

Complaint

Miss D has complained that Bank of Scotland plc (trading as “Halifax”) irresponsibly provided a credit card as well as a credit limit increase to her. She says that this was unaffordable and caused her continued financial difficulty as the repayments resulted in her struggling to repay essentials and having to take out further lending.

Background

Halifax appears to have provided Miss D with two credit cards. Miss D’s letter of complaint appears to only express dissatisfaction about the second of her credit cards. In any event, we’ve already separately explained why we cannot consider Miss D’s complaint about her first credit card. And this decision is solely considering Miss D’s complaint about the credit card Halifax provided to her in August 2008.

Halifax initially provided Miss D with a credit card, which had a limit of £7,100.00, in August 2008. Halifax subsequently offered Miss D a £750 limit increase, taking the limit to £7,850.00, in August 2014.

In October 2023, Miss D complained saying that the credit card and the limit increase Halifax provided were unaffordable and caused her continued financial difficulty as the repayments resulted in her struggling to repay essentials and having to take out further lending.

Halifax didn’t uphold the complaint as it considered that it was made too late. Miss D remained dissatisfied and referred her complaint to our service as a result. When responding to our request for its file on Miss D’s complaint, Halifax reiterated that it believed she had complained too late.

One of our investigators reviewed what Miss D and Halifax had told us.

He thought that he hadn’t seen enough to be persuaded that Halifax failed to act fairly and reasonably either when initially providing Miss D with her credit card, or the limit increase. This meant that the investigator didn’t recommend that Miss D’s complaint be upheld.

Miss D disagreed with the investigator’s conclusions and asked for an ombudsman to look at her complaint.

My findings

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

Basis for my consideration of this complaint

There are time limits for referring a complaint to the Financial Ombudsman Service. Halifax has argued that Miss D’s complaint was made too late because she complained more than six years after the decisions to provide the credit card and all of the credit limit increases as

well as more than three years after she ought reasonably to have been aware of her cause to make this complaint.

Our investigator explained why it was reasonable to interpret the complaint as being one alleging that the relationship between her and Halifax was unfair to her as described in s140A of the Consumer Credit Act 1974 (“CCA”). He also explained why this complaint about an allegedly unfair lending relationship had been made in time.

Having carefully considered everything, I’ve decided not to uphold Miss D’s complaint. Given the reasons for this, I’m satisfied that whether Miss D’s complaint about the specific lending decisions was made in time or not has no impact on that outcome.

I’m also in agreement with the investigator that Miss D’s complaint should be considered more broadly than just those lending decisions. I consider this to be the case as Miss D has not only complained about the respective decisions to lend but has also alleged that this unfairly impacted upon her ability to pay for essentials and that this resulted in her having to take out other credit to make her repayments.

I’m therefore satisfied that Miss D’s complaint can therefore reasonably be interpreted as a complaint about the fairness of her relationship with Halifax. I acknowledge Halifax may still disagree that we can look at Miss D’s complaint, but given the outcome I have reached, I do not consider it necessary to make any further comment or reach any findings on these matters.

In deciding what is fair and reasonable in all the circumstances of Miss D’s case, I am required to take relevant law into account. As, for the reasons I’ve explained above, I’m satisfied that Miss D’s complaint can be reasonably interpreted as being about the fairness of her relationship with Halifax, relevant law in this case includes s140A, s140B and s140C of the CCA.

S140A says that a court may make an order under s140B if it determines that the relationship between the creditor (Halifax) and the debtor (Miss 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. S140B 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 Miss D’s complaint, I therefore need to think about whether Halifax’s decision to lend to Miss D and increase her credit limits, or its later actions resulted in the lending relationship between Miss D and Halifax being unfair to Miss D, such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove that unfairness.

Miss D’s relationship with Halifax is therefore likely to be unfair if it didn’t carry out reasonable enquiries into Miss D’s ability to repay in circumstances where doing so would

have revealed the credit card or limit increases to be irresponsible or unaffordable. And if this was the case, Halifax didn't then remove the unfairness this created somehow.

Our general approach to unaffordable and irresponsible lending complaints

We've explained how we handle complaints about unaffordable and irresponsible lending on our website. And I've used this approach to help me decide Miss D's complaint.

Bearing in mind Miss D's response to our investigator, I think that it would be helpful for me to set out that we consider what a firm did to check whether any repayments to credit were affordable (asking it to evidence what it did) and then determine whether this was enough for the lender to have made a reasonable decision on whether to lend.

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 that information – 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, the amount lent was high, or the information the lender had – such as a significantly impaired credit history – suggested the lender needed to know more about a prospective borrower's ability to repay.

That said, I think that it is important for me to explain that our website does not provide a set list of mandated checks that a lender is expected to carry out on every occasion. Indeed, the requirements have not and still do not mandate a list of checks that a lender should use. Any rules, guidance and good industry practice in place over the years has simply set out the types of things that a lender could do when considering whether to lend to a prospective borrower.

