

The complaint

Mr C complains that Bank of Scotland plc trading as Halifax lent to him irresponsibly when they provided him with two personal loans.

What happened

Mr C applied for two personal loans with Halifax. The loans were approved in July 2018 and May 2019 respectively. I've provided further details of the lending below.

Loan date	Amount	Term	Monthly repayments
22 July 2018	£8,000	60 months	£178.74
1 May 2019	£10,000	60 months	£218.90

In early 2024, Mr C complained. In summary, he said Halifax had irresponsibly lent to him and that sufficient checks – to ensure his affordability status – hadn't been undertaken.

Halifax didn't uphold the complaint. They said, in summary, that they had carried out checks proportionate to the amount being lent; those checks hadn't revealed any concerns, and on that basis, the credit had been provided. So, they were satisfied they had lent responsibly.

Mr C disagreed; he still thought Halifax were wrong to have lent to him, so he referred his complaint to this Service for independent review.

There have been a number of opinions issued with various challenge from both parties. Halifax have since accepted they shouldn't have provided loan 2 and have agreed to put things right, in line with our service's approach to redress on such matters. So, the latest opinion issued by the investigator, looked into whether or not it was right for Halifax to have provided loan 1. In summary, the investigator said:

- The checks carried out by Halifax in respect of loan 1 should have gone further.
- Had Halifax's checks gone further, the results of those checks were still unlikely to have given Halifax any cause for concern. And there was nothing that would have suggested to Halifax that Mr C was struggling financially, and/or wouldn't be able to afford the repayments towards the agreement.
- Any financial struggles, which did materialise for Mr C later, wouldn't have been apparent to Halifax at the time they provided Mr C with the credit.
- Overall, with that in mind, Halifax hadn't acted unfairly or unreasonably in providing Mr C with the finance.

Mr C disagreed; he maintained he'd been irresponsibly lent to and argued that proportionate checks would have shown the credit to be unaffordable for him.

So, as no agreement has been reached by the parties, Mr C's complaint has now 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.

Like the investigator, my decision has focussed on loan 1, as Halifax have already agreed to uphold loan 2 in full. Having now reviewed matters, while this will no doubt disappoint Mr C, I agree with the findings of our Investigator and for broadly the same reasons. I'll explain why.

The rules and regulations in place at the time Mr C was provided with the credit, required Halifax to carry out a reasonable and proportionate assessment. That's to determine whether he could afford to repay what he owed in a sustainable manner. This practice is sometimes referred to as an 'affordability assessment' or 'affordability check'.

The checks had to be borrower focussed; that is, relevant to Mr C. So, Halifax had to think about whether repaying the credit sustainably would cause him difficulties, or other adverse consequences. In other words, Halifax had to consider the impact of any repayments on Mr C.

Checks also had to be 'proportionate' to the specific circumstances of the lending. In general, what constitutes a proportionate affordability check will be dependent on a number of factors including – but not limited to – the particular circumstances of the consumer (e.g: their financial history, current situation and outlook, any indications of vulnerability or financial difficulty) and the amount/type/cost of credit they were seeking. I've kept all of this in mind when thinking about whether Halifax did what they needed to before agreeing to lend to Mr C.

The information provided by Halifax from around the time of this lending decision is limited. And they've told us that they no longer hold the application or credit risk data obtained at the time the first loan was granted. Given the lack of information provided, I've looked at Mr C's bank statements, along with other information he has provided - both to our service, and to Halifax - to better understand Mr C's financial position at the time.

The bank statements provided are limited and show little in the way of outgoings in the lead up to loan 1 being taken out. And while there are regular transfers to another of Mr C's bank accounts – where some of his bills are potentially being managed from - Mr C has not been able to provide these statements to help us build a full picture of his finances from the time loan 1 was agreed. So, I've based my decision on the evidence I do have.

When asked about his monthly commitments at the time of the loan 1, Mr C declared that he was earning around £1,850 and had monthly housing commitments totalling £500. And while I can't see specifics around his general living expenditure at the time of loan 1, I can see that Halifax used a figure of £374 for this when approving his second loan application. So, in the absence of any other supporting evidence, I've used this figure to estimate Mr C's general living expenses at the time.

Based on the above numbers it would appear that after Halifax's loan repayment of £178, Mr C would still have had in the region of £800 a month leftover. I've also noted that Mr C used these funds to settle an existing loan with a third-party that he took out a month prior to the Halifax loan, and that he was paying £247 a month towards. So, if I was to deduct this payment as well, it would suggest Mr C had a disposable income of around £550 a month remaining.

I accept that these numbers differ from what both the investigator has set out and what Mr C has argued, but I think they're the right figures to base the assessment on. I'll explain why.

The investigator has used the lower income - before Mr C's change in employment - of around £1,200 a month, when considering what income Halifax should have based their assessment on. And, when deducting Mr C's outgoings from this, she has chosen not to deduct the loan repayments for the loan with the third-party, based on the fact that loan was then paid off with the funds Mr C received from the Halifax loan. So, I've thought carefully about this approach.

