

## **complaint**

Mr C complains that Bank of Scotland plc, trading as Halifax (“Halifax”) should not have provided him with loans, an overdraft and a credit card over a number of years.

## **background**

On 12 February 2021, I issued a provisional decision upholding this complaint. I attach a copy of that provisional decision below — both for background information and to supplement my reasons in this final decision. I would ask the parties to re-read the provisional decision before proceeding further.

I invited both parties to reply to my provisional decision. Mr C accepted my provisional decision. Halifax did not and said the following, in summary:

- The regulations I quoted around creditworthiness and affordability checks don’t include any requirements or guidance around a bank controlling or monitoring a customer’s discretionary spend on lawful activity like gambling.
- For the overdrafts and loans, they had clearly shown that Mr C was able to make repayments in accordance with CONC 5.5A.13 which states that the customer is able to make their repayments out of their income as they become due.
- It is not reasonable nor proportionate to expect Halifax to perform a manual review of a customer’s bank statements prior to the granting of credit. Dictating to a customer how they can spend their discretionary income is not something lenders are expected to do unless the activity is unlawful or illegal which gambling is not. In the case of Mr C, his personal circumstances at the time of the lending meant he had very few non-discretionary outgoings and plenty of disposable income to meet the lending repayments.
- Mr C repaid all three loans which demonstrates they were affordable and paid the second loan back after only three months into the 24-month term
- For the credit card, the amount of lending extended to Mr C was relatively small and affordable to him based on his disposable income. Their assumptions of Mr C’s monthly expenditure were reasonable, and they took into account all of his existing unsecured credit commitments.
- Mr C has not made any payments towards his credit card debt in the last 12 months despite a healthy current account credit balance
- They’ve seen on Mr C’s bank statements that he is still gambling and are concerned that this continues to be an issue for him. My provisional direction to award money and to remove adverse information from Mr C’s credit file increases the chance of him borrowing further which could lead to adverse outcomes for him and other potential further lenders.

## **my findings**

I have reconsidered all the available evidence and arguments in light of Halifax’s further submissions, as briefly summarised above, to decide what is fair and reasonable in the circumstances of this complaint. I remain of the view that this complaint should be upheld. My reasons are set out in my provisional decision and as follows.

Halifax is quite correct to say that there is nothing within any of the rules, regulations and guidance I referred to at length in my provisional decision about an obligation imposed on

them to control what a customer is spending their money on. And they point out that gambling is a legal activity.

I have not though at any point sought to say there was such a specific obligation. Nor have I sought to say that gambling is anything other than a legal pastime. However, Halifax did have an obligation to assess whether providing credit and further credit to Mr C was a responsible thing to do. The rules around lending are quite clear about that. And that any such decisions should take into account whether Mr C would have suffered financial (or further financial) difficulties or any adverse consequences. Advancing credit to a customer who, with a cursory examination of their financial situation as an existing customer, shows that they were having such severe problems with gambling is not responsible lending.

Halifax has said that there was nothing in the rules and regulations I quoted that says they *should* have performed a manual review of Mr C's bank statements. But the point here is that Halifax had clear, unambiguous information about their own customer to hand, which I consider showed – for the reasons detailed in my provisional decision - that the severity of Mr C's gambling problem was such as to render his circumstances exceptional. And Halifax isn't able to provide me with the information they did use. I don't consider it to be realistic to expect a lender, whose customer is using a bank account almost exclusively to gamble and to such a severe degree, to simply continue to grant more and more credit. This wasn't Mr C's own money he was spending; it was money he had to repay to Halifax.

And as I mentioned in my provisional decision, there were enough signs that Mr C was struggling to keep things under control, for example he was going over his overdraft limit on multiple occasions. I don't see how Halifax can in effect say Mr C would have been perfectly able to repay the credit bearing in mind the sheer number and volume of gambling transactions that were happening over such a long period of time. I certainly don't see that Mr C was able to use any disposable income to repay this when he was gambling so significantly.

Halifax has also repeated its view that Mr C repaid the three loans that he took out and note in particular that he repaid the second loan very shortly after taking this out. The obligation on ensuring that a customer can repay credit (which are the loans in this instance), is that the customer is able to do so sustainably without adverse consequences. Simply repaying the credit isn't enough to show this without context. For example, someone may borrow from somewhere else to repay existing credit and doing so could undoubtedly lead to someone's financial position potentially worsening. By simply mentioning that Mr C repaid the loans ignores the multiple times he missed loan repayments and ignores the information about the extent of Mr C's gambling that I have said Halifax should have been aware of.

