

Complaint

Mr E has complained about credit cards which Bank of Scotland plc (trading as “Halifax”) provided to him. He says that the credit cards were unaffordable for him and so shouldn’t have been provided.

Background

Halifax provided Mr E with four credit cards in total.

As I understand it, Mr E was provided with the following credit cards, which had the following lending decisions made on them at the following times:

Card	Opened	Opening limit	Limit increase 1	Limit increase 2
A*	December 18	£1,000.00	N/A	N/A
B**	April 20	£5,000.00	N/A	N/A
C***	August 20	£5,000.00	£10,000.00 in April 21	£15,000.00 in October 21
D	April 21	£5,000.00	£10,000.00 in August 21	£15,000.00 in October 21

* card A was closed in August 2019

** card B was closed in June 2020

*** card C was closed in August 2022

One of our investigators reviewed what Mr E and Halifax had told us. She thought that Halifax hadn’t done anything wrong when providing cards A and B. However, the investigator also thought Halifax ought to have realised that it shouldn’t have provided Mr E with cards C and D. So she recommended that Mr E’s complaint be partially upheld.

Mr E didn’t disagree with the investigator. However, Halifax did not accept the investigator’s conclusions. As Halifax didn’t agree with the investigator’s conclusions the case was passed to an ombudsman for review as per the next stage of our process.

As the parties are in agreement over the outcome on cards A and B, this decision is only looking at whether Halifax acted fairly and reasonably towards Mr E when providing him with cards C and D as well as the associated limit increases.

My findings

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

We’ve explained how we handle complaints about unaffordable and irresponsible lending on our website. I’ve considered all of this when deciding Mr E’s complaint.

Having carefully considered everything, I’m partially upholding Mr E’s complaint. I’d like to explain the reasons for my conclusion.

Halifax needed to make sure that it didn't lend irresponsibly. In practice, what this means is Halifax needed to carry out proportionate checks to be able to understand whether Mr E could afford to repay before advancing any credit.

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 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. 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 lender to be able to show that it didn't continue to lend to a customer irresponsibly.

I've kept this in mind when considering Mr E's complaint.

Were the checks that Halifax carried out before providing card C and card D, as well as the associated credit limit increases, reasonable and proportionate?

General observations

Before I get into the specific checks that Halifax carried out at the time it decided to provide card C, card D and the associated limit increases, I have a few general observations on a number of the arguments Halifax has made in this case. In its response to our investigator's assessment, Halifax has referred to its arguments and approach being consistent with other final decisions issued by ombudsmen, the guidance on our website as well as the regulator's rules and guidance.

However, it seems to me that Halifax agreed to Mr E's application after he declared some information on his income and expenditure. The evidence provided indicates that Halifax did not carry out a credit searches on Mr E and I've not been provided with anything else to indicate that some kind of other cross checking of the information Mr E provided took place.

Furthermore, while Halifax has referred to its response to Mr E's complaint, its response to the investigator's assessment and its approach all being in line with the regulator's rules and guidance, I'm not persuaded by its arguments here.

Indeed, CONC 5.2A.7 R states:

A firm must base its creditworthiness assessment on sufficient information:

...

(2) obtained, where appropriate, from the customer, and where necessary from a credit reference agency, and

the information must enable the firm to carry out a reasonable creditworthiness assessment.

Halifax has not directly told me why it believes it wasn't necessary for it to obtain information from credit reference agencies. I don't know whether this is because of what Halifax has also said about it having no prior solo relationship with Mr E - such as on a bank account – in response to our investigator's view. But I don't see how this could possibly hold true for all of Mr E's applications, given by card B, at the latest, Mr E had already been provided with card A. So, at best, Halifax's arguments which have been repeated for cards B, C and D, could only apply to card A.

Furthermore, CONC 5.2A.16 (3) states:

(3) For the purpose of considering the *customer's* income under CONC 5.2A.15R, it is not generally sufficient to rely solely on a statement of current income made by the *customer* without independent evidence (for example, in the form of information supplied by a *credit reference agency* or documentation of a third party supplied by the third party or by the *customer*).

I've not been provided with any evidence to indicate that Halifax took any steps to verify, or even cross-check Mr E's declaration of income either.

I accept that Mr E may have made his credit card applications online. But there doesn't appear to be anything within the rules I've cited which indicates that a different standard exists for online applications. And, given what I've set out above, it doesn't seem to me that Halifax obviously complied with the regulator's rules and guidance in the way that its response to our investigator's view suggests it believes it did.

I'll now go on to consider the circumstances at the time of the individual applications.

Card C

Mr E was provided with a credit card which had a limit of £5,000.00 and as this was a revolving credit facility, Halifax was required to understand whether Mr E could repay £5,000.00 within a reasonable period of time.

I've already set out why Halifax's conclusion that this was Mr E's first solo application cannot hold true past the application for card A – if that assertion is in fact correct for that application in the first place. In any event, it's worth noting that by the time of the application for card C, Mr E had already been provided with card A and card B. Card C was also being provided only four months after card B – albeit card B was closed after two months.

