

The complaint

Miss B says Bank of Scotland plc, trading as Halifax, irresponsibly lent to her.

What happened

Miss B opened a credit card with Halifax in September 2013. The opening limit was £1,500 and she received a number of limit increases over a ten-year period. This complaint looks at the following limit increases – from £3,250 to £3,750 in July 2018; to £4,750 in February 2019 and to £6,500 in February 2023.

Miss B says, in summary, had Halifax checked her credit record when it increased her limit it would have seen that she had taken out other credit cards and had issues with spending, maxing out on her cards. This would have shown Halifax that she was struggling with her finances and it was not responsible to increase her limit.

In addition, Miss B says she has gone through a period of immense emotional hardship over the last few years, dealing with the loss of a loved one, and subsequently experiencing long-term sickness from work due to mental health issues such as depression, anxiety and stress. She says Halifax did not take this into account and these factors have not only impacted her income but have also limited her capacity to handle the additional financial burden the limit increases created. She feels Halifax did not meet its responsibility to act in her best interests and credit limit increases should only be made after consultation with the borrower.

Miss B wants interest to be frozen on her current balance, a refund of interest she has paid and if possible the debt to be wiped.

Halifax says it carried out proportionate checks before increasing Miss B's limit and always provided advance notification to her, including details of how to opt out.

Our investigator did not uphold Miss B's complaint. She said Halifax completed reasonable checks at the time of each increase that showed the limit increases would be affordable.

Miss B disagreed and asked for an ombudsman's review. She set out in detail why she believes Halifax did not lend responsibly and did not consider the impact of its decisions on her mental health.

I reached a different conclusion to the investigator so I issued a provisional decision. An extract follows and forms part of this final decision. I asked both parties to send any comments by 28 October 2024.

Extract from my provisional decision

I can see Halifax reviewed certain information before increasing Miss B's limit each time. It considered her income and outgoings using external data to calculate her disposable income. It carried out a credit check to understand her total debt, its monthly cost and her repayment behaviour. It also looked at how she was managing this account. From these checks combined Halifax conclude each limit increase was affordable.

I'm not wholly persuaded Halifax's checks were proportionate at the time of the fourth increase as I can't see it verified the data it used for her income and expenses. But I won't comment on this further as even based on the information it did gather, I do not think it made a fair lending decision based on what it knew.

I say this as its affordability assessment showed Miss B would have a disposable income of £161. But it used a repayment rate of 3.5% of her balance on her total revolving debt making her monthly credit commitments £306. This service uses a 5% rate when considering affordability which would mean Halifax needed to allocate £436.65 for Miss B's commitments. We allocate 5% of outstanding balance to allow for repayment of interest and capital and to ensure there is no risk of a consumer falling into persistent debt. And this would mean she did not have sufficient disposable income remaining to take on an increased limit of £3,750. So I find Halifax was wrong to give Miss B the fourth increase.

It follows I would not have expected it to make any of the subsequent limit increases given what it ought to have decided at this stage.

Did Halifax treat Miss B unfairly in some other way?

I am satisfied however that Halifax notified Miss B adequately of its intention to increase her limit on each occasion. I have not seen any evidence that Miss B had notified Halifax of her mental health issues to allow it to make any required and reasonable adjustments. As it is now aware it must make any such adjustments as they work together going forwards.

I then set out what Halifax would need to do to put things right.

Miss B did not respond to my provisional decision.

Halifax disagreed with my findings. It explained how its affordability calculation forms part of its overall lending assessment. It said typically when this service finds checks were not proportionate we go on to look at what proportionate checks would have shown, normally using bank statements. And in this case based on what it knows about Miss B's finances at the time of the increases (she held a savings account with it that she used like a current account) all limit increases would have been affordable. It asked for an explanation as to why a further assessment of Miss B's creditworthiness was not appropriate on this occasion before deciding the lending was irresponsible.

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 will be familiar with all the rules, regulations and good industry practice we consider when looking at a complaint about unaffordable and irresponsible lending. So, I don't consider it necessary to set all of this out in this decision. Information about our approach to these complaints is set out on our website.

I have thought carefully about Halifax's comments. It is accurate that typically where we find checks were not proportionate we recreate what better checks would most likely have shown. However, as it knows we consider each case on its individual merits. And there are times where based on the results of the checks a lender did complete alone, we find it reasonable to conclude that the lending decisions were irresponsible. And this remains my finding in the circumstances of this case.

In its affordability calculation, Halifax used a repayment rate of 3.5% of Miss B's balance on her total revolving debt making her monthly credit commitments £306. Using a 5% rate would mean Halifax needed to allocate £436.65 for Miss B's commitments. So had it adequately considered her existing credit commitments Halifax would have seen Miss B did not have sufficient disposable income remaining to take on the increased limit of £3,750. And at this stage she would not have been offered a limit increase. So I remain satisfied I can fairly conclude it was not fair and reasonable for Halifax to extend Miss B's credit line as it did.

Halifax submitted what it thinks better checks would most likely have shown, acknowledging Miss B transferred an amount each month to another account that it assumes she covered other bills from. And it argues the checks show the limit increases to be affordable. But, *if* I had found that to fairly decide this complaint it was necessary to recreate what better checks would likely have shown, this would need to have been done with access to both bank accounts that Miss B used for her non-discretionary outgoings.

So, in the round and for the reasons set out above I find Halifax ought not to have increased Miss B credit limit above £3,250.

Putting things right

As Halifax should not have increased Miss B's credit limit to £3,750 and above, I don't think it's fair for it to have applied interest or charges to any balances which exceeded £3,250. It is reasonable for Miss B to repay the capital she borrowed as she had the benefit of that money.

So Halifax should:

- Rework the account removing all interest, fees, charges and insurances (not already refunded) that have been applied to balances above £3,250 from July 2018 onwards.
- If this rework results in a credit balance, this should be refunded to Miss B along with 8% simple interest per year* calculated from the date of each overpayment to the date of settlement.
- If this rework results in there being an outstanding capital balance Halifax should agree an affordable repayment plan with Miss B.
- Remove any adverse information derived as a result of those limit increases that have been upheld from Miss B's credit file.

*HM Revenue & Customs requires Halifax to deduct tax from any award of interest. It must give Miss B a certificate showing how much tax has been taken off if she asks for one. If it intends to apply the refund to reduce an outstanding balance it must do so after deducting the tax.

I've also considered whether the relationship might have been unfair under Section 140A of the Consumer Credit Act 1974. However, I'm satisfied the redress I have directed above results in fair compensation for Miss B in the circumstances of her complaint. I'm satisfied, based on what I've seen, that no additional award would be appropriate in this case.

My final decision

I am upholding Miss B's complaint. Bank of Scotland plc, trading as Halifax, must put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 26 November 2024.

Rebecca Connelley
Ombudsman