With the credit card, given Mr C's history of account management and what Halifax ought to have known about how he was using the credit, I don't agree that simply assuming what his expenditure was or determining what his credit commitments were from a snapshot from a credit file was proportionate. A much more robust check should have taken place. Even simply determining Mr C's recent history with credit would have shown that he took out 60 short term or payday loans over the previous two years because his gambling addiction had become completely uncontrollable and that these loans were going into his bank account with Halifax. That can't be indicative of someone who was able to sustainably take on more credit.

I would also like to reiterate the point I made in my provisional decision. I accept that Mr C has some responsibility because he applied for the credit. However, I do consider the

circumstances surrounding this complaint to be exceptional, given the clear signs, from the information readily available to Halifax, of the severity of Mr C's gambling problem. I'm disappointed to see that Halifax persists in pointing out that gambling isn't illegal, unlawful and is a legitimate activity. That isn't in dispute. Halifax though is simply failing to understand that there were clear and obvious signs that, with a reasonable, proportionate assessment of Mr C's situation at the appropriate times as I have mentioned in my provisional decision, would have shown them that Mr C's gambling wasn't something he could control and wasn't something that he was doing purely for his entertainment. It simply doesn't follow that Halifax had no obligation to intervene by choosing not to lend to him any further.

So I am satisfied that my proposed direction to Halifax as outlined in my provisional decision is one that I will now direct them to undertake. This is as follows:

*The overdraft limit increases*

- rework Mr C's current account balance so that all interest, fees and charges applied to it from November 2011 to June 2017 are removed;
- remove all adverse entries from Mr C's credit file from November 2011 to June 2017.

*The loans*

- refund all interest and charges;
- refund the capital amounts of each loan; and
- remove all adverse information from Mr C's credit file

*The credit card*

- take steps to buy back the debt from the debt purchaser;
- rework the credit card balance to refund all interest, cash fees and charges to Mr C. It should also refund him any capital that he borrowed using the card;
- remove all adverse information from Mr C's credit file.

I am mindful that Mr C's situation would have had a serious impact on his wellbeing and that Halifax facilitated that by granting him access to credit when it should not have done. I have taken this into account and feel that my direction to Halifax as set out above addresses this. I note that Halifax has pointed out that Mr C has chosen not to repay his outstanding credit card balance for some time. That has no bearing on my finding that Halifax should not have granted him the credit in the first place or on my direction to Halifax.

And I also note that Halifax is concerned that Mr C is still gambling and that my direction will potentially adversely affect him and also potentially allow Mr C to continue to borrow for that purpose. Mr C has told me that he has his gambling under control even though he is still gambling here and there.

I am not satisfied from what Mr C has told me that making this award will lead to him suffering potential detriment. And it is in my view the fair and reasonable award here considering the extent of Halifax's failings in this case. It should also be noted that it will be

entirely down to each individual lender to ascertain what checks they want to do should Mr C apply for more credit. The applications for each credit application will remain on Mr C's file so this will be of potential relevance for any future lender.

### **my final decision**

My final decision is that I uphold this complaint. I direct Bank of Scotland plc to take the action I've described above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 19 May 2021.

Dan Picken  
**ombudsman**

## **COPY OF PROVISIONAL DECISION**

### **Complaint**

Mr C complains that Bank of Scotland plc, trading as Halifax ("Halifax") should not have provided him with loans, an overdraft and a credit card over a number of years.

### **Background**

In October 2018 Mr C complained to Halifax that it should not have agreed to provide him with an overdraft, subsequent limit increases, and further credit facilities, as follows:

September 2011 - initial overdraft with a limit of £1,000  
October 2011 – limit increased to £1,600  
November 2011 – limit increased to £2,300  
December 2011 – limit increased to £2,700  
February 2012 – limit increased to £3,600  
September 2012 – £1,400 loan for 12 months

November 2013 - £1,000 loan for 24 months  
September 2014 - £1,000 loan for 24 months  
September 2016 - £1,500 credit card limit

He said this lending was unaffordable and that if Halifax had looked more carefully into his financial situation it would have realised he was using the money to feed his gambling addiction.

