

The complaint

Mrs S is unhappy with Halifax, who is a trading name of Bank of Scotland plc. Mrs S complains Halifax lent to her irresponsibly.

What happened

Mrs S fell victim to an investment scam in early 2022. As part of the scam, Mrs S was led to believe she needed to pay fees and charges to withdraw funds from her investment. She didn't have the funds to meet these costs and so, over a space of three weeks, Mrs S and her husband applied to borrow £156,450 over 11 loans with several different lenders.

In April 2022 Mrs S applied to Halifax for, and was given a loan for £10,100, which was repayable over a period of 60 months. The repayments were around £221 a month, and in total Mrs S agreed to pay back about £13,265 over the five years, after interest was added.

Mrs S says she was groomed and coached by the scammers on how to apply for the loans. Mrs S thinks Halifax should have checked her circumstances more thoroughly before agreeing to lend because with better checks, Halifax ought to have seen she could not afford this loan.

Halifax says it completed appropriate checks before it approved lending to Mrs S and these showed the borrowing was affordable. It also ran checks to verify Mrs S' details including her name, address and bank details and these didn't lead it to believe the loan application wasn't made by Mrs S.

Halifax didn't uphold Mrs S' complaint but in an act of forbearance given her predicament, it agreed to suspend the interest charges whilst it and her other bank continued to look into the scam. In June 2022, Halifax transferred the loan to its collections department with Mrs S not having made a repayment to the account and only £28.12 interest added to the original £10,100 she borrowed.

Unhappy with the response Mrs S got from Halifax, she brought her complaint to this service. Our Investigator upheld the complaint. He concluded that with reasonable and proportionate checks, Halifax would have considered Mrs S unable to sustainably afford this loan. He recommended that Halifax should remove all interest and charges from the loan and arrange an affordable repayment plan for the balance going forward. He also recommended Halifax remove any negative information about the loan from Mrs S' credit file.

Halifax accepted the Investigator's findings and recommendation to put matters right.

Mrs S disagreed with the Investigator and she thinks Halifax should forgo collecting on the loan altogether.

Because an agreement couldn't be reached, the case has been passed to me to decide. Mrs S' loan with Halifax is the sixth in the chain of nine accepted loan applications and this decision is looking only at this one loan agreement. I am aware Mrs S (and her husband)

have referred other cases concerning some of the other loan applications and these have been looked at under separate case references.

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.

We've set out our approach to complaints about unaffordable and irresponsible lending on our website. I've taken this into account in deciding Mrs S' complaint. I'm sorry to hear of the devastating impact this matter has had, and is having on, Mrs S and her family. I don't wish to cause them any further distress – but I must give my decision based on what I consider to be fair and reasonable, taking account of all evidence in the circumstances relating to this individual case. I've considered Mrs S' submissions carefully, but I'm not persuaded to reach a different outcome from the Investigator. I'll explain my reasons.

Halifax needed to take reasonable steps to ensure that it didn't lend to Mrs S irresponsibly. It should have completed reasonable and proportionate checks to satisfy itself that Mrs S would be able to pay the loan in a sustainable way. There is no set list of what reasonable and proportionate checks should look like. Generally, we think it's reasonable for a lender's checks to be less thorough – in terms of how much information it gathers and what it does to verify it – in the early stages of a lending relationship. But we might think it needed to do more if, for example, a borrower's income was low or the amount lent was high.

Halifax did complete some checks to see if the loan was affordable. Halifax has said Mrs S would not have been offered the loan if she had not passed its checking criteria. In summary, it explained that part of its checks involved reviewing Mrs S' credit profile to assess her income and expenditure, and it also used information from Mrs S' active credit file.

At this point, I do think it's important for me to set out that Halifax was required to establish whether Mrs S could sustainably make her loan repayments – not just whether the loan payments were technically affordable on a strict pounds and pence calculation. And as Mrs S banked with Halifax, it already knew a fair amount of information about her income and expenditure.

Mrs S told Halifax she was married with three dependants, that she was a homeowner without a mortgage, she was employed with a monthly income of £2,800, and her expenditure totalling £890 per month. Halifax assessed Mrs S' affordability separately, revising her declared expenditure with housing costs at £840 a month, her monthly repayments to unsecured credit at £746, her essential monthly living costs at £455 and another significant commitment at £50 – all of which would leave Mrs S with £709 available a month.

