

The complaint

Mr W complains that Bank of Scotland plc trading as Halifax irresponsibly lent to him.

What happened

Mr W was approved for a Halifax credit card in June 2009 with a £1,100 credit limit. I have detailed the credit limit changes below:

| | |
|---------------|------------------|
| February 2010 | £1,100 to £1,600 |
| March 2010 | £1,600 to £1,400 |
| December 2010 | £1,400 to £1,900 |
| May 2012 | £1,900 to £650 |

Mr W says Halifax irresponsibly lent to him. Mr W made a complaint to Halifax, who did not uphold Mr W's complaint, so Mr W brought his complaint to our service.

Our investigator upheld Mr W's complaint. She said due to the length of time that's passed since the account opened, Halifax no longer hold any information relating to the affordability checks they completed. She said Mr W has been able to provide information relating to his P60 for the year ending April 2009, which showed he only received an annual income of £2,017.73 for the 2008/2009 tax year.

Our investigator said she reviewed the P60 Mr W had supplied for the 2009/2010 tax year, which shows he received income of £14,601 during this tax year. She said his annual income translated to a monthly income of £1,216, before tax. Our investigator said that Mr W supplied her with an extract of his credit file which showed accounts being in arrears. She said she didn't think Halifax acted fairly when they opened his account as he was likely to be struggling financially at the time, so his account shouldn't have been opened.

Halifax asked for an ombudsman to review the complaint. They said Mr W's income for the 2009/2010 tax year was £1,216.83 a month before tax (roughly £1,084 a month in take home pay). They said Mr W said he was paying £100 a week to his parents, and after his credit commitments shown on the information Mr W provided this would total £561 a month, which if Mr W utilised his full credit limit, and made a repayment of 5% each month, this would mean he would still have £468 a month remaining after a repayment of £55 a month to service his Halifax credit card.

Halifax said that the information showing arrears on Mr W's accounts doesn't show the dates when he was in arrears, and this could have been many years before their lending decisions, or after their lending decisions.

As my findings differed in some respects from our investigator's, I issued a provisional decision to give both parties the opportunity to consider things further. This is set out below:

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

Before agreeing to approve or increase the credit available to Mr W, Halifax needed to make proportionate checks to determine whether the credit was affordable and sustainable for him. There's no prescribed list of checks a lender should make. But the kind of things I expect lenders to consider include - but are not limited to: the type and amount of credit, the borrower's income and credit history, the amount and frequency of repayments, as well as the consumer's personal circumstances. I've listed below what checks Halifax have done and whether I'm persuaded these checks were proportionate.

June 2009 - Initial acceptance of the Halifax credit card:

I've looked at what checks Halifax said they did when initially approving Mr W's application for the credit card. I'll address the credit limit increase later on. Halifax have said that due to the time that's passed, they have no information regarding this. So I can't see what their checks would have shown. Therefore I'm not able to say that the checks they performed prior to the £1,100 credit limit being approved were proportionate or not, or whether they made a fair lending decision here.

Mr W has provided us with his P60's for the 2008-2009 and 2009-2010 tax years. The figures on these two tax returns are substantially different. I say this as the 2008-2009 tax year shows an income of £2,017.73, but the 2009-2010 tax year income is shown as £14,601.96, which is over seven times higher. But I do note from the 2009/2010 tax calculation Mr W sent our service that he also received £4,166 in dividends, so the total income on this document is shown as £18,667 which equates to £1,572.25 a month. This is higher than the figure Halifax has referred to when they asked for an ombudsman to review the complaint.

As too long has passed since the application, I'm unable to see what Mr W would have entered as his income. And as Halifax aren't automatically required to request evidence of tax returns or bank statements as part of account opening checks, I can't say they should have asked for either of these things before approving Mr W's application.

I have reviewed the information which Mr W says was from his credit file which showed an account was two months in arrears, and another account which was three months in arrears as the worst status of those accounts. But this doesn't show when the arrears were from. Both accounts were closed within four months of the Halifax credit card being opened, so the arrears could have been from many years prior to the Halifax credit card being approved.