It is for a lender to decide which checks it wishes to carry out, although we can form a view on whether we think what was done was fair to the extent it allowed the lender to reasonably understand whether the borrower could make their payments. Furthermore, if we don't think that the lender did enough to establish whether the repayments that a prospective borrower might have to make were affordable, this doesn't on its own mean that a complaint should be upheld.

We would usually only go on to uphold a complaint in circumstances where we were able to recreate what reasonable checks are likely to have shown – typically using information from the consumer – and this clearly shows that the repayments in question were unaffordable.

Application to Miss D's complaint - Did Halifax act fairly and reasonably when providing Miss D with her credit card and the limit increase on it?

Halifax says it will have agreed to Miss D's application after it obtained information on her income and carried out a credit search. And the information obtained would have indicated that Miss D would be able to make the monthly repayments due for this credit card. Due to Miss D's account being relatively well managed and the information present on the credit checks it carried out, Miss D was then subsequently offered her credit limit increase.

On the other hand, Miss D says that the credit card and the subsequent limit increase were unaffordable and caused ongoing hardship as she was unable to pay for essentials and had to borrow from elsewhere as a result of the payments she had to make to Halifax.

I've considered what the parties have said.

What's important to note is that Miss D was provided with a revolving credit facility rather than a loan. This means that to start with Halifax was required to understand whether Miss D could repay £7,100.00 within a reasonable period of time. It's fair to say that a credit limit of this much will have required relatively chunky monthly payments in order to clear the full amount that could be owed within a reasonable period of time.

Although the size of the credit limit would suggest any assumptions regarding a reasonable period of time would probably be based on a standard term had an equivalent amount been borrowed on an unsecured personal loan. So perhaps around five to seven years.

Halifax hasn't been able to provide any details on what it found out about Miss D as a result of the credit checks that it carried out prior providing the card. Given the initial card application took place approaching seventeen years ago, I don't think that this lack of information is unreasonable. Therefore, I've not drawn any adverse conclusions as a result of Halifax not being able to provide this.

In any event, I'm also mindful that I've not been provided with any information and neither has it even been argued, that Miss D had any significant adverse information – such as defaulted accounts or county court judgments ("CCJ") recorded against her at the time of this application at least.

Furthermore, I need to consider this part of Miss D's complaint in relation to the obligations and expectations that were in place on a lender at this time. And it would be fair to say that a lender's obligations and responsibilities were not the same as they are now. For example, the concepts of borrower focused assessments and proportionate checks were not part of the expectations or requirements in August 2008.

However, the good industry practice in place at the time of Miss D's application, required a lender to assess whether it felt that a prospective borrower would be able to repay any lending provided. I've seen a copy of Miss D's credit card application form. This shows that Miss D declared having a gross annual income of £20,000.00 at this time.

While I've thought about what Miss D has said about the credit limit being around a third of her annual income, I don't think that this in itself is excessive. This is particularly given what I've said about how long a reasonable period of time is likely to have been in this instance. Clearly Halifax must have felt that Miss D could repay a credit card with a limit of £7,100.00, for it to have accepted Miss D's application and granted her a limit of this much at this stage.

As there isn't anything to indicate that Miss D had any significant adverse credit information recorded against her at the time and I've not been provided with any evidence or information which shows me that Miss D was in financial difficulty in August 2008, I cannot reasonably conclude that Halifax acted unfairly in providing Miss D with her credit card.

Halifax felt that Miss D could repay £7,100.00 within a reasonable period of time and I've not seen anything which clearly shows me that this wasn't the case. As this is the case, I've not been persuaded that Halifax's decision to provide Miss D with her credit card was unfair or that it resulted in unfairness going forward.

Did Halifax carry out reasonable and proportionate checks before deciding to offer the limit increase to Miss D?

As I've explained in the background section of this decision, Halifax increased Miss D's credit limit to £7,850.00 in August 2014.

So this increase was provided after regulation of consumer credit had passed to the Financial Conduct Authority ("FCA"). By this stage, the FCA set out, in its Consumer Credit Sourcebook, that a lender was required to carry out proportionate checks into a customer's circumstances in order to reach a reasonable determination on whether they could repay any credit provided. I've therefore considered whether it is more likely than not that Halifax did this.

Once again, Halifax hasn't been able to provide any details on what it found out about Miss D as a result of any credit checks that it might have carried out on her, prior to it offering to increase her credit limit. But given this limit increase took place more than a decade ago, I don't think that this lack of information is unreasonable.

Furthermore, I've that I've not been provided with any information that Miss D had any defaulted accounts or county court judgments ("CCJ") recorded against her at this stage either. Indeed, it looks like Miss D's credit card transactions show that she made a promotional balance transfer from another card to this Halifax one in May 2014. I think that it is unlikely that Miss D would have qualified for a promotional transfer rate if she had any significant adverse information recorded against her with credit reference agencies.