On the other hand, while Mr C seems to accept the £1,200 monthly income being used, he has argued, that at the time of taking out the Halifax loan, Halifax weren't aware that he was using the loan's funds to repay the previous loan he'd taken out with the third-party, and he noted that they had recorded the loan purpose as 'miscellaneous'. He says that therefore, the £247 monthly repayments due towards this loan should still have been taken into account when assessing his affordability.

I think Mr C makes a fair point here. And while I think it's important to note that it's now evident Mr C did in fact take out the loan for the purpose of consolidation; and that he repaid the third-party loan with the Halifax funds (and in doing so, made the Halifax loan affordable for him), I accept that my role is to assess whether the lending decision was fair at the time. So, I agree with Mr C that the monthly costs towards this loan should have been considered.

Based on the above, Mr C has - in response to the investigator's view - set out his figures, showing similar deductions to the investigator. And, from a monthly income of £1,200; when deducting his commitments towards housing, general living costs, and the third-party loan taken out shortly before, along with the new Halifax payments, he has shown the loan to be unaffordable.

While I understand the position Mr C is coming from, it's important to note, that the expectation on Halifax wasn't for them to purely check Mr C's bank statements, but for them to have gained a better picture of his financial circumstances. This could include reviewing several pieces of evidence, such as payslips, work contracts, bank statements, credit file etc.

So, while I accept, Mr C's bank statements may have shown both the third-party loan being paid out, and the lower income being received, this wasn't a full picture of Mr C's circumstances at the time. Mr C – by his own admission – was aware his income was increasing the following month, having declared a monthly income of around £1,850 at the time he applied, as a result of starting new employment.

The evidence Mr C has himself now provided, shows that his earnings did increase the month after taking out the loan – to slightly above the amount he declared. So, even if Halifax had seen Mr C's bank statements, and deducted the third-party loan along with his other outgoings – seemingly showing the new loan to be unaffordable – I think they then would've then questioned Mr C as to why he had quoted a monthly income of £1,850 rather than the £1,200 showing on his bank statements. And given he was applying for credit at the time, I think it most likely he would have told Halifax that he was starting a new job paying a significantly higher monthly income than he had been receiving up until that point. And based on this, Halifax would have likely concluded the loan to be affordable. So, I think even if Halifax's checks had have gone further, they would've still concluded this loan was affordable for Mr C, and therefore, I don't think it was unreasonable for them to have provided it.

Mr C has also argued that his bank statements, in the months that followed the loan, showed his housing costs to be around £700, not £500. But I think its unlikely Mr C would have

disclosed this increased sum. I say that, because Mr C was asked about this, and did declare at different figure, that his costs were just £500 a month at the time. But regardless of this, when deducting either figure from Mr C's new income, any income and expenditure check completed would've have still shown the loan to have been affordable for Mr C at the time. So, this point raised doesn't change my mind.

Mr C has also noted that one of his credit cards had exceeded his limit prior to it being settled by the third-party loan, and that he was regularly within his overdraft. But this in itself wouldn't warrant - in my opinion - Halifax choosing to decline his application. If anything, I think it may have warranted further checks, such as a full financial review. And I've already set out above what I think the results at that review would have most likely shown. So, for these reasons, this argument doesn't alter my findings either.

Whilst I'm not upholding the complaint in respect of loan 1, I do want to remind Halifax of their obligations to exercise forbearance moving forward. I would certainly encourage Mr C to keep in regular contact with Halifax about any difficulties he might be facing in maintaining any outstanding repayments that may be owed, or any other support he may require moving forward in respect of any outstanding balances owed.

Finally, I've also considered whether the relationship might have been unfair under Section 140A (S140A) of the Consumer Credit Act 1974. However, for the reasons I've already given, I don't think Halifax lent irresponsibly to Mr C or otherwise treated him unfairly in relation to loan 1. I haven't seen anything to suggest that S140A would, given the facts of this complaint, lead to a different outcome here. And I'm satisfied that the offer from Halifax amounts to fair compensation for Mr C in respect of loan 2. Based on what I've seen, S140A wouldn't warrant any additional redress in this case.

Putting things right

In respect of loan 2, Halifax should:

Add up the total repayments Mr C has made and deduct these from the amount lent.

a) if this results in Mr C having paid more than he received, any overpayments should be refunded along with 8% simple interest (calculated from the date the overpayments were made until the date of settlement). † Halifax should also remove all adverse information regarding this account from Mr C's credit file at this time.

b) if any capital balance remains outstanding, then Halifax should arrange an affordable and suitable payment plan with Mr C. Once Mr C has cleared the balance, any adverse information in relation to the account should be removed from his credit file.

If Halifax has sold the debt to a third party, it should arrange to either buy back the debt from the third party or liaise with them to ensure the redress set out above is carried out promptly.

† HM Revenue & Customs requires Halifax to take off tax from this interest. Halifax must give Mr C a certificate showing how much tax it's taken off if he asks for one.

My final decision

My final decision is that I uphold Mr C's complaint, and Bank of Scotland plc trading as Halifax should put things right in line with the redress I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 11 March 2026.

Brad McIlquham
Ombudsman