other credit providers and was using a high level of those limits too. Mr J says he was using different credit facilities to repay his debts.

In 2021, Mr J discovered that lenders could be held accountable for providing credit facilities irresponsibly. He'd watched a popular consumer affairs television show which highlighted such situations and explained the steps consumers should take if they felt they'd been affected.

In August 2021, Mr J wrote to Halifax to complain. He thought Halifax should've realised he couldn't repay what he owed within a reasonable length of time. Mr J thought Halifax shouldn't have let him borrow more in 2011. He thought they had enough information available to warn them he was struggling with his finances, and it wasn't responsible to lend him more.

Halifax responded to Mr J's complaint in a letter on 15 September 2021. They said they could only consider his complaint if it was brought to them within six years of the event he was complaining about. Because the limit increase was in November 2011, they said he would've needed to complain by November 2017 or three years from when he first realised he had a need to complain. Halifax thought Mr J's complaint was outside of these time limits.

Mr J wasn't happy with Halifax's response. He said he wasn't aware of a need or reason to complain until 2021- when he watched the television show. So, he decided to bring his complaint to this service. Our investigator thought Mr J's complaint should be considered. And after explaining this to Halifax, they provided their consent.

Having considered all the information available, our investigator thought Halifax had acted irresponsibly when they increased Mr J's credit limit in 2011. He thought Halifax should refund all interest and charges from November 2011 on any amount borrowed above the previous limit of £1,650. And if refunds resulted in an overpayment, Halifax should refund this together with interest of 8% simple per year, removing any adverse data from Mr J's credit file. Where a debt remained, our investigator thought Halifax should agree a suitable repayment plan with Mr J.

Halifax didn't agree with our investigator's findings. They said the information available to them didn't suggest that Mr J had any financial difficulties at the time they increased his limit.

As an agreement couldn't be reached, Mr J's complaint has been passed to me to consider.

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 rules and guidance that applied when Halifax increased Mr J's credit card limit in 2011 were set by the Office of Fair Trading. These stated that Halifax should complete an assessment of affordability before agreeing to or increasing Mr J's credit limit. The assessment should consider the potential for the increase to adversely impact Mr J's financial situation, taking account of information available at the time the increase was agreed.

The rules and guidance don't detail the specific checks to be made. They should be proportionate and demonstrate that Mr J should be able to sustainably repay the debt over a reasonable period of time. Factors may include:

- the type of credit; and
- the amount of credit and the associated cost and risk to Mr J; and
- Mr J's financial situation at the time; and
- Mr J's credit history including and indications of financial difficulty; and
- Mr J's existing and future financial commitments.

Although there are no prescribed sources of information to be used in this assessment, examples may include:

- records of Mr J's previous dealings with Halifax (or the wider group); and
- evidence of income; and
- evidence of expenditure; and
- credit scoring; and
- credit reference agency information; and
- information obtained from Mr J.

Key here is whether there was information available to Halifax that should've prompted them to undertake further proportionate tests and checks in their assessment. If there was, and those checks weren't completed, I would need to consider what those checks might've revealed and whether a responsible lender would've increased Mr J's limit based upon those findings.

Halifax have confirmed they no longer have records relating to Mr J's original application, or the limit increases. I don't see this as unreasonable as they're only obliged to keep records for a limited time. But this does mean Halifax are unable to confirm what checks and tests were completed and what these revealed.

Where there is no clear record of what happened, I must decide on the balance of probabilities – that is, what I consider was most likely to have happened, given the evidence that is available and the wider surrounding circumstances.

I've looked at Mr J's credit card statements for the 12-months before Halifax increased his limit. For the majority of the period, Mr J owed more than £1,600 against the agreed limit of £1,650. He also appeared to be mainly making minimum payments. Where credit was available, he used the account to make small purchases increasing the balance owed close to the limit. There's no evidence of limit excesses or missed payments.

At the end of August 2011, Mr J repaid the balance he owed in full. He then made two balance transfers from his account totalling £1,479.51. This is usually where a debt is transferred from another credit provider. Mr J then continued to make minimum payments.