In its response Halifax said it wouldn't consider Mr C's complaint about the overdraft as the decision to grant this had been made more than six years ago and Mr C had not raised the complaint within that time or within three years of becoming aware he could complain.

With respect to the three loans and credit card, Halifax summarised the information it had considered in approving these and said it was satisfied it hadn't done anything wrong. But Halifax said it was sympathetic to the problems Mr C had only now brought to their attention. And so it agreed to reimburse the unplanned overdraft fees of £130 incurred by Mr C on his current account over the last six years, and late payment and over limit fees of £204 charged to his credit card.

Mr C was dissatisfied with the bank's reply and brought his complaint to us.

Our investigator first said to Mr C that under the rules that determine the complaints we can consider, we wouldn't be able to look into his concerns about his overdraft because he had complained too late. But she said she would investigate the loans and credit card.

There then followed a significant exchange of correspondence between our investigator and the bank and Mr C, which resulted in her producing two views. In the first, and in summary, she said that she was satisfied that the loans and credit card were affordable at the time they were agreed by Halifax.

Mr C disagreed and provided reasons why, if Halifax had been a responsible lender, it would have realised that his indebtedness was increasing on each occasion and that he was using the borrowing to feed his gambling addiction. Our investigator considered Mr C's response and revised her view on the lending decision of the credit card. Essentially, she said that Halifax should have realised that Mr C's monthly expenditure exceeded his income and the bank should therefore not have agreed any additional credit facilities.

Halifax disagreed with this view and asked for an ombudsman's decision. In doing so it set out why it considered Mr C's credit card had been affordable at the time he applied for it and gave an overview of the factors it had taken into account in reaching that decision.

### **My provisional findings**

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

Mr C has asked us to look at Halifax's decision to grant him the overdraft and the three subsequent limit increases. He has also asked us to look at the decision to lend him the three loans and the credit card facility.

One of our ombudsmen has issued a decision in which he said that Mr C had complained about the lending of the initial overdraft and the limit increases in time for our service to consider this. So, I will not be revisiting that particular point here.

I will therefore be considering Halifax's decision to grant Mr C the overdraft and its decision to agree to increase the overdraft limit on each occasion. I will also be considering Halifax's decision to grant Mr C the three loans and the credit card.

It will be useful at this point to explain the rules and guidelines that were in place for these lending decisions.

### **The regulatory framework**

#### *Regulation by the Office of Fair Trading (up to 31 March 2014)*

In 2011, which is the start of the period of time Mr C has asked us to look at, Halifax held a standard licence from the Office of Fair Trading ("OFT"), which permitted it to carry out consumer credit activities.

Section 25(2) of the Consumer Credit Act 1974 set out the factors the OFT had to consider when deciding whether to grant a consumer credit licence to a lender. It said:

*(1) In determining whether an applicant for a licence is a fit person for the purposes of this section the OFT shall have regard to any matters appearing to it to be relevant including (amongst other things)—*

*a. the applicant's skills, knowledge and experience in relation to consumer credit businesses, consumer hire businesses or ancillary credit businesses;*

*b. such skills, knowledge and experience of other persons who the applicant proposes will participate in any business that would be carried on by him under the licence;*

*c. practices and procedures that the applicant proposes to implement in connection with any such business;*

*d. evidence of the kind mentioned in subsection (2A)*

*(2A) That evidence is evidence tending to show that the applicant, or any of the applicant's employees, agents or associates (whether past or present) or, where the applicant is a body corporate, any person appearing to the OFT to be a controller of the body corporate or an associate of any such person, has—*

*a. committed any offence involving fraud or other dishonesty or violence;*

*b. contravened any provision made by or under—*

*(i) this Act;*

*(ii) Part 16 of the Financial Services and Markets Act 2000 so far as it relates to the consumer credit jurisdiction under that Part;*

*(iii) any other enactment regulating the provision of credit to individuals or other transactions with individuals;*

*c. contravened any provision in force in an EEA State which corresponds to a provision of the kind mentioned in paragraph (b);*

*d. practised discrimination on grounds of sex, colour, race or ethnic or national origins in, or in connection with, the carrying on of any business; or*

***e. engaged in business practices appearing to the OFT to be deceitful or oppressive or otherwise unfair or improper (whether unlawful or not) [my emphasis].***

Section 25(2B) set out a direct example of the type of practice referred to in Section 25(2A(e)) and said:

*'For the purposes of subsection (2A)(e), the business practices which the OFT may consider to be deceitful or oppressive or otherwise unfair or improper include practices in the carrying on of a consumer credit business that appear to the **OFT to involve irresponsible lending**' [my emphasis].*

In March 2010, the OFT sought to produce clear guidance on the test for irresponsible lending for the purposes of section 25(2B) of the Consumer Credit Act 1974. And so it issued its guidance on irresponsible lending ("ILG").

