

The complaint

Mr O complains that in 2017 Bank of Scotland plc, trading as Halifax, lent to him without doing the right checks. He says he had other debt which Halifax ought to have known about.

Mr O says that Halifax did not account for his mental health at the time and any future change in circumstances. And transactions should have shown Halifax he was gambling.

Mr O says that Halifax dealt with his complaint in a poor way, was patronising and arrogant.

What happened

Mr O took a loan with Halifax on 24 September 2017. It was for £5,000 and was due to be repaid over 84 months until 28 September 2024 at £118.50 each month. Mr O paid it regularly, often overpaying up until around July 2019. The loan account records we have been sent from Halifax show that his direct debits started to be rejected around that time. The account was defaulted in May 2020 and sold to a third party debt collector in August 2020.

Mr O complained to Halifax in September 2023 and he received a final response letter to say that the complaint had been brought out of time. A colleague ombudsman has determined that the complaint can be looked at by the Financial Ombudsman Service.

So, one of our Investigators considered the complaint. She thought that the lack of evidence from Halifax, due to the length of time since the loan was approved, combined with the lack of evidence from Mr O about his financial circumstances in September 2017, meant that she did not think that she could uphold the complaint.

Mr O then sent to us more information including his personal credit file dated 1 October 2023 and copy bank statements from May 2017 to September 2017. He's sent some statements from 2018 as well. There are two accounts. There are sections of the statements missing.

Our Investigator was able to see some of Mr O's financial circumstances and so she issued a second view but the information she had from Mr O did not reveal that he was unable to afford the loan. And apart from some national lottery transactions she did not see any evidence of gambling to the extent that a lender like Halifax would consider it to have been an issue for Mr O.

The Investigator had no records from Halifax and so was not able to see details of any checks it had carried out about Mr O before lending, for instance finding out about any other debt Mr O may have had to pay for at the time.

There were no account notes sent to us by Halifax for this complaint and so any record of Mr O's illness being mentioned to it has not been evidenced. So, our investigator did not uphold his complaint.

Mr O disagreed with our investigator's assessment and asked for an ombudsman to review it. The complaint was passed to me to decide.

As one aspect of Mr O's complaint was not covered in our Investigator's assessment (complaint handling) and I found some evidence about Halifax's knowledge of Mr O's health issues – then I issued a provisional decision on 5 July 2024 to cover all these points.

A duplicate of that provisional decision is inserted here for ease of reading. It is in smaller

type to differentiate it and forms part of this final decision.

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 general approach to complaints about unaffordable/irresponsible lending – including all the relevant rules, guidance and good industry practice – on our website. And I've used this approach to help me decide Mr O's complaint. Having carefully considered everything I've decided to not uphold Mr O's complaint in part. I'll explain why in a little more detail.

Halifax needed to make sure it didn't lend irresponsibly. In practice, what this means it needed to carry out proportionate checks to be able to understand whether Mr O could afford to repay any credit it provided. Our website sets out what we typically think about when deciding whether a lender's checks were proportionate. Generally, we think it's reasonable for checks to be less thorough – in terms of how much information is gathered and what is done to verify it – in the early stages of a lending relationship.

But we might think more needed to be done if, for example, a borrower's income was low or the amount lent was high. And the longer the lending relationship goes on, the greater the risk of it becoming unsustainable and the borrower experiencing financial difficulty. So, we'd expect a firm to be able to show that it didn't continue to facilitate a customer's loans irresponsibly. I've carefully considered all the arguments, evidence and information provided in this context and what this all means for Mr O's complaint.

Irresponsible lending

I do not have information from Halifax surrounding Mr O's application in September 2017. I do not consider that unreasonable as this was many years ago. But I have been asked to use what information is available to me to determine whether proportionate checks were carried out by Halifax at the time Mr O applied for the loan and whether the lending was irresponsible.

I can't discover whether the checks it carried out were proportionate ones as I've no information on the checks it did do. Using my own experience then I think it's highly likely some sort of checks were carried out by Halifax before lending.

What I can do is review Mr O's financial situation to try to piece together what it is that Halifax may have discovered when it did do the checks I consider it likely would have carried out at the time.

I have had to use what evidence I have about Mr O's income and outgoings at that time. This information is a combination of documents from Halifax sent to us for this complaint and other complaints we have about Mr O's accounts and credit cards. Plus documents from Mr O some of which result from a data subject access request (DSAR) he had made last year and which Halifax complied with.

