

The complaint

Mr S has complained that Bank of Scotland plc trading as Halifax (“Halifax”) gave him a loan without conducting proportionate affordability checks.

What happened

Mr S was granted loan of £20,000 by Halifax on 16 July 2020. Mr S was due to make 64 monthly repayments of £432.08. Had Mr S repaid the loan in line with the credit agreement then he would’ve repaid a total of £27,653.12. The loan had an APR of 13.5%. Due to repayment problems Halifax defaulted the account in January 2021 before selling the debt to a third party.

Following Mr S’s complaint Halifax wrote to him and explained why it didn’t consider it had made an error by approving the loan – it didn’t uphold the complaint. Unhappy with this response, Mr S referred the complaint to the Financial Ombudsman.

An investigator initially considered the time bar that Halifax had raised, in summary it said that Mr S had raised his complaint more than six months after it had provided Mr S with the final response. The investigator agreed with this and said the Financial Ombudsman couldn’t investigate Mr S’s complaint.

An ombudsman colleague then issued a decision determining the complaint was within jurisdiction and so the merits could be investigated. As Mr S hadn’t brought it too late. For the sake of completeness, I’d add that I’m satisfied that I can consider this complaint.

The complaint was then returned and reviewed by an investigator, who didn’t uphold the complaint. He concluded Halifax hadn’t conducted proportionate checks and needed to do more before granting the loan. But he was satisfied had Halifax conducted more in depth checks it still would’ve lent to Mr S.

Mr S didn’t agree with the outcome. I’ve read of all his emails, but in summary Mr S says his income was incorrect and wasn’t as high as Halifax believed. And Halifax, as part of its affordability assessment, had used assumptions. Mr S says given his commitments at the time the loan wasn’t affordable.

The investigator thought about these points but didn’t change his mind about the outcome he had reached. As no agreement could be reached the complaint has been passed to me to decide.

Mr S has recently provided some further information that he wanted the Ombudsman considering his case to be aware of. Mr S reiterated the following that the income used by Halifax was incorrect. He also said that he had had some health problems and the loan has caused him a lot of distress. Mr S went on to say that he didn’t have to provide copy bank statements as he could’ve provided his payslip to show his income – and he now says the bank statements have been “...used against him...”. Finally, Mr S provided a screenshot from his bank statement showing his personal living costs and these show the loan payment were unaffordable.

As no agreement could be reached the complaint has been passed to me 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've set out our general approach to complaints about unaffordable/irresponsible lending - including all of the relevant rules, guidance and good industry practice - on our website. And I've used this approach to help me decide Mr S's complaint. Having carefully considered everything I've decided to not uphold Mr S's complaint. 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 S 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 can tell from the emails and letters to both ourselves and to Halifax that Mr S feels strongly about his complaint. I am also sorry to hear about the impact this has had on Mr S's health and I thank him for sharing that information with us. I do hope he is getting support with how he is feeling, and I do hope things have improved for him.

I've carefully considered all of the arguments, evidence and information provided in this context and what this all means for Mr S's complaint. Having looked at everything I have decided to not uphold Mr S's complaint and I've explained why below.

In summary, Halifax says it asked Mr S for details of his income and then used a combination of his credit search results and statistical modelling to work out his credit commitments and his living costs. Halifax says for a loan to be granted it has to pass its credit assessment, indebtedness assessment, policy rules and its affordability assessment. In the circumstances of this complaint, Halifax was satisfied that its checks went far enough and showed it that Mr S was able to afford his loan.

As a starting point, Halifax as the lender was entitled to rely on the information Mr S gave in his application – unless Halifax knew, or ought to have known that what he declared was inaccurate. Based on the information gathered from Mr S and the results of its own checks the loan looked affordable. However, having considered everything, I don't think, in totality the checks Halifax did before advancing the loan went far enough.

Mr S, as part of application, declared his income was £2,700 per month. From the information provided by Halifax it doesn't seem to have taken any steps to verify or cross reference this figure either through the collection of payslips, bank statements or through using one of the tools provided by the credit reference agency.

I do think, some sort of check was needed into Mr S's declared income to ensure it was accurate. This could've been done a number of ways which I've outlined above. Therefore, the check wasn't proportionate.

Halifax has also provided the details that it used for its affordability assessment about Mr S's living costs. It seems that Mr S declared that he had housing costs of £550 per month and based on the credit search results Halifax received (which I'll come on to below) it calculated monthly existing monthly credit commitments of £21 per month. It then assumed that Mr S had essential living costs of £434 per month. This figure wasn't given by Mr S but instead has been calculated by Halifax using "...*different internal model*..." taking account a number of factors including Mr S's income and where he lived.