So, I consider the ILG to be of central importance in reaching a fair and reasonable outcome on Mr C's complaint, for the lending decisions that were made during the period where the ILG was applicable.

The foreword to the guidance set out its purpose and it said:

*'The primary purpose in producing this guidance is to provide greater clarity for businesses and consumer representatives as to the business practices that the Office of Fair Trading (OFT) considers may constitute irresponsible lending practices for the purposes of section 25(2B) of the Consumer Credit Act 1974. It indicates types of deceitful or oppressive or otherwise unfair or improper business practices which, if engaged in by a consumer credit business, could call into consideration its fitness to hold a consumer credit licence. Whilst this guidance represents the OFT's view on irresponsible lending, it is not meant to represent an exhaustive list of behaviours and practices which might constitute irresponsible lending'.*

Section two of the guidance sets out the general principles of fair business practice.

Section 2.1 says:

*'In the OFT's view there are a number of overarching principles of consumer protection and fair business practice which apply to all consumer credit lending'.*

Section 2.2 of the guidance says:

*'In general terms, creditors should:*

- not use misleading or oppressive behaviour when advertising, selling, or seeking to enforce a credit agreement*
- make a reasonable assessment of whether a borrower can afford to meet repayments in a sustainable manner*
- explain the key features of the credit agreement to enable the borrower to make an informed choice*
- monitor the borrower's repayment record during the course of the agreement, offering assistance where borrowers appear to be experiencing difficulty and treat borrowers fairly and with forbearance if they experience difficulties'.*

Section 2.3 lists other expectations of lenders. Amongst other things, it says:

*'In addition to the above there should be:*

*fair treatment of borrowers. Borrowers should not be targeted with credit products that are clearly unsuitable for them, subjected to high pressure selling, aggressive or oppressive behaviour or inappropriate coercion, or conduct which is deceitful, oppressive, unfair or improper, whether unlawful or not.*

*Borrowers who may be particularly vulnerable by virtue of their current indebtedness, poor credit history, or by reason of age or health, or disability, or for any other reason, should, in particular, not be targeted or exploited’.*

Section 4 of the guidance is concerned with the assessment of affordability that lenders were required to carry out before granting credit, and details the following:

*‘all assessments of affordability should involve a consideration of the potential for the credit commitment to adversely impact on the borrower’s financial situation, taking account of information that the creditor is aware of at the time the credit is granted. The extent and scope of any assessment of affordability, in any particular circumstance, should be dependent upon - and proportionate to - a number of factors.*

*‘Assessing affordability’, in the context of this guidance, is a ‘borrower-focussed test’ which involves a creditor assessing a borrower’s ability to undertake a specific credit commitment, or specific additional credit commitment, in a sustainable manner, without the borrower incurring (further) financial difficulties and/or experiencing adverse consequences’.*

Section 4.2 explains how a creditor should assess significantly increasing someone’s access to credit.

*‘Whatever means and sources of information creditors employ as part of an assessment of affordability should be sufficient to make an assessment of the risk of the credit sought being unsustainable for the borrower in question. In our view this is likely to involve more than solely assessing the likelihood of the borrower being able to repay the credit in question. We consider that before granting credit, significantly increasing the amount of credit, or significantly increasing the credit limit under an agreement for running account credit, creditors should take reasonable steps to assess a borrower’s likely ability to be able to meet repayments under the credit agreement in a sustainable manner.*

Section 6 of the ILG sets out other “specific irresponsible lending practices” relating to lender behaviour once credit has been provided. Section 6.2 says it would be an unsatisfactory practice where a business is *‘failing to monitor a borrower’s repayment record’*.

