

## **The complaint**

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

## **What happened**

Mr W was approved for two Halifax personal loans, one for £10,800 in March 2012, and one for £12,280.17 in September 2013. Mr W says it was irresponsible for Halifax to lend to him as the loans were unaffordable. Mr W made a complaint to Halifax.

Halifax said that Mr W complained too late for them to consider his complaint, so he brought his complaint to our service, where an ombudsman decided we could look into the merits of Mr W's complaint.

Our investigator partially upheld Mr W's complaint. He said it appeared the March 2012 loan was affordable for Mr W, but after reviewing Mr W's card statements and proof of income for this period, it's apparent that any further lending wasn't going to be beneficial to him, as the new lending was not showing as sustainable, only taking him further into his overdraft and increasing his overall indebtedness.

Halifax asked for an ombudsman to review the complaint. They made a number of points. In summary, they said as they no longer hold any application details, affordability assessments or credit reference data from September 2013 due to the time that's passed, they are only able to review his bank statements from that period to help them confirm whether the loan they provided was affordable at that time.

They said Mr W's bank statements showed he received credits into the account for £4,500 in June 2013, £4,128 for July 2013 and £2,350 in August 2013, with the majority of the income being faster payments with the reference "Div" which suggests they were dividends to Mr W. They said Mr W's monthly financial commitments over the same period were £1,066 in June 2013, £2,920 in July 2013 and £1,146 in August 2013, which showed Mr W had a healthy disposable income.

Halifax said some of the expenditure was also showing overpayments to credit cards so in reality the expenditure would be lower if they were to just consider the minimum payments required. Halifax said Mr W was also making a weekly payment to a financial institution of £125, which suggests he was also able to contribute £500 a month to a savings account. They said if they made further checks and checked Mr W's bank statement they still would have approved the loan as there was no reason to conduct further checks. They said Mr W repaid the loan in full after seven months which indicates he wasn't in financial difficulty due to the loan being approved.

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.*

*March 2012 - £10,800 personal loan:*

*I've looked at what checks Halifax said they did when initially approving Mr W's application for the 2012 personal loan. I'll address the second loan 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 loan being approved 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 approved his application. But as his credit file is not available from 2012 (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 have reviewed Mr W's bank statements leading up to the approval of the loan to see if there were any signs of financial difficulty prior to the loan being approved, or any indication that the lending may be unaffordable or unsustainable.*

*Mr W's Halifax bank statements show that he was in credit for the entire three months on his Ultimate Reward Current Account. Although he had an overdraft available, he did not use this during the three month period. Mr W was often in credit on his account by three or four figures, and he often credited the account with faster payments from what I understand to be from his business.*

*As too long has passed since the application was made, 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 as part of account opening checks, I can't say based on the information they had available from his bank statements that this should have prompted a further check.*

*So while I can't fairly say if Halifax's checks were proportionate as they haven't retained the information about the checks they completed, which is understandable based on the time that's passed, I can't conclude that they made an unfair lending decision here, as Mr W's bank statement appears to show he would have the affordability and that the repayments would be sustainable for him.*

*September 2013 - £12,280.17 personal loan:*

*I've looked at what checks Halifax said they did when initially approving Mr W's application for the 2013 personal loan. My understanding is that this loan repaid the 2012 loan outstanding balance and £5,000 of this loan was paid into his Halifax current account. So the repayments for this loan wouldn't have been in addition to his 2012 loan repayments. Halifax have said that due to the time that's passed, they have no information regarding this loan. 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 loan being approved 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 approved his application. But as his credit file is not available from 2013 (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 have reviewed Mr W's bank statements leading up to the approval of the loan to see if there were any signs of financial difficulty prior to the loan being approved, or any indication that the lending may be unaffordable or unsustainable.*

*Mr W's Halifax bank statements show that at times he was overdrawn on his Ultimate Reward Current Account. But at other times he was in credit. Mr W had an overdraft limit of £3,500, but he didn't go near his overdraft limit, so I can't fairly say he was relying on the overdraft to meet his outgoings. The bank statement shows that Mr W was in credit on this bank account when Halifax approved his loan on 26 September 2013, as he had credited £1,000 into the account from his business on 23 September 2013.*

*As too long has passed since the application was made, 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 as part of account opening checks, I can't say based on the information they had available from his bank statement that this should have prompted a further check, especially as Mr W frequently paid money into his account with the reference "DIV".*

*Mr W's bank statements show that in the month prior to the 2013 loan being approved, there was £3,600 crediting his account in total with the reference "DIV" from his business, along with other credits, again mostly from his business, but with different references, such as the 27 August 2013 credit of £200 which had a reference of "TEMP REPAY". So it would appear to Halifax, that if they checked Mr W's bank statements as part of a proportionate check, that they would reasonably believe the "DIV" credits were his dividends whereas other references may not be part of his actual income.*

*Mr W's other bank account with Halifax was not often used by him around the time of the loan approval. The account was in credit on 10 July 2013 until Mr W transferred £1,400 into his other Halifax account on 11 July 2013 which meant he was overdrawn by £1,316.17. But he was still within his arranged overdraft limit of £1,500. Mr W didn't credit or debit anything himself on this account until 4 October 2013.*

*While Mr W may say that his tax returns show different figures for his actual income, the 2013-2014 tax year had not finished, so the information on here would not be available. But the reality is, Halifax would have had no concerns about the information showing on his bank statements to prompt any further checks, even though one of his accounts was overdrawn at the time the loan was approved. I say this as it would appear to Halifax that Mr W had disposable income available, and his statements showed he also paid £125 a week to a financial institution who doesn't offer borrowing, so it would appear that Mr W was able to save £125 a week despite all of his other borrowings.*

*So it wouldn't have been proportionate for Halifax to ask for further information from Mr W such as his tax returns based on them seeing that Mr W appeared to have disposable income and he was able to service his existing debts without utilising all of the available credit available to him, and it appeared he was able to save more in a month than what the repayments for his loan would be on a monthly basis.*

*So while I can't fairly say if Halifax's checks were proportionate as they haven't retained the information about the checks they completed, which is understandable based on the time that's passed, I can't conclude that they made an unfair lending decision here, as Mr W's*

*bank statement appears to show he would have the affordability and that the repayments would be sustainable for him.*

*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**