

The complaint

Miss S says Bank of Scotland plc trading as Halifax ('Halifax'), irresponsibly lent to her. She says it didn't take reasonable steps to ensure she could afford the repayments towards her loans. And it should have recognised that, over time, her lending increased, and she was using her overdraft more frequently. It should have made better checks to ensure she could afford the loans.

What happened

Miss S has complained about five loan agreements that she took out, some information about the lending is below:

- Loan 1 was started in August 2015. Miss S borrowed £6,000 and she was due to make 60 monthly repayments of £164.43.
- Loan 2 was started in April 2016. Miss S borrowed £7,167.04 and she was due to make 60 monthly repayments of £164.43.
- Loan 3 was started in February 2017, Miss S borrowed £13,500 and she was due to make 84 monthly repayments of £239.72.
- Loan 4 was started in January 2024. Miss S borrowed £8,145.05 and she was due to make 36 monthly repayments of £288.35.
- Loan 5 was started in June 2024, Miss S borrowed £13,326.02 and she is due to make 60 monthly repayments of £322.06.

Miss S settled loan 1 with the proceeds of loan 2. Halifax says loan 2 was settled with a loan taken from a third party. It was only open for a few weeks. And loans 3 and 4 were settled with the proceeds from the subsequent Halifax loans. Miss S continues to repay loan 5. Halifax says Miss S has repaid all the lending without problem over the terms of the loans.

Miss S has complained to Halifax saying that the lending wasn't affordable for her and shouldn't have been approved. Halifax has considered this complaint, and it didn't uphold it. It said Miss S passed all the checks it made, and this is why it agreed to approve the loans. Miss S didn't agree with this and brought her complaint to the Financial Ombudsman Service.

Halifax didn't think that the Ombudsman Service should consider loans 1 to 3 as they had been brought too late. Our Investigator thought that loans 3 to 5 were within the jurisdiction of the ombudsman service, as loan 3 was settled by loan 4. From what I can see all the parties to the complaint agreed with this. There isn't any ongoing disagreement about this and I'm only considering loans 3 to 5 in this decision. I agree loans 1 and 2 aren't within the jurisdiction of the Financial Ombudsman Service.

Our Investigator didn't uphold Miss S' complaint about loans 3 to 5. They thought the loans were approved using limited information and so Halifax should have made better checks. But if it had made better checks it would have still thought that the loans were affordable.

Miss S didn't agree with the Investigator. She said if Halifax had made better checks then it would have seen that she was struggling financially, and these loans were not sustainable.

She said that every new loan was used to repay other borrowing, either with Halifax or other lenders. And while her bank and credit file may have seemed positive this did not reflect her actual financial position. Whilst she was keeping up with her repayments this was because she was working to avoid harming her credit file. She was, at times, going without essentials and was 'juggling debt'. These loans increased her overall borrowing and placed her under considerable stress.

And I've noted Miss S' bullet point summary that she provided very recently. As Miss S didn't agree, this matter has been passed to me to make a final 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.

When someone complains about irresponsible and/or unaffordable lending, there are two overarching questions I need to consider when deciding what's fair and reasonable in all of the circumstances of the complaint. These are:

1. Did Halifax complete reasonable and proportionate checks to satisfy itself that Miss S would be able to repay the credit in a sustainable way?
 - a. if so, did Halifax make a fair lending decision?
 - b. if not, would reasonable and proportionate checks have shown that Miss S could sustainably repay the borrowing?
2. Did Halifax act unfairly or unreasonably in some other way?

And, if I determine that Halifax didn't act fairly and reasonably when considering Miss S' application, I'll also consider what I think is a fair way to put things right.

Did Halifax complete reasonable and proportionate checks to satisfy itself that Miss S would be able to repay the credit in a sustainable way?

There's no set list for what reasonable and proportionate checks are, but I'd expect lenders to consider things such as the amount, duration, and payments of the finance being applied for, as well as the borrowers' personal circumstances at the time of each application.

Before loan 3, Halifax asked Miss S what her income was, and she said that it was around £1,300 a month after tax. Before loan 4, Miss S said that her income was £32,000 a year. Halifax has not said what information it obtained about Miss S' income before it approved loan 5. Halifax has said that it used a current account turnover check to verify Miss S' income. It is reasonable to assume that it did verify her income this way before each of the loans, as I know it does do this, but it's not provided any further detail about this.