So I can't evidence that the financial difficulty Mr W may have had at one point was present when Halifax approved Mr W's application for the credit card, or there were indicators which should have resulted in Halifax completing further checks. The information Mr W provided here does show that the current balance of those two accounts which were in arrears at times was £0, so Mr W was able to settle these accounts by paying the full outstanding balance without them defaulting.

Mr W has provided evidence that he had other credit agreements at the time Halifax approved his application. But as his credit file is not available from 2009 (which is understandable given how long has passed), then I'm unable to say what the checks Halifax would have made would have shown.

I do note that on one of Mr W's credit card statements he's provided us, that while he did go over his credit limit, which appeared to be an oversight, he also made repayments to his account of £263.20 on 16 March 2009, £510.18 on 27 April 2009, and on 26 May 2009 he paid a total of £368.76, which these repayments were significantly higher than his minimum repayment, and his credit limit was £510.

On a different credit card he held at the time, Mr W's statements show he made repayments of £610.89 on 15 April 2009, £704.71 on 15 May 2009, and £380.33 on 27 May 2009. So if Mr W was experiencing financial difficulties around the time his Halifax credit card was approved, then I would not expect him to be able to make substantially higher repayments than what was required to be paid to the account on a consistent basis.

Ultimately, I simply do not have sufficient evidence to conclude that Halifax did not make a fair lending decision when they approved Mr W's initial application for £1,100.

February 2010 credit limit increase - £1,100 to £1,600

I've looked at what checks Halifax said they did when they increased his credit limit by £500. Halifax have said that due to the time that's passed, they have no information regarding this. So I can't see what their checks would have shown. Therefore I'm not able to say that the checks they performed prior to the credit limit increase to £1,600 were proportionate or not, or whether they made a fair lending decision here.

As too long has passed since the credit limit increase, I'm unable to see what Halifax would have recorded as Mr W's income. And as Halifax aren't automatically required to request evidence of tax returns or bank statements as part of opening checks, I can't fairly say they should have asked for either of these things before approving Mr W's application.

Mr W has provided evidence that he had other credit agreements at the time Halifax increased his credit limit. Again, as his credit file isn't available from 2010, (which is understandable given how long has passed), then I'm unable to say what the checks Halifax would have made would have shown.

Mr W has told us that he's found a summary of account charges dating from September 2009 - October 2009 on his bank account, which proves that the account was overdrawn four months prior to Halifax increasing the credit limit. But while I don't doubt what Mr W has said here, it's unclear what the credit checks would have shown Halifax about this.

I say this as entering an arranged overdraft would not show as an adverse marker on a credit file. An unarranged overdraft may show this, but it depends when his bank would report information to a credit reference agency (CRA), as to what his balance was at the time, and this was several months prior to the credit limit increase, so I can't say that Mr W being overdrawn months earlier would automatically make any lending decision unfair.

But Halifax would have been able to see how Mr W operated his Halifax credit card since it had been opened. Looking at Mr W's credit card statements I can see that he was late on one of his payments. So this could be a sign of financial difficulties. But again, it could have just been an oversight from Mr W.

The statements show that Mr W was consistently making repayments of £100 a month, which was around four times higher than his minimum payment. Even when Mr W was late with a repayment, his next payment was also for £100, which could be an indication that he wasn't having financial difficulties and this was an oversight, otherwise it would be reasonable for him to make a lower repayment if this was the case.

I do note that on one of Mr W's credit card statements with another provider that he's provided us, that in the months prior to the Halifax credit limit being increased, he made a repayment of £319.91 on 26 October 2009, £480 on 16 November 2009, £186.27 on 23 November 2009 and £437.75 on 4 January 2010, which these repayments were significantly higher than his minimum repayment, and his credit limit was still £510.

On another credit card Mr W held, his statements show he made repayments of £610.89 on 15 April 2009, £704.71 on 15 May 2009, and £380.33 on 27 May 2009. Another credit card statement with a different company shows that on 23 September 2009 his initial statement balance was showing as £834, but on 22 January 2010, the month prior to the Halifax credit limit being increased, his initial statement balance had reduced to £783.08. The statement didn't show any missed payments or overlimit fees.