In any event, whether or not Miss D did have significant adverse information recorded against her at this time, as Miss D was being provided with a limit increase to £7,850.00, and it was being provided in the era of borrower focused assessments, I would have expected Halifax to have found out more about Miss D's income and expenditure before providing this credit limit increase.

As Halifax has been unable to evidence having done this, I don't think that the checks it carried out before it increased Miss D's credit limit in August 2014, were reasonable and proportionate.

Ordinarily, where a firm failed to carry out reasonable and proportionate checks before providing credit or increasing the amount available to a customer, I'd usually go on to recreate reasonable and proportionate checks in order to get an indication of what such checks would more likely than not have shown.

However, Miss D says she is unable to provide us with the information we've asked her for in order to be able to assess what Halifax finding out more about her regular monthly living costs is likely to have shown. So I've not been provided with sufficient evidence to reasonably conclude that the limit increase was as a matter of fact unaffordable for Miss D.

I appreciate that Miss D may feel that it is unreasonable and unfair to expect her to provide information which she doesn't have and cannot reasonably be expected to have. This is especially after she destroyed this information once she entered into a debt management plan and thought she'd no longer require it.

But I also have to take into account that Halifax isn't required to have retained all of this information either and it was Miss D that chose to make her complaint in October 2023. As this is the case, I have to decide the complaint on what I have before me.

I appreciate that Miss D has provided copies of her position at the time that she entered into a debt management plan. This not only includes an income and expenditure assessment but details of what she owed at this stage. However, this information is from October 2019, which is more than five years after Halifax decided to increase Miss D's credit limit. As this is the case, I can't reasonably reach the conclusion that Miss D owed the same amount when Halifax agreed to increase her credit limit in August 2014.

Equally, it is only fair and reasonable for me to uphold a complaint in circumstances where I can see that any additional credit provided was unaffordable. And I'm afraid that I've not been provided with sufficient evidence which corroborates what Miss D has said about not being able to make the increased monthly payments required should she owe the full amount of the new credit limit.

For the sake of completeness, I've also considered the overall pattern of lending based on the earliest credit card statement data that I have been provided with. In doing so, I'm mindful that this credit limit increase was offered some six years after the card had been initially opened.

Most importantly, while Miss D has said that she was already using most of her existing limit at the time of the increase, Miss D actually had a balance of just over £5,000.00 (against a limit of £7,100.00) when she Halifax made its offer. So Miss D doesn't appear to have been maxed out on the credit card in the lead up to August 2014 either.

I appreciate that in her letter of complaint Miss D has also referred to only making the minimum payment on her credit card. Having looked at the earliest credit card transactions, it's fair to say that the payment amounts Miss D was making on the card, in the lead up to the limit increase, are commensurate with minimum payments.

However, I think that there are two reasons why I don't think that this in itself ought to have been concerning to Halifax. Firstly, Miss D's payments were being made by direct debit. So it seems to me that Halifax is likely to have concluded that Miss D was choosing to make such a payment as this was being taken automatically, rather than it being the case that Miss D's payment was all that she could afford to pay.

Secondly and most importantly, Miss D's credit card transactions appear to show that no interest was being added to her balance. In these circumstances, I think it's likely that Miss D's credit card had a promotional interest rate. This means that all of Miss D's payment was going to reducing her balance, rather than just a small portion. So Miss D could reasonably have been making lower payments as she was able to do so during this interest free period. As this is the case, I don't think that Halifax ought to have viewed Miss D's payments as being problematic.

Therefore, this isn't a case where I can reasonably say that Miss D's account usage ought reasonably to have shown Halifax that Miss D's indebtedness, on this credit card, was rapidly increasing in an uncontrollable way, or that the pattern of lending here ought reasonably to have led Halifax to conclude that the facility had become demonstrably unsustainable for Miss D either.

So overall and having carefully considered everything and while I appreciate that this will disappoint Miss D, I've not been persuaded that proportionate checks would have shown Halifax that it shouldn't have provided the credit limit increase it provided to Miss D in August 2014. Furthermore, I don't think that Miss D's pattern of borrowing meant that Halifax offered the credit limit increase in circumstances where it ought reasonably to have realised that it may have been unsustainable or otherwise harmful for her either.

Overall, and based on the available evidence I don't find that Miss D's relationship with Halifax was unfair. I've not been persuaded that Halifax created unfairness in its relationship with Miss D by irresponsibly lending to her whether when initially agreeing to provide her with a credit card, or in respect of the limit increase. I don't find that Halifax treated Miss D unfairly in any other way either based on what I've seen either.

So overall and having considered everything, while I can understand Miss D's sentiments and appreciate why she is unhappy, I'm nonetheless not upholding this complaint. I appreciate this will be very disappointing for Miss D. But I hope she'll understand the reasons for my decision and that she'll at least feel her concerns have been listened to.

My final decision

For the reasons I've explained, I'm not upholding Miss D's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D to accept or reject my decision before 15 May 2025.

Jeshen Narayanan
Ombudsman