Furthermore, the copy of the credit file which Mr E has provided me with also shows that he had been provided with at least one loan by Halifax too, which Halifax ought to have been aware of even without carrying out a credit search. I've also been provided with copies of bank statements from a Halifax account which appears to be in Mr E's sole name. So it's clear to me that by this stage Mr E had made quite a few sole applications to Halifax.

I find it somewhat odd that it didn't credit check Mr E in these circumstances – particularly as it says Mr E intended to make a balance transfer at this point too. In any event, Mr E declared that he had an annual salary of £29,000.00, was a homeowner with a mortgage and had a monthly mortgage commitment of £400 as well as other commitments of £400. In Halifax's view, Mr E would have sufficient funds left over to make his payments after his commitments were deducted from his income.

On the other hand, Mr E says the credit card was unaffordable.

I've carefully thought about what Mr E and Halifax have said.

Halifax appears to be arguing that the monthly payments required to repay a credit limit of £5,000.00 meant that a lighter touch assessment of affordability was proportionate here. But as I've explained Mr E was an existing Halifax customer, who had made a number of previous credit applications. Halifax may consider that Mr E having previously met his credit commitments with Halifax meant that it was reasonable and proportionate to rely solely on his declarations – particularly as this was an online application. However, I think that Mr E's

previous borrowing was a reason to delve further into the information provided.

As Halifax checks appear to be based mainly on Mr E's declaration of income and expenditure despite him possessing the traits of being a repeat borrower, I'm satisfied that the checks carried out before card C were provided weren't reasonable and proportionate.

Halifax doesn't appear to have done anything more before agreeing to the credit limit increases on card C. So it follows that I don't think that the checks carried out before this card was provided were reasonable and proportionate either.

Card D

Mr E was provided with card D, which what Halifax's records describe as a second credit card, in April 2021. I presume that card D is described as a second credit card as it was provided as card C remained open at this stage. Card D had a limit of £5,000.00 and as this was an additional revolving credit facility, provided on or around the time Mr E was provided with a limit increase on card C to £10,000.00, Halifax was in effect required to understand whether Mr E could repay £15,000.00 within a reasonable period of time.

Halifax says that it once again agreed to Mr E's application after it obtained information on his income and expenditure. The evidence Halifax has provided indicates that it did not have any data regarding Mr E's existing credit commitments. I can only assume that this means it once again chose not to carry out a credit check on Mr E despite him having card C open at this stage.

This time Mr E declared that he had an annual salary of £29,700.00 and that he was still a homeowner with a mortgage. Although for this application which was only eight months after the application for card C, Mr E purportedly had a monthly mortgage commitment of £300, which was 25% lower than his previous declaration. Mr E also declared that he also had other commitments of £300. It is once again Halifax's view that Mr E had sufficient funds left over to make his payments after his commitments were deducted from his income.

However, Halifax's checks once again appear to be primarily based on Mr E's declaration of income and expenditure despite some of the information provided (the mortgage payment) being inconsistent with the application he made only eight months earlier and it lending him significantly more, considering that card D was being provided in addition to the increased limit on card C.

I appreciate that that Halifax may argue that a reduction of £100 wasn't huge. But this was nonetheless a reduction of 25%. And there wasn't anything that would support such a reduction having taken place in that time. If anything, I would have expected Mr E's mortgage payments to increase rather decrease bearing in mind the prevailing environment at the time. Additionally, Halifax ought to have been concerned that Mr E payments towards other commitments had exactly the same reduction too. In these circumstances, it is my view that Halifax had cause to ask Mr E to provide further information and evidence about his financial circumstances.

Halifax doesn't appear to have done anything more before agreeing to provide Mr E with card D, than it did before providing card C. This is despite the fact that there was the potential for him to owe significantly more. In these circumstances, I don't think that the checks Halifax carried out before card D was initially provided, or any of the subsequent credit limit increases, were reasonable and proportionate.

Would reasonable and proportionate checks have indicated to Halifax that Mr E would have been unable to repay card C and card D as well as the limit increases granted on the facilities?

As reasonable and proportionate checks weren't carried out before card C and card D as well as the associated credit limit increases were provided, I can't say for sure what they would've shown. So I now need to decide whether it is more likely than not that proportionate checks, at the respective times, would have told Halifax that Mr E would have been unable to sustainably repay card C and card D as well as the limit increases provided.

Halifax was required to establish whether Mr E could make his credit card repayments without experiencing significant adverse consequences – not just whether these repayments payments were technically affordable on a strict pounds and pence calculation. I note that Halifax argues the fact that card A, card B and card C were repaid means that Mr E wasn't placed in difficulty and that all of the cards as well as credit limits were affordable. I think that this is far too simplistic. Besides at the time the complaint was referred to us, Mr E was towards the upper end of his credit limit on card D and taking Halifax's argument to its logical conclusion would mean therefore mean that that card was unaffordable for him.