Halifax said that before loan 3 Miss S told it that she had expenditures of £200 a month. It's not clear if Halifax asked her any further questions about her expenditures or estimated her expenditures for this loan. It's not clear what information it obtained about her expenditure for loans 4 and 5.

Halifax has essentially said that it looked in detail at what was on her credit file. It's said it looked at her usage of various other forms of credit such as overdrafts and credit cards and gave a 'score' in respect of this credit usage. It can't provide the details of this but has confirmed that Miss S' passed these checks before each loan was approved. It has said that it didn't find any adverse repayment information on Miss S' credit file throughout all the lending. And she has repaid the Halifax loans without problem.

And Halifax has examined the bank statements that it has and has noted that Miss S used each of the loans to repay and consolidate other debt. For loan 3 she repaid another loan and two credit cards. With the proceeds of loan 4 she repaid her existing Halifax loan and another credit card. And before loan 5 she repaid her existing Halifax loan, a credit card and an overdraft balance. And she placed some of the proceeds of this loan in savings. Halifax thinks that she used the loans responsibly to manage her credit.

But these were all long-term lending agreements and Miss S would be repaying a reasonable amount each month. So even if I accept that Halifax likely determined what Miss S' income was, I think it should also have considered what her expenditure was (in more detail) to ensure she could sustainably repay the loan. It doesn't seem to have done this at all, other than looking at what was on her credit file.

So, I'm not persuaded that the checks Halifax did were reasonable and proportionate. I think Halifax could have checked in more detail that this further lending wasn't likely to cause her a problem going forward.

Would reasonable and proportionate checks have shown that Miss S would be able to repay the credit in a sustainable way?

I've gone on to consider what Halifax would likely have found had reasonable and proportionate checks been carried out.

Miss S has provided copies of her bank statements for a short period just before each of the loans. She's also provided a copy of her credit file. While I wouldn't have expected Halifax to have asked Miss S for copies of bank statements, I'm satisfied that these statements would give a good indication of what Halifax would likely have taken into consideration had it asked Miss S to verify, or provide more information about, her income and committed expenditure during that specific period.

Our Investigator has looked in detail at Miss S' income and expenditure using these. I'm not going to reproduce all the amounts provided as all the parties were made aware of them, and no party has said they were incorrect. This shows that before all the loans Miss S was earning around £2,000 a month. And her fixed expenditure was well below this, she was left with enough to repay the new loans.

The bank statements, and the current credit file Miss S has provided, all show she wasn't having repayment problems with any of her credit and bills. She did use her overdraft at times, but this wasn't always the case, and as our Investigator said, she also ended the month with a positive balance on her current account at times. I think it's established, and acknowledged by Miss S, that her financial record didn't indicate that she was having problems.

Miss S has essentially said that the information on her financial records isn't reflective of her true situation. She says that, in reality, she was struggling to make ends meet and was 'juggling' her finances. The fact that she was using the loans for debt consolidation purposes she thinks is evidence of this. And she was supplementing her income by selling items and she received money from friends and family, and she said she relied on credit cards for essential spending.

But a reasonable method of doing a check before lending is to look at someone's past repayment history to other credit and bills. To see if there is a likelihood that they will have problems repaying any new credit. If someone has a good history of repaying their credit and bills then it's a reasonable assumption this will continue going forward. I don't think it was unreasonable for Halifax to rely on this as part of the checks it did.

And whilst I've taken on board what Miss S says about her situation it's hard to see how Halifax could have become aware of it, unless Miss S disclosed it to them. Which I understand she didn't. I think there needs to be clear indicators in her bank statements or credit file, or similar, of financial problems to be able to say that Halifax should have seen enough for it to have not lent responsibly. I've not seen any indication of these.

And if Miss S has had periods where repaying her credit was difficult, and I've no reason to think that she hasn't, but she has still been able to repay everything on time. It would be reasonable for Halifax to have thought she was generally on top of things.

So, and while I appreciate this will come as a disappointment to Miss S, I'm satisfied that, had Halifax carried out reasonable and proportionate checks, I think that it's likely that would have found the finance to be sustainably affordable.

Did Halifax act unfairly or unreasonably in some other way?

I have considered whether the relationship might have been unfair under Section 140A of the Consumer Credit Act 1974. However, for the reasons I've already given, I don't think it lent irresponsibly to Miss S or otherwise treated her 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.

I haven't seen anything to make me think Halifax acted unfairly or unreasonably in some other way.

My final decision

For the reasons set out above, I don't uphold Miss S' complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 5 January 2025.

Andy Burlinson
Ombudsman