So, the values Halifax used to assess the loan affordability were significantly higher than those Mrs S had declared. This said, I share the Investigator's concern that Halifax overlooked Mrs S declaring she was a homeowner without a mortgage when it was her mortgage lender, and crucially, her understatement of expenditure. I think these ought to have prompted further interrogation of Mrs S' circumstances and so I don't find Halifax's checks reasonable and proportionate.

Halifax, as both Mrs S' mortgage lender and her current account provider, had access to a large amount of information about Mrs S' income and expenditure. Halifax says looking at this information would disadvantage its existing customers over those applying for a loan who don't bank with them. But I think it's fair to say this doesn't take away from the

responsibility of carrying out reasonable and proportionate checks for each application, using not only what is declared by an individual, but what is already reasonably known.

In any event, I am only interested in Mrs S' application. And given Halifax's checks showed she had declared inaccurate expenditure details, I think it would have been reasonable for the lender to have reviewed Mrs S' existing account activity. Had it done so, Halifax ought to have seen a significant increase in the account turnover, with over £33,000 crediting her account from four other lenders. And the repayments to those advances alone would mean Mrs S didn't have enough free income to sustainably repay the £221 monthly commitment to the loan she was applying for.

I'm therefore satisfied that reasonable and proportionate checks would more likely than not have shown Halifax that it shouldn't have provided this loan to Mrs S.

Finally, I've considered whether Halifax ought to have identified Mrs S' application was in connection to the investment scam she had fallen victim to. Although I think better checks ought to have led to Halifax spotting the loans from other lenders, I'm not convinced they also ought to have shown Halifax Mrs S didn't intend to put the loan monies towards paying for home improvements – which is what she'd described as the purpose of the loan. The funds were released to her bank account with Halifax, which it could see belonged to Mrs S. So, I can't fairly say Halifax could have prevented Mrs S' investment in the scam at this time.

Putting things right

When I find that a business has done something wrong, I'd normally direct that business – as far as it's reasonably practicable – to put the complainant in the position they *would be in now* if the mistakes it made hadn't happened.

In this case, that would mean putting Mrs S in the position she would now be in if she hadn't been given the loan in question.

However, this isn't straightforward when the complaint is about unaffordable lending. Mrs S was given the loan and she used the money. In these circumstances, I can't undo what's already been done. So, it isn't possible to put Mrs S back in the position she would be in if she hadn't been given the loan in the first place.

I note Mrs S wants Halifax to forgo collecting on the loan altogether. Mrs S says she did not benefit from the loan because the funds were lost to an investment scam. As I explained in the above, it was not foreseeable to Halifax how Mrs S intended to use the loan funds. Mrs S did have the benefit of the loan funds insofar as they were paid to her bank account, albeit she then transferred most to her account with another bank before transferring them again and losing the money to the scam. Mr and Mrs S have approached both their banks – Halifax and the other – to seek the reimbursement of those funds and their responses are under separate consideration by this service. In the circumstances, I cannot reasonably hold Halifax responsible for all or part of Mrs S' loss of the loan moneys to the scam or tell it to write-off the loan.

I must consider another way of putting things right fairly and reasonably given the circumstances of this complaint.

I note that Mrs S failed to make any repayment to the account before Halifax charged off the account to collections. Only £28.12 interest was added to the original £10,100 Mrs S borrowed, with another interest charge already refunded.

I think it is fair for Mrs S to repay the £10,100 capital she borrowed but without interest, fees and charges. So, Halifax should refund the £28.12 interest it charged back into the account and ensure no further interest, fees or charges are applied to the debt going forward. As Halifax has now transferred the debt to its collection department, it should agree with Mrs S an affordable repayment plan if one is not yet in place. Finally, once the debt has been repaid, Halifax should remove any adverse information recorded on Mrs S' credit file because of this loan.

I would only remind Halifax about its obligations to treat Mrs S fairly and offer due forbearance should she now find herself in financial hardship.

My final decision

For the reasons I've explained, I uphold Mrs S' complaint. Bank of Scotland plc, trading as Halifax, should put things right for her in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 20 September 2023.

Stefan Riedel
Ombudsman