Section 6.2 goes on to say:

*“The OFT considers that creditors should take appropriate action, including notifying the borrower of the potential risk of an escalating debt, and signposting the borrower to not-for-profit providers of free independent debt advice, when/if there are signs of apparent/possible repayment difficulties – for example, a borrower failing to make minimum required payments or making a number of consecutive small/minimum repayments or a borrower seeking to make repayments on a credit card account using another credit card’.*

*Regulation by the Financial Conduct Authority (from 1 April 2014)*

Halifax provided Mr C with one loan and a credit card after regulation of consumer credit activities had transferred from the OFT to the Financial Conduct Authority (“FCA”) on 1 April 2014. Halifax was authorised by the FCA at this time, so it was subject to the FCA’s rules in respect of consumer credit activities from 1 April 2014.

*The FCA Principles for Business (“PRIN”)*

The FCA’s Principles for Business set out the overarching requirements which all authorised firms are required to comply with.



PRIN 1.1.1G, says

*'The Principles apply in whole or in part to every firm'.*

The Principles themselves are set out in PRIN 2.1.1R. And the most relevant principle here is PRIN 2.1.1 R (6) which says:

*'A firm must pay due regard to the interests of its customers and treat them fairly'.*

*The Consumer Credit sourcebook ("CONC")*

This sets out the rules which apply to firms specifically when carrying out credit related regulated activities. CONC also replaced the requirements set out in Section 55B. Bearing in mind the complaint before me, I think the most relevant sections of CONC here are CONC 1 which sets out guidance in relation to financial difficulties; CONC 5 which sets out a firm's obligations in relation to responsible lending; and CONC 6 which sets out a firm's obligations after a consumer has entered into a regulated agreement.

CONC 1.3G provides guidance on financial difficulty. It says:

*"In CONC (unless otherwise stated in or in relation to a rule), the following matters, among others, of which a firm is aware or ought reasonably to be aware, may indicate that a customer is in financial difficulties:*

- 1. consecutively failing to meet minimum repayments in relation to a credit card or store card;*
- 2. adverse accurate entries on a credit file, which are not in dispute;*
- 3. outstanding county court judgments for non-payment of debt;*
- 4. inability to meet repayments out of disposable income or at all, for example, where there is evidence of non-payment of essential bills (such as, utility bills), the customer having to borrow further to repay existing debts, or the customer only being able to meet repayments of debts by the disposal of assets or security;*
- 5. consecutively failing to meet repayments when due;*
- 6. agreement to a debt management plan or other debt solution;*
- 7. evidence of discussions with a firm (including a not-for-profit debt advice body) with a view to entering into a debt management plan or other debt solution or to seeking debt counselling"*

CONC 5 sets out the rules and guidance in relation to 'responsible lending' and CONC 6 sets out the rules and guidance in relation to post contractual requirements.

It's clear there is a high degree of alignment between the OFT's Irresponsible Lending Guidance and the rules set out in CONC 5 and CONC 6. The FCA's CONC rules specifically note and refer back to sections of the OFT's *Irresponsible Lending Guidance* on many occasions.

Section 5.2.1(2) of CONC set out what a lender needed to do before agreeing to give a consumer credit of this type. And it says a firm had to consider *"the potential for the commitments under the regulated credit agreement to adversely impact the customer's financial situation"* as well as *"the ability of the customer to make repayments as they fall due over the life of the regulated credit agreement."*

CONC 5.2 also includes some guidance on the sorts of things a lender needs to bear in mind when considering its obligations under CONC 5.2.1. Section 5.2.4(2) says *“a firm should consider what is appropriate in any particular circumstances dependent on, for example, the type and amount of credit being sought and the potential risks to the customer. The risk of credit not being sustainable directly relates to the amount of credit granted and the total charge for credit relative to the customer’s financial situation.”*

And CONC 5.3 contains further guidance on what a lender should bear in mind when thinking about affordability. CONC 5.3.1(1) says *“In making the creditworthiness assessment or the assessment required by CONC 5.2.2R (1), a firm should take into account more than assessing the customer’s ability to repay the credit.”*

CONC 5.3.1(2) then says: *“The creditworthiness assessment and the assessment required by CONC 5.2.2R (1) should include the firm taking reasonable steps to assess the customer’s ability to meet repayments under a regulated credit agreement in a sustainable manner without the customer incurring financial difficulties or experiencing significant adverse consequences.”*

I will also set out the relevant sections of CONC 6.