There was one credit card statement where I noticed an overlimit fee was charged to the account on 31 January 2010. But it's unlikely that this would have shown on any credit checks Halifax would have completed for two reasons. One is that it tends to take a credit file 4-6 weeks to update, and the other is Mr W often made repayments of £800 or more a month on this account, so it appears the overlimit wouldn't be reported to the CRA's as Mr W made a repayment to come back under his credit limit.

So if Mr W was experiencing financial difficulties around the time his Halifax credit card credit limit was increased to £1,600, then I would not expect him to be able to make substantially higher repayments than what he was required to pay to the account on a consistent basis.

Ultimately, I simply do not have sufficient evidence to conclude that Halifax did not make a fair lending decision when they approved Mr W's credit limit increase to £1,600.

December 2010 credit limit increase - £1,400 to £1,900

Mr W had decreased his credit limit since the last lending increase. But I've looked at what checks Halifax said they did when they increased his credit limit to £1,900. Again, Halifax have said that due to the time that's passed, they have no information regarding this. So I can't see what their checks would have shown. Therefore again I'm unable to say that the checks they performed prior to the credit limit increase to £1,900 were proportionate or not, or whether they made a fair lending decision here.

Mr W has provided evidence that he had other credit agreements at the time Halifax increased his credit limit. As I've previously mentioned, his credit file isn't available from 2010, so I'm unable to say what the checks Halifax would have made would have shown.

Halifax would have been able to see how Mr W operated his Halifax credit card since the last credit limit increase. Looking at Mr W's credit card statements prior to the credit limit increase to £1,900, Mr W often just repaid the minimum payment due as opposed to the overpayments that he was making before. But there doesn't appear to be any late fees or any overlimit fees since the last credit limit increase. So I can't conclude that making minimum repayments in itself would mean that a credit limit increase wouldn't be affordable or sustainable for him.

Mr W has provided his 2010/2011 tax year calculation. Page 10 of this shows £13,593 of income, which has reduced from the 2009/2010 tax year. But I note that the 2010/2011 tax year wouldn't have ended when the last Halifax credit card credit limit was increased, so it's not clear if Mr W's income was more consistent with his previous tax year or whether his income had already begun to decline. But due to the nature of his role, it would be unlikely he would be able to say with any certainty what he would likely receive for the rest of the tax year in December 2010.

I do note that on one of Mr W's credit card statements he's provided us, that he did incur an overlimit charge on 7 October 2010, but I can see that there were no late or missed payments. But I do note that Mr W wasn't making overpayments on this account like he had been in other months. But as Mr W made his repayments on time on this account, I can't

fairly say that Halifax's checks would have shown that he did go over his credit limit on this account.

On another credit card that Mr W held, his statements show that he made a repayment of £250 on 12 October 2010 which appeared to be a lot higher than what his minimum repayment would be. There doesn't appear to be any overlimit fees or late/missed payment fees charged on this account in the months prior to Halifax increasing the credit limit on the account.

Another credit card statement with a different company shows that on 12 October 2010 Mr W made a repayment of £250. There doesn't appear to be any overlimit fees or late/missed payment fees charged on this account in the months prior to Halifax increasing the credit limit on the account to £1,900.

So if Mr W was experiencing financial difficulties around the time his Halifax credit card credit limit was increased to £1,900, then I would not expect him to be able to make substantially higher repayments than what he was required to pay to his accounts on occasion.

But ultimately, I simply do not have sufficient evidence to conclude that Halifax did not make a fair lending decision when they approved the credit limit increase to £1,900.

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 can't conclude that Halifax lent irresponsibly to Mr W 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. So it follows I don't intend to ask Halifax to do anything further."

I invited both parties to let me have any further submissions before I reached a final decision. Halifax said they had no further information to add. Mr W did not respond to the provisional decision.

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.

As neither party have provided me with any further information to consider, then my decision and reasoning remains the same as in my provisional decision.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 25 November 2024.

Gregory Sloanes
Ombudsman