The fact Mr J was generally only making minimum payments wouldn't ensure the debt was repayable over a reasonable period of time. So, this may raise questions about his financial situation at the time. Halifax say they don't believe this was a sign of financial difficulty. Rather that it was probably Mr J's choice and was in keeping with what they see other customers choosing to do. While I don't disagree with that observation, it should be considered within the context of other information available.

I accept that Mr J had met all the terms of his credit card agreement. But the fact he'd been consistently paying minimum payments coupled with the balance transfers made so soon after he'd repaid the credit card balance were, I think, sufficient to prompt Halifax to consider further checks and tests before increasing his limit. So, I would've expected them to do that here. The question then is, what would those checks and tests have revealed?

I've looked at Mr J's bank statements for the 12 months to November 2011. He held a current account within the wider banking group to which Halifax were affiliated. So, I would expect this information to have been available to Halifax, or requested. The statements show Mr J received income from three sources. Two of these related to state benefits in the form of Tax credits. They accounted for 62% of Mr J's regular income. The remaining employment income was received fortnightly and fluctuated between £106 and £343 each time. I think this suggests that Mr J's earned income wasn't fully guaranteed and would depend upon the terms of his employment contract and the hours he worked. So, I think Halifax would've needed to check that.

It also appears Mr J had other credit commitments, not least evidenced by a monthly loan repayment of £156 and payments to another credit card provider. Remaining payments appear to relate to general living expenses, and I can't see any evidence of excessive non-discretional spend. This is what I would expect. State benefits are means tested, and by their nature are not usually designed to create a surplus of income. Further, the statements show no evidence of a regular monthly surplus accumulating from Mr J's income. So, I would expect a responsible lender to question Mr C's ability to generate material surpluses to repay debts where the majority of income appears to be benefits related and fully utilised.

In August 2011, Mr J received a payment of over £5,000 into his current account. He's explained this related to an award made for an accident he was involved in. It was at this point Mr J repaid the Halifax credit card debt. But shortly after, he arranged two balance transfers to other creditors from his Halifax credit card.

Mr J has told this service he was struggling financially. He said he was using available credit to repay other creditors. The evidence above persuades me this was likely to have been the case. Given this information, I'm not persuaded that a responsible lender, acting reasonably would've agreed to increase Mr J's credit limit further.

I accept Halifax wouldn't have had the benefit of hindsight. But the fact that Mr J then fully utilised the credit Halifax had made available and only made minimum payments, further persuades me that Mr J clearly wasn't able to sustainably repay his debt.

I want to assure Halifax that I've considered all their comments and observations following our investigator's view of Mr J's complaint. But I'm not persuaded that they completed appropriate and proportionate checks before they increased Mr J's credit limit. And, I don't think the limit increase was appropriate.

Halifax did suggest that the increase agreed would only result in increasing Mr J's minimum payments by £7.50 each month. I agree this amount is low. But any assessment of affordability should be based upon repayment of the debt over a reasonable period. Minimum payments wouldn't achieve that.

Putting things right

As I don't think Halifax should've increased Mr J's credit limit from £1,650, I also don't think it's fair for them to charge any interest or charges on any balances which exceeded that limit. However, Mr J has had the benefit of all the money he spent on the account so I think he should pay this back. Therefore, Halifax should:

- Rework the account removing all interest and charges that were applied to balances above £1,650.
- If the rework results in a credit balance, this should be refunded to Mr J along with 8% simple interest per year* calculated from the date of each overpayment to the date of settlement. B should also remove all adverse information recorded after November 2011 regarding this account from Mr J's credit file.
- Or, if after the rework an outstanding balance remains, Halifax should arrange an affordable repayment plan with Mr J for that amount. Once the outstanding balance has been cleared, any adverse information recorded after November 2011 regarding the account should be removed from Mr J's credit file.

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

As Halifax has sold the debt to a third party, it should arrange to either buy back the debt from the third party or liaise with them to ensure the redress set out above is carried out promptly.

My final decision

For the reasons set out above, I uphold Mr J's complaint.

I require Bank of Scotland plc trading as Halifax to provide redress as I've detailed above under "Putting things right".

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 29 September 2022.

Dave Morgan
Ombudsman