And I have looked carefully at the personal credit file Mr O has sent us which is dated 1 October 2023. That can show us closed accounts and accounts that may have opened before 2017 and still be open now or recently closed. So, the personal credit file was of some use. It does reveal that something significant occurred which affected Mr O's financial situation in 2020 and of course likely coincided with the Covid pandemic. Many of Mr O's accounts defaulted around May to August 2020. I am sorry to read of that. But I need to underline that Halifax would not have known of these events.

I know that in September 2017 Mr O had two bank accounts with Halifax, one was marked as a bills account and not used a great deal. The other was the one Mr O appeared to use regularly and had a £500 arranged overdraft on it. Mr O also had another current account with another bank which had opened in February 2011 and closed in December 2017. I've no details of that account.

The checks Halifax likely carried out would, in my view, have included looking at his two current accounts and checking the balance on his credit card and whether Mr O had any

arrears, over limit charges or was close to his credit limit on the card account. And I say this was likely as all three accounts were with Halifax. So, I think it's fair and reasonable of me to review the ones I've been sent.

I have received copy Halifax current bank accounts dated 7 September 2017 to February 2018 but there are dates missing. I've received photographs of statements for May, June, July, August and September 2017 as well which I've used to fill in the gaps from the other copy set.

Plus, I've seen copy statements in June, July, August and part of Sept 2017 for a Halifax 'bills account'. That shows that Mr O and another person paid money into that account and it looks to have been used to pay some bills.

Mr O has explained that his relationship broke down around the time he applied for the loan. And I assume that the bills account would have been depleted if the other person was not paying into it. At the end August 2017 that bills account had £37 in it and on 11 September 2017 only £4.27. So that account is not one that's likely to have altered Halifax's view on affordability.

Mr O also had a credit card with Halifax he'd opened in 2014 which I know from records about the card had a credit limit in July 2015 of £4,950. It was not increased again after that and so I think it's likely this was the credit limit in September 2017.

Mr O has said that in September 2017 he had about £3,000 on that card to pay off and used £1,000 of the bank loan to pay that down. At a minimum repayment of around 3% then that would have been around £90 each month and that is evidenced by the transactions to that card I've seen on his statements. So I think it is likely that Mr O's balance was around £3,000 at that time.

Mr O had another credit card he'd opened in 2009 and in 2012 the credit limit for that was increased to £2,000 and not increased further. I cannot see from his current account copy bank statements that he was paying anything towards that card.

Mr O had a further credit card (with a different bank) which had opened in May 2012 and the limit had been increased in 2013 to £2,000. I do not know the balance on that card in September 2017. But in the current account statements I have, I see no payments towards it.

Mr O has mentioned another account with a different bank which he applied for in May 2018. It was approved together with a £1,750 overdraft at the same time. Although it's irrelevant to this complaint as it was opened in May 2018, I mention it here for completeness and to demonstrate to Mr O I've considered all he's said.

Mr O has said that Halifax was wrong not asking him about his future plans, but unless Mr O informed Halifax of this or of any other future changes he was concerned about then I can't attribute to Halifax knowledge of future changes in Mr O's circumstances. I've no evidence that he did inform Halifax of any of these details in September 2017.

Similarly with his employment – Mr O says it ought to have checked this as he was on a zero hour contract at the time and at risk of his employment income reducing. Halifax would have proceeded on the information at the time and unless Mr O told Halifax he was on a zero hour contract and therefore at risk of his salary being less than it was in September 2017 then I do not consider it likely it would know, or ought to have known. I've no evidence that Mr O told Halifax that detail.

Mr O has sent to us payslips dated 2018 but as these post-dated the loan application then I have disregarded them.

The most complete bank statements I have are for August 2017. There are gaps in the other sets and so I have used August 2017 as a reasonable indicator of Mr O's income and expenditure (I&E).

Mr O's four wage payments for August 2017 came to £1,020. The outgoings included £150 on bills, £94 to a Council, £67 and £13 to insurances, and £130 to his Halifax credit card. This left him with £566 for other outgoings such as food, pay as you go phone (which I do not consider to be a credit commitment) and relatively small amounts on petrol. So, despite Mr O being a relatively modest wage earner I do think that Mr O could have afforded the £118.50.