Halifax also carried out a credit search and it has provided a summary of the results that I have reviewed. It showed no defaults, delinquents or other markers that may have indicated Mr S was overindebted or struggling with his existing repayments.

The results also showed that there had been only two credit searches within the last six months – so not an indication that Mr S had a constant need for credit or was stuck in a cycle of borrowing. It also seems to have worked out from the results that Mr S's existing credit commitments were costing him £21 per month. Overall, the credit check results, wouldn't have raised any flags or concerns with Halifax.

But as I've said above, I don't think, given the loan value and term that it was reasonable to have relied on Mr S's declared income without any further checks being conducted. And while of course it's reasonable to have relied on the housing costs Mr S declared along with the credit commitment amounts provided by the credit reference agency, I do have some concerns about solely relying on the modelling to obtain the living costs for Mr S in circumstances where he was committed to making repayments for 64 months and Halifax couldn't be sure what his actual monthly income.

However, concluding the checks didn't go far enough doesn't mean that Halifax was wrong to have lent the loan and isn't enough to uphold the complaint. After all, it's possible, and entirely plausible that had further checks been conducted into Mr S's circumstances then Halifax may have well discovered that the loan was affordable. And so why its checks may not have been good enough at the time, had it made better checks it would've still decided to have advanced the loan.

While I've used the copy bank statements provided by Mr S, there wasn't and isn't a requirement for Halifax to have considered them. The bank statements are just one of the ways Halifax could've gone about investigating Mr S's living costs.

Mr S has provided copy bank statements from around the time the loan was advanced, and so I've looked at this to check what his income was at the time. Had further checks been conducted I think Halifax would've likely discovered Mr S's income wasn't as much as he declared. Mr S's income was around £1,500 per month – which is significantly less than the amount Halifax used for its assessment.

But the fact that Mr S's declared income wasn't accurate and Halifax didn't use the correct figure for its affordability assessment, doesn't mean the complaint should be upheld.

In the copy bank statements that Mr S has provided, I've also gone on to consider his regular living costs – so direct debits and other regular payments. As I've said above, the bank statements are just one way Halifax could've obtained this further information before lending to Mr S.

I can see a transfer that is made each month marked as 'mortgage' of £600. On top of this there are payments for car tax, media subscriptions, home insurance, mobile phone, internet and a credit card payment. The total of these outgoings come to around £780 per month. There also wasn't anything in the way he managed the account to suggest he was in financial difficulties.

I can also see transfers to a savings account, but I'm satisfied that having looked at the savings account statement that the funds would then be transferred back into the main account. So, there were no other sources of income / and or savings that Halifax needed to have been aware of or considered for the affordability assessment.

Mr S has recently provided further bank statements, but these appear to be from a different bank account from the ones he provided to the investigation originally and I say this given the colour combination used and the format of the data. And these are partly dated to November – the year isn't given so I can't be sure when these transactions occurred. In any event, the transactions would've been too far removed (either before or after the loan) for Halifax to have considered them.

I know Mr S says that he felt the bank statements were 'used against him' but the statements were used to try and discover what Halifax may have seen had it made better checks into his income and then made some enquires with him about his living costs. In the circumstances of this complaint, I'm satisfied that the bank statements Mr S has provided from 2020 would've demonstrated to Halifax – had it seen them – that the loan was affordable.

So, even if I thought Halifax should have done more, I've not seen anything to persuade me from the bank statements Mr S has provided that more thorough checks ought to have led to a different lending decision because Halifax would've likely concluded that Mr S had sufficient disposable income to afford the loan repayment of around £432.

Overall, I'm not persuaded that Halifax acted unfairly when providing the loan to Mr S, I think had it completed reasonable and proportionate checks these would've likely showed the loan to be affordable and sustainable. I am therefore not upholding Mr S's complaint.

I've also 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 M 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.

Other considerations

Mr S has also said that he has had difficulties from Halifax obtaining information from it about the application. In short, he says that Halifax hasn't dealt with his request for information.

Halifax has provided a copy of a contact note it made with Mr S during a call in August 2022. Based on the content of that note, Halifax offered Mr S a subject access request but the note says Mr S declined this. Halifax also says it offered to send Mr S a copy of the credit agreement and loan statement, but Mr S also declined this.

If Mr S remains unhappy with how the requests have been actioned and or handled he is of course free to take this up directly with Halifax or the Information Commissioner's Office who is the supervisory authority for data protection issues.

My final decision

For the reasons given above, I am not upholding Mr S's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 6 December 2024.

Robert Walker
Ombudsman