

The complaint

With the help of a professional representative (PR), Ms D complains that Bank of Scotland plc trading as Halifax lent to her irresponsibly. This led to her credit relationship with Halifax becoming unfair. For ease, I'll refer to the PR's actions as being those of Ms D.

What happened

Ms D has had two credit cards with Halifax:

	Date	Event	New limit	Account status
Account 1	20 June 2008	Opening	Unknown	Closed 25 March 2015
	23 April 2010	Limit reduced	£1,000	
	1 November 2013	Limit reduced	£500	
Account 2	19 March 2017	Opening	£1,000	In arrangement
	7 February 2020	Limit reduced	£500	

On 20 September 2023, Ms D complained to Halifax saying that her relationship with it was unfair as described in Section 140A of the Consumer Credit Act 1974 (s.140). She said the bank had failed to carry out proper affordability and credit worthiness assessments and *"failed to comply with regulatory and statutory provisions"*.

Ms D said that at the time the agreements were taken out, her *"monthly income was approximately £2,100 after Tax and monthly outgoings were approximately £1,100"*. The expenditure mentioned was just bills and debts and didn't account for other expenses. Ms D said if Halifax had carried out proper checks it would have been clear that the credit was unaffordable for her.

Halifax looked into Ms D's complaint. It said the complaint had been brought too late to be considered under the rules of the Financial Conduct Authority (FCA) as the lending decisions had taken place more than six years previously. It said Account 1 had been closed with a nil balance in 2015. Account 2 is still open, but a payment arrangement had been agreed with Ms D under which she'd need to pay 115 instalments of £3.41 per month and the remaining balance of £111.67 would be written off.

Ms D was unhappy with Halifax's response so asked our service to investigate the complaint. One of our investigator's looked into it. She agreed with Halifax that the complaint about Account 1 had been brought too late. But she felt we could consider Account 2 and went on to do so. Due to the time elapsed, there is little evidence on which to base an assessment, so she felt she couldn't uphold Ms D's complaint.

Ms D didn't accept our investigator's opinion of the complaint. She said Halifax *"would have known my outgoings through my current account and overdraft"*. As there was no agreement, 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.

There are time limits for referring a complaint to the Financial Ombudsman Service, and Halifax thinks this complaint was referred to us too late. Our investigator explained why she didn't, as a starting point, think we could look at a complaint about the lending decisions that happened more than six years before the complaint was made.

But she also explained that we could, in part, look at Ms D's complaint about her relationship with Halifax being unfair. She said that as Account 1 was opened and closed more than six years before she raised her complaint, we didn't have the power to look into that account. But as Account 2 is still open, that element of the complaint has been referred to us in time. Ms D hasn't disputed what our investigator said in that regard.

For the avoidance of doubt, I agree with our investigator that we can't look into Ms D's complaint about Account 1, but we can look into Account 2. I acknowledge Halifax doesn't agree, but as I don't think it should be upheld, I don't intend to comment on this further.

In deciding what is fair and reasonable I am required to take relevant law into account. Because Ms D's complaint is partly about the fairness of her relationship with Halifax, relevant law in this case includes s.140A-C.

S.140A says that a court may make an order under s.140B if it determines that the relationship between the creditor (Halifax) and the debtor (Ms D), arising out of a credit agreement is unfair to the debtor because of one or more of the following, having regard to all matters it thinks relevant:

- any of the terms of the agreement;
- the way in which the creditor has exercised or enforced any of his rights under the agreement;
- any other thing done or not done by or on behalf of the creditor.

Case law shows that a court assesses whether a relationship is unfair at the date of the hearing, or if the credit relationship ended before then, at the date it ended. That assessment has to be performed having regard to the whole history of the relationship.

S.140B sets out the types of orders a court can make where a credit relationship is found to be unfair – these are wide powers, including reducing the amount owed or requiring a refund, or to do or not do any particular thing.

Given what Ms D has complained about, I need to consider whether Halifax's decision to lend to her, or its later actions, created unfairness in the relationship between her and Halifax such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove that unfairness.

We've set out our approach to complaints about irresponsible and unaffordable lending on our website – including the key relevant rules, guidance, good industry practice and law. I've considered this approach when deciding this complaint.

Halifax needed to carry out reasonable and proportionate checks to ensure that it didn't lend to Ms D irresponsibly. I think there are key questions I need to consider in order to decide what is fair and reasonable in the circumstances of this complaint:

- Did Halifax carry out reasonable and proportionate checks to satisfy itself that Ms D was in a position to sustainably repay the credit?
 - If not, what would reasonable and proportionate checks have shown at the time?
- Did Halifax make a fair lending decision?
- Did Halifax act unfairly or unreasonably towards Ms D in some other way?

It's not about Halifax assessing the likelihood of it being repaid, but it had to consider the impact of the repayments on her.

Account 2 was opened more than six years before Ms D raised her complaint. Not unreasonably given the time elapsed, Halifax no longer has details of the checks it would have carried out at the time. In the absence of any evidence, I can't fairly conclude that the checks were reasonable and proportionate.

But I can't say what Halifax would have found at the time either, because Ms D has not been able to provide evidence from the appropriate time either. I accept what she says that Halifax would have had access to her current account at the time which would have given it a good understanding of her circumstances.

I think it more likely than not that her account performance would have formed part of its checks when assessing her application for the account. And as it went ahead and agreed the account, I think it must've fallen within its lending criteria at the time.

Without persuasive evidence to show the card would have been unaffordable for Ms D at the time, I can't reasonably make a finding that Halifax reached an unfair decision to lend.

I've thought about whether there are any other signs of unfairness in the relationship too. As I mentioned above, Ms D has entered a DAS to repay her debt under Account 2 and as part of that, Halifax will write off part of the balance.

Overall, based on the available evidence, I don't find that Ms D's relationship with Halifax is currently unfair. It's not clear enough to me that Halifax created unfairness in its relationship with her by lending to her irresponsibly initially, or in any other way.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms D to accept or reject my decision before 14 April 2025.

Richard Hale

Ombudsman