I have seen that Mr O had a mail order account which had opened in 2009. Using his personal credit file and a complaint file about this account, I can see that in the summer of 2017 Mr O's limit on the account was £3,200 but his balance was very low – about £47 which appears to have been paid off and so his balance was zero. The records I have seen of that account do not indicate that Mr O was in financial trouble. I doubt that this would have featured as an issue for Halifax to have been concerned over.

His bank statements sent to us do not indicate that he was in financial difficulties as there were no returned direct debits or unauthorised bank overdraft charges, or no indications of payments to a debt collector for example.

I must also factor in that Mr O was going to receive the benefit of the £5,000 loan which I can see from later bank statements he used some to pay down some credit card debt. So, Mr O's I&E would, in theory, have reduced to an extent. And Halifax would have recognised that as well.

I appreciate that things changed for Mr O after this – he had to rent a flat alone, pay for all the bills alone and had to run the car on his own. So, I understand that expenditure must have increased. But I can't consider that Halifax was responsible for knowing future alterations of his circumstances.

I plan not to uphold the complaint about irresponsible lending.

Gambling

The bank transactions on both accounts with Halifax show no evidence of gambling other than modest national lottery purchases. For example, about £10 to £15 each week.

Mental health issues

Reviewing one of the other complaints we have from Mr O relating to his Halifax credit card I've seen that one of his DSAR documents shows Halifax in 2011 was aware of some mental health concerns surrounding two bereavements of close relatives in 2003 and 2005. But there are several points to say about this. I am sorry to learn of Mr O's close family deaths. It's always hard.

But these would have been many years before Mr O was applying for the loan in September 2017 and so even if a marker had been placed on Mr O's file in 2011, it may have been removed between then and his application.

Added to which the Financial Conduct Authority (FCA) CONC 2.10 Guidance on this area surrounding mental ability/capacity to enter into agreements makes it clear that the default position is not that therefore Halifax ought not to have lent to him. To not lend to a person simply because of a health issue on a record could be discriminatory.

And it was evident that Mr O had a job and was earning a salary which would have been one of the many factors it would have looked into if it did have a marker on the file surrounding Mr O's health in 2017. So I have no evidence to suggest that Halifax did anything wrong in respect of this aspect of his life and application in September 2017.

Complaint handling

I can consider complaints about complaint handling when it is part and parcel of the regulated activity about which Mr O is complaining – here the loan application.

Mr O has said that he considers the final response letter it got from Halifax arrogant and patronising and overall poor.

Any lender faced with a complaint relating to a decision made more than six years before the complaint was made is entitled under the FCA DISP rules to state its concern at the time between the two. I have seen from reading this complaint file that Halifax did make such a challenge and it was resolved by a fellow ombudsman colleague in March 2024 who determined that the complaint could be looked at by us. So, I would not describe Halifax's reliance on an FCA rule as a disrespectful act towards its customer. I disagree with Mr O on this part.

In addition, I have seen copies of Halifax's notes regarding the complaint process which seems to have moved along swiftly from September 2023 complaint date. This was acknowledged quickly and a final response letter soon followed in early October 2023. Following the referral to us, Halifax was prompt in its replies to us in relation to Mr O's complaint. So, I consider matters were dealt with in a timely manner.

There's nothing in the tone of the correspondence or the content of any emails or letters I have been provided with that Mr O received about the complaint which might suggest that any Halifax representatives were being arrogant towards him or patronising. I do not consider that Halifax was poor in its response to Mr O's complaint about this loan.

So, I do not consider that the complaint handling by it was poor and I plan not to uphold this part of Mr O's complaint.

S140A

I've also considered whether Halifax has acted unfairly or unreasonably in any other way and I have considered whether the relationship might have been unfair under s.140A of the Consumer Credit Act 1974.

However, for the reasons I've already given, I don't think Halifax lent irresponsibly to Mr O or otherwise treated him unfairly in relation to this matter. I haven't seen anything to suggest that Section 140A would, given the facts of this complaint, lead to a different outcome here.

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.

Halifax and Mr O have been given time to respond to my provisional decision and neither has.

In the circumstances, I have no reason to depart from the provisional findings I made and those are repeated here.

For the reasons I give here and in my provisional decision, I do not uphold the complaint.

My final decision

My final decision is that I do not uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 19 August 2024.

Rachael Williams

Ombudsman