In response to our investigator's assessment, Halifax has calculated a retrospective income and expenditure assessment which it says takes into an account of average of seven months prior to card A being taken out. It's worth noting that while Mr E had joint account, there are limited contributions going into the account from the second account holder. So, from the available evidence, I think it is fair to say that Mr E was responsible for the majority of the household expenditure.

Furthermore, while Halifax has included payments to some of Mr E's credit commitments, these are only the commitments which show on the joint account statements. As I've explained, Mr E has provided a copy of his credit file and this shows that he had to pay more towards credit commitments than the payments which were going out of the joint account. I can even see some payments towards payday loans on the credit file and I don't rule out the possibility of there having been more bearing in mind many providers have removed entries on credit files since voluntarily, or being required, to leave the market.

I've also considered the fact that there are periods where Mr E was gambling. Halifax argues that it wasn't aware of this and in any event it couldn't be expected to know about this as Mr E was gambling through another account. I'm not wholly unsympathetic to Halifax's argument here. But I do have to take into account the overall circumstances here and it's fair say that Mr E's pattern of borrowing was, at the very least, unusual and arguably even erratic. I don't think that four separate credit card applications over a period of less than two and a half years coupled with a number of credit limit increases and loans with a lender is typical. That's not even taking into account Mr E's applications for credit elsewhere.

I think that by the time of Card C, Halifax ought to have got to the bottom of the erratic nature of Mr E's borrowing – particularly as Halifax has highlighted that Mr E wasn't making balance transfers as he would. And I don't think that Halifax should have granted Card C and Card D as well as the associated credit limit increases, until it received this clarity on Mr E's position. I say this especially as Mr E had the potential to accrue a total balance of up to £30,000.00 across cards C and D when his limits on these cards were increased in October 2021. In my view, any reasonable attempt to gain this clarity would have seen Halifax ascertain the underlying reason for what at first glance, at least, appears to be an erratic use of credit.

Taking everything I've set out above together, I'm satisfied that reasonable and proportionate checks would more likely than not have demonstrated that Mr E was unlikely to have been able to make the repayments required to repay card C and card D (and credit

limit increases) within a reasonable period of time - i.e. doing so without borrowing further and/or suffering undue difficulty.

In the alternative and in conjunction with my finding above, I'm also satisfied that Halifax provided card C and card D as well as the associated credit limit increases, in circumstances where it ought reasonably to have realised that it was increasing Mr E's indebtedness in a way that was likely to be unsustainable or otherwise harmful for him.

So overall and having considered all of the information provided, I'm satisfied that Halifax shouldn't have provided credit card C, credit card D as well as the limit increases on both cards to Mr E. Mr E ended up paying interest, fees and charges as a result of Halifax providing him with credit cards and limit increases it shouldn't have provided him with.

I'm therefore satisfied that Mr E lost out because of what Halifax did wrong and that it should put things right.

In reaching my conclusions, I've also considered whether the lending relationship between Halifax and Mr E might have been unfair to Mr E under section 140A of the Consumer Credit Act 1974.

However, I'm satisfied that what I direct Halifax to do below results in fair compensation for Mr E given the overall circumstances of his complaint. I'm also satisfied that, based on what I've seen, no additional award is appropriate in this case.

Fair compensation – what Halifax needs to do to put things right for Mr E

Having thought about everything, I'm satisfied that it would be fair and reasonable in all the circumstances of Mr E's complaint for Halifax to put things right by:

Card C

- Refunding all interest, fees and charges Mr E paid on card C;
- Paying interest at 8% simple a year† on all refunded payments from the date that they were made by Mr E to the date of settlement;
- Removing any and all adverse information it may have recorded about this card from Mr E's credit file.

Card D

- Reworking Mr E's current credit card balance to ensure that all interest, fees and charges added from the outset are refunded.

AND

- If an outstanding balance remains on Mr E's account once these adjustments have been made Halifax should contact Mr E to arrange a suitable repayment plan, Mr E is encouraged to get in contact with and cooperate with Halifax to reach a suitable agreement for this.

OR

- If the effect of removing all interest, fees and charges results in there no longer being an outstanding balance, then any extra should be treated as overpayments and returned to Mr E along with 8% simple interest† on the overpayments from the date they were made (if they were) until the date of settlement. If no outstanding balance remains after all adjustments have been made, then Halifax should remove any and all adverse information it has recorded from Mr E's credit file. Halifax can also reduce Mr E's credit limit by the amount of compensation it awards, as long as doing so wouldn't leave Mr E's balance above any new credit limit.

† HM Revenue & Customs requires Halifax to take off tax from this interest. Halifax must give Mr E a certificate showing how much tax it has taken off if he asks for one.

My final decision

For the reasons I've explained, I'm upholding Mr E's complaint. Bank of Scotland plc (trading as Halifax) should put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 10 October 2024.

Jeshen Narayanan
Ombudsman