

The complaint

Mr C complains that Bank of Scotland plc (trading as Halifax) acted irresponsibly by giving him a loan that he couldn't afford to repay.

What happened

On 15 May 2019 Halifax approved Mr C's application for a £5,000 loan. This was to be repaid in 24 monthly instalments of £270.10.

Although his wages were paid into his Halifax current account each month, Mr C thinks they should have noticed that most of it was immediately transferred out. He says he'd been consistently over his overdraft limit for several months - and that he'd also reached the limit on the credit card he held with them.

Mr C feels Halifax should have asked him further questions about where his money went each month. He says if they'd asked to see his other account statements, they'd have seen a series of gambling transactions, that he'd also reached the limit on another credit card, and that he'd applied for several payday loans.

Mr C complained to Halifax that they'd acted irresponsibly by lending to him. But they said they'd agreed the loan correctly.

Our investigator thought Halifax had followed the requirements expected of them when deciding to grant the loan – and that they hadn't acted unfairly. He felt they'd carried out proportionate checks, which hadn't revealed anything that suggested it would be unfair for Halifax to lend to Mr C.

Mr C disagreed. He felt he'd provided enough evidence showing Halifax would have been able to see that he couldn't afford this loan. And that they should have considered whether the payments would be sustainable for him, as well as completing an affordability calculation. He asked for his complaint to be reviewed by an ombudsman.

My provisional decision

In my recent provision decision, I said:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

The Financial Conduct Authority (FCA) sets out rules and guidance for lenders to follow, which can be found in the Consumer Credit Sourcebook (CONC). I've reviewed what this required Halifax to do before approving Mr C's loan application.

Halifax were required to carry out a creditworthiness assessment, and to have proper regard to what that showed about whether the loan was affordable for Mr C. This wasn't just about how likely it was that they'd get their money back - they had to focus on whether the repayments would adversely affect Mr C's financial situation. This meant satisfying

themselves he'd be able to afford to make the repayments in a way that he could sustain throughout the 24-month loan period.

There was no set list of checks to be carried out, but Halifax had to make sure the checks they completed were reasonable and proportionate in the circumstances. CONC listed a number of factors that might affect how extensive the checks needed to be, such as the type and amount of credit, the monthly repayment amount, and the length of the agreement.

CONC said businesses had to make sure they'd got enough information to enable a reasonable assessment to be carried out. This could include information they were aware of at the time. But it might be appropriate to obtain more from Mr C, or from a credit reference agency. I've reviewed the checks Halifax carried out with these requirements in mind.

I've seen a copy of the information Mr C provided in his online application. He declared his salary to have been £1,680 per month. He didn't declare any financial commitments, such as rent or other regular monthly payments. I note that Mr C's application didn't say what he wanted the loan for.

Halifax have told us that they estimated Mr C's housing costs to be £262 per month and his essential living costs to be £374 per month. They've said these figures were based on statistical data taken from the Office for National Statistics and their own transactional records. Their assessment showed that, after paying his essential living costs, Mr C was likely to have over £1,000 available to spend each month.

Halifax said they were satisfied that their assessment showed the loan was affordable for Mr C. And that, as the credit reference agency information they obtained showed no defaults, county court judgments or bankruptcy recorded against him, the loan was approved.

But I'm not persuaded that Halifax properly considered all the information they were aware of at the time. Mr C already held other Halifax accounts. I've seen copies of statements for his Halifax current account, savings account and credit card covering the three month period before he applied for the loan. I've reviewed these in detail.

The evidence I've seen shows Mr C opened the credit card account on 4 March 2019 and reached the credit limit in less than two weeks. Despite making payments, I can't see that he was making any real progress towards reducing the outstanding balance. Before receiving the loan funds on 15 May 2019, he was very close to his credit card limit.

The current account statements confirm Mr C was receiving at least the amount of salary he'd declared in his application. But the account was overdrawn and incurring daily fees throughout the three-month period I looked at. I saw only one external direct debit instruction, relating to a phone provider. In March 2019 that direct debit instruction bounced back because there were insufficient funds to cover a payment of £20.36. Other than payments to his phone provider and Halifax credit card, all other transactions were transfers to accounts held by Mr C. I was unable to see where his money was being spent.

Similarly, almost all of the transactions on the savings account were to and from other accounts in Mr C's name. Again, I was unable to see what he was spending his money on.

I appreciate Halifax's affordability assessment showed Mr C should have over £1,000 available to spend each month. But I don't consider that to be consistent with the account information they held. Over the three-month period I reviewed, the amount of money paid into Mr C's current and savings accounts almost exactly matched the amount of money paid out. So, before Halifax decided he could sustainably afford to pay an additional £270.10

each month, I think reasonable and proportionate checks should have included asking Mr C for more information to show where his salary was going.

I've reviewed what Halifax would have discovered if they'd asked to see a recent statement for Mr C's other bank account. At the time of the loan application, the most recent statement would have covered the period from 22 March to 18 April 2019. Mr C has provided a copy of this.

The statement shows large numbers of gambling transactions on a daily basis. On 25 March 2019 Mr C transferred over £2,000 into the account. But just two days later this was gone - and his account was overdrawn by nearly £200. It remained overdrawn for the rest of the statement period, despite high-cost short-term loans being paid into the account on 1, 11, 15 and 17 April 2019.

Based on the information I've seen so far, I'm not persuaded that Halifax carried out adequate checks before granting this loan. If they'd asked for more information to show where Mr C's money was going, I think it would have been very clear that he had problems with gambling – and that he was borrowing more money than he could afford to repay. In those circumstances, I don't consider Halifax to have acted fairly by lending Mr C more money. I've gone on to consider what they should do to put things right.

I've thought about how Mr C spent the money, and his current financial situation. I don't think his circumstances suggest it would be unfair for him to repay the £5,000 he borrowed from Halifax. But I think they should refund all the interest and charges applied to the loan account from the outset. And I think Halifax should remove any adverse information about this account from Mr C's credit file.

I intend to uphold this complaint and direct Halifax to:

- Remove all interest, fees and charges applied to the loan from the outset;
- If the effect of removing all interest, fees and charges results in there no longer being any outstanding balance, then any extra should be treated as overpayments and returned to Mr C along with 8% simple interest from the date the overpayments were made to the date of settlement;
- Remove any adverse information recorded on Mr C's credit file in respect of this account.

I invited both parties to send me any further information or comments they'd like me to consider. Both parties responded, saying they accepted my provisional findings.

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.

As both parties have accepted my provisional findings, I see no reason to depart from them.

My final decision

For the reasons set out in my provisional decision, I uphold this complaint and direct Bank of Scotland plc to:

- Remove all interest, fees and charges applied to the loan from the outset;
- If the effect of removing all interest, fees and charges results in there no longer being

any outstanding balance, then any extra should be treated as overpayments and returned to Mr C along with 8% simple interest from the date the overpayments were made to the date of settlement;

- Remove any adverse information recorded on Mr C's credit file in respect of this account.

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

Corinne Brown
Ombudsman