

The complaint

Mr H complains that Bank of Scotland trading as Halifax irresponsibly provided him with a credit card account. Mr H wants the debt written off and a refund of interest, fees and charges.

What happened

Halifax provided a screenshot to say it opened a credit card account for Mr H in November 2000. It says apart from this, it holds no further information about the credit card account due to the passage of time.

When Mr H complained to Halifax, it said he'd made his complaint outside the relevant time limits and so his complaint couldn't be considered. Mr H referred his complaint to the Financial Ombudsman Service where one of our investigators looked at whether Mr H had complained too late. Our investigator concluded that Mr H had complained in time and this service could look at Mr H's complaint. Halifax agreed but said it didn't hold any further information about the account other than the screenshot it provided.

Our investigator concluded that due to the lack of information available, she couldn't conclude that Halifax had acted unfairly in the circumstances. Mr H disagreed, he said he's provided evidence to show he was in a debt management plan (DMP) and that proved he had high levels of debt and couldn't afford further credit. It says due the onus is on Halifax to prove it lent responsibly and the information he has provided on balance suggests the credit card was unaffordable.

As the complaint remains unresolved it has been passed to me an ombudsman 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.

We are independent and impartial, and our role is to listen to both sides of a complaint, take evidence from both parties, and then decide on a fair and reasonable outcome. So - it's important that we must see evidence from both the consumer and the firm concerned to do this.

Neither Mr H nor Halifax have been able to provide details of checks carried out or Mr H's financial circumstances from 2000. Mr H has said due to the passage of time he can't obtain information - like his bank statements and credit file from that time. Halifax has also said it holds no further information due to the passage of time. Given that the credit card account was opened more than 23 years ago, it isn't surprising that there is a lack of credible information relating to what happened in 2000.

Halifax needed to take steps to satisfy itself the credit was affordable for Mr H. In order to check whether Halifax acted fairly before agreeing to lend in 2000, I need to see evidence of what checks they carried out. Typically, a firm would show us the assessment they did when

agreeing to lend – this might include (for example) a customer’s credit history with the lender; a picture of his/her other debts with other lenders; whether they were making payments on time; and a borrower’s overall financial situation - his/her salary; other household income (e.g. from a partner); time in employment; whether a homeowner or tenant. We then look at the information the firm had and come to a decision as to whether proportionate checks were carried out.

For me to come to a decision as to whether Halifax lent responsibly, I need to see the information they had at the time for Mr H. And given the passage of time, this just isn’t available. Halifax isn’t required to keep records indefinitely – and so it’s reasonable for Halifax to say they don’t have any records to show us. The information available is so limited we don’t know what the limit on the card was when it was initially agreed, whether there were any credit limit increases and what those increases may have been.

I know Mr H has come forward with his arguments as to his financial situation. But most of this is taken from the position when the DMP was agreed in 2006 – we don’t have any confirmed or authenticated evidence for the time when the card was agreed in 2000. Mr H has also provided a benefits statement from 2001 to show his pensionable income was £13,540.80. Again, this information was after the credit account was agreed.

I appreciate Mr H says the information should be sufficient to draw the inference that he was likely struggling when the account was opened but to make a fair decision about whether Halifax did something wrong when it provided credit, I would still need to see what, for their part, Halifax did and knew about Mr H’s circumstances in 2000 to come to a balanced and reasonable decision about the merits of this complaint. And as that isn’t possible – I’m unable to say that Halifax lent irresponsibly at that time.

Mr H has shared some information about his personal circumstances, and I’m sorry to learn of Mr H’s situation and how difficult things have been for him over the years. I know he will be disappointed by my decision, but I hope he can see why I’ve come to it.

My final decision

For the reasons given above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr H to accept or reject my decision before 22 April 2024.

Oyetola Oduola
Ombudsman