CONC 6.7.2 R states:

*“A firm must monitor a customer’s repayment record and take appropriate action where there are signs of actual or possible repayment difficulties.”*

*[Note: paragraph 6.2 of ILG]*

CONC 6.7.3 G states:

*‘The action referred to in CONC 6.7.2 R should generally include:*

*(1) notifying the customer of the risk of escalating debt, additional interest or charges and of potential financial difficulties; and*

*[Note: paragraph 6.16 of ILG]*

*(2) providing contact details for not-for-profit debt advice bodies’.*

*[Note: paragraph 6.2 (box) of ILG]*

### **Other relevant publications**

The ILG and CONC set out the regulatory framework that firms carrying out consumer credit activities have to adhere to. But they represent a minimum standard for firms. I’m also required to take into account any other guidance, standards, relevant codes of practice, and, where appropriate, what I consider to have been good industry practice.

Halifax was a subscriber to the Lending Standard Board’s Lending Code in place from November 2009 and currently subscribes to the Standards of Lending Practice which replaced it in July 2016.

#### *The Lending Code*

Section 4 of the Lending Code is concerned with credit assessments. It says:

*‘Personal customers*

*50. Before lending any money, granting or increasing an overdraft or other borrowing, subscribers should assess whether the customer will be able to repay it in a sustainable*

*manner. They should do this by considering the potential for the borrowing to adversely impact the customer's financial situation, information from CRAs, including existing financial commitments where provided, as well as the following, as appropriate:*

- The type and amount of credit being sought;*
- How the customer has handled their finances in the past;*
- Any known future financial commitments of the customer;*
- Any future changes in circumstances which could be reasonably expected to have a significant financial adverse impact on the customer;*
- Internal credit scoring techniques (if used by the subscriber);*
- The customer's declared income;*
- Why the customer wants to borrow the money and for how long; and*
- Any security provided.*

*51. Subscribers should take a view on which of the above factors it is appropriate to consider in any particular circumstance dependent on, for example, the type and amount of credit being sought and the potential risks to the borrower.*

*52. Assessment may also include other checks that have not been listed above.*

*53. The requirement to consider information from CRAs does not apply in specialist customer segments such as private banking where use of CRA data may not be appropriate.*

*54. Where income is one of the factors considered when assessing ability to repay a personal loan and the loan is agreed only if the income of another person is taken into account, normally the loan should be provided on a joint and several basis. However there may be circumstances when it is appropriate to provide a loan on a sole basis.*

*55. Subscribers should ensure they are familiar with the requirements of the Code Sponsors' Guide to Credit Scoring and the explanations that need to be given to customers if credit scoring is used.*

*56. If a lending application is declined following credit assessment, the subscriber should explain the main reason why if asked by the customer. If the decline is as a result of information obtained from a CRA search, the subscriber should provide the customer with contact details for the CRA'.*

#### *The Standards of Lending Practice*

The standards relating to assessing the affordability of credit are set out in the 'Product Sale' section of the Standards of Lending Practice. The relevant section says:

*"5. Before providing any form of credit, granting or increasing an overdraft or other borrowing, Firms should assess, from the information available to the Firm at the time, whether the customer will be able to repay it in a sustainable manner without the customer incurring financial difficulty or experiencing significant adverse consequences. [CONC 5]"*

There is also a section on 'Money Management' and paragraph 3 of this section says:

*"3. Firms should monitor customers' credit card and overdraft limits to ensure that the customer is not exhibiting signs of financial stress and where relevant, offer appropriate support."*

#### *The initial overdraft limit and subsequent limit increases*

It's not entirely clear when each lending decision was specifically made by Halifax. They have said there is very little they can send us in relation to this. That isn't altogether

surprising due to the passage of time. But, looking at Mr C's bank account statements, it seems that Halifax granted him an initial overdraft with a limit of £1,000 in September 2011. And that they increased the limit to £1,600 in October 2011, to £2,300 in November 2011, to £2,700 in December 2011 and finally to £3,600 in February 2012.

Halifax isn't able to give us details of each application, so I don't know what information it asked Mr C for or what information it considered before agreeing to grant each line of credit.

Having considered the matter, I see no reason why Halifax shouldn't have decided to grant Mr C the initial overdraft of £1,000. It appears that Mr C was overdrawn around that time without any limit which presumably was the reason why he applied for one. His account statements show that he was around £700 overdrawn at this point. However, I don't think Halifax would have assumed Mr C had a problem with gambling or that any overdraft would have been used for that purpose. Mr C had a weekly wage of around £300 coming into his account and Halifax could quite reasonably have assumed that the overdraft would have been used for Mr C to help balance his finances for a period of time.

Mr C then applied for an increase of £600 to his overdraft the following month. Halifax would have been able to see how he was managing his account before deciding whether to agree to this.

Having looked at the bank statements, my feeling is that while there were a number of potentially concerning signs, in that Mr C appears to have predominantly been using his account for gambling, it seems he was keeping within his overdraft limit. So, I wouldn't necessarily have expected Halifax to start having concerns about this at that time. I also note that the limit increase happened within a few weeks of the initial overdraft being granted so I don't necessarily think it could be reasonably assumed that this pattern of spending would have been replicated from month to month.

I think the position changes though when Mr C applied for a further overdraft limit increase in November 2011. At this point, this was over double the amount of credit from the original application. And I think there were enough signs that Mr C was beginning to rely on credit to use almost exclusively on gambling. His bank statements certainly show that he was essentially gambling up to his limit by that time. And there were other worrying signs. For example, Mr C had gambling winnings of around £4,000 come into his account in late October 2011 which were all re-spent on gambling within a day. So, I think Halifax should have given closer scrutiny to this.

Mr C was of course in theory required to repay the overdraft limit back to Halifax. If, as the bank statements show, he was using the account to gamble up to the limit, his ability to repay the overdraft would have been in serious doubt. His monthly income at the time would certainly not have sustained this. So, the time Mr C applied for the next limit increase, there were enough signs to show that he was relying on credit to gamble and that increasing the limit would have likely led to Mr C suffering financial detriment.

Mr C's bank statements then show a pattern much like how I've previously described. However, after the limit of £2,300 was granted, he started going over his overdraft limit on several occasions and this was in fact repeated after he'd been granted further increases to £2,700 and £3,600. And the pattern of using his account almost exclusively for gambling is repeated with any winnings being used again for gambling almost immediately. For example, Mr C had some significant winnings in July 2012 and these had been used for gambling within a week.

So, bearing in mind Halifax's obligations under the regulations and guidelines at the time, I do not think they gave suitable and appropriate scrutiny to Mr C's financial situation or his account management by the time he applied for the limit increase to £2,300 in November 2011 or the subsequent two limit increases. I think it quite clear at this time that the decision

to grant these to Mr C would have very likely had adverse consequences for him and his ability to sustainably repay what he'd in effect borrowed from Halifax. And I should point out that this wasn't Mr C's own money he was using to gamble, this was money he'd borrowed from Halifax that would need to potentially be repaid at reasonably short notice.

My provisional conclusion is that Halifax should not have granted the overdraft limit increases from November 2011 onwards.

### *The loans*

Mr C has said that he applied for the first loan of £1,400 in September 2012 because Halifax declined his overdraft limit increase application at that time. It's not clear why this was declined however what is clear is Halifax approving the loan application.

Halifax says that it doesn't have any information about the loan application, or indeed the subsequent loans of £1,000 in November 2013 and September 2014. It seems that Halifax asked for Mr C's income although Mr C doesn't appear to recall what was asked of him.

However, the income information, if asked, is missing from Halifax's records. Halifax says that they would have taken this into account at each loan application along with using credit scoring using credit reference agency data. And they say this included Mr C's historic account data and any that were in default.

Halifax then decided whether to approve or decline the application or ask Mr C for more information if they thought it appropriate. It would appear that Halifax approved Mr C's application for the first loan without the need for further information

As I've mentioned, Halifax isn't able to tell us what information they saw. However, it's abundantly clear that they had access to Mr C's account statements and knowledge of his account management at that time. While Halifax has said they don't analyse customer's account statements on a micro-managed transactional basis, that was a decision and choice for Halifax. It still had an obligation to ensure that it lent responsibly by carrying out a borrower-focussed assessment of affordability, taking into account what they knew about Mr C's circumstances and what it should have known, given the information available.

By the time Mr C had applied for the loan of £1,000 he had gone over his overdraft limit on several occasions in the preceding months, and the account was being used almost solely for gambling. So, Halifax had information available to them which should have been reviewed and should have formed part of its lending decision.

As I've provisionally decided that Halifax shouldn't have granted the overdraft limit increases from November 2011 onwards, it follows that I find granting Mr C access to a further £1,400 of credit via a loan was also irresponsible. Particularly as I think it was foreseeable that this would be used by Mr C for gambling. I think the information on Mr C's bank statements and his pattern of applying for further credit was enough to make that decision. And this initial application came after Mr C had been turned down for a further increase to his overdraft limit of £3,600.

Mr C then applied for a second loan in November 2013 for £1,000. And by this time, Halifax not only had information about Mr C's account management available to them, they also had information about Mr C's management of his first loan to hand.

Mr C's bank statements again show much the same pattern of spending as before. The account is almost exclusively used for gambling. And Mr C was evidently struggling to keep this under control. I can that Mr C went over his overdraft limit several times leading up to the second loan and that he'd incurred unplanned overdraft fees for most of the six months

leading up to this.

Not only that, Mr C's direct debit payments for the first loan were returned unpaid in May 2013, July 2013 and August 2013. I think this should have alerted Halifax that Mr C was very much struggling to meet this commitment. As I've set out above, the ILG mentioned that an example of irresponsible lending would be where a creditor failed to monitor a borrower's repayment record.

I think in this case Halifax failed to do this. And this, along with Mr C's evident issues with how his current account was being managed, should have led to them decline Mr C's application.

Mr C then applied for a third loan with Halifax in September 2014 for a further £1,000. And, again, a repeat pattern occurred in the months leading up to this application. Mr C was using the account for excessive gambling and went over his overdraft limit in February 2014. I note he received large sums of money in winnings around this time, totalling nearly £10,000 but he was back in his overdraft again within a few days and reached his limit again in early March.

Mr C also had the first payment for his second loan returned and this happened again in January 2014 and February 2014.

I also note other concerning signs of Mr C's situation at that time. It appears that Mr C lost his job in February 2014 as he started receiving around £150 a week in Jobseekers Allowance. He then received what presumably was a severance payment of £4,500 from his previous employer in July 2014 which took his account back into credit. However, Mr C was then back up to his £3,600 overdraft limit within four days.

In my view, there were clearly enough signs at the time of the third loan application for Halifax to have declined it. It's indisputable that Mr C couldn't meet his existing commitments without great difficulty and his current account again showed excessive and uncontrollable gambling. For these reasons, I do not agree that it was responsible for Halifax to agree Mr C's third loan application.

So, to conclude, I provisionally find that Halifax should not have agreed to provide Mr C the three loans.

#### *The credit card*

Mr C applied to Halifax for a credit card in September 2016. Halifax asked Mr C for his income which he said was £27,000 gross each year. Halifax then worked out Mr C's current monthly credit commitments to be £1,178 which they took from internal and external agency data.

Halifax then determined assumed living costs for Mr C of £300 each month, which they calculated meant Mr C was left with a disposable monthly income of £172. Halifax agreed to the credit card application and set the card with a limit of £1,500.

I'm not entirely sure how Halifax worked out Mr C's monthly commitments. However, Mr C did give his gross annual salary and it was reasonable for Halifax to assume what this equated to each month, to compare with the information and data they had either gleaned or assumed.

However, by this time, and bearing in mind Mr C's history of account and loan management with Halifax, it would at the very least have been prudent to have established in rather more detail what Mr C's credit history was and his appetite for credit. I accept that the credit card application was made some two years after his third loan was granted. However, I think

bearing in mind Mr C's history, it would have been proportionate for Halifax to have reviewed his recent credit history in more detail as well as taking into consideration his previous account management.

I've looked at Mr C's credit file and can see that he took out nearly 60 payday/short term loans from December 2014 to September 2016 and that these were not only taken out in consecutive months all the way through, but also on a number of occasions Mr C took out several of these loans each month.

So, when Mr C had applied for the credit card, he had an unbroken pattern of high cost short term borrowing over two years. His credit file also shows that he had taken out two separate credit cards with other businesses from July 2015.

I've seen that all of the high cost short term loans were paid into, and were being paid out of, Mr C's current account with Halifax. So, not only could Halifax have seen the history of Mr C's dependence on short-term loans from his credit file, even a cursory look at his bank account statements would have revealed the same. And, it's also clear from looking at Mr C's bank account statements, that he was using these loans to fund his gambling addiction. So there remained a very high risk that Mr C was applying for the credit card for the same reason.

And in fact, that's exactly what happened. Mr C used his credit card straight away for gambling which attracted a large number of cash fees, and he went over the limit within two months of getting the card.

So, for the reasons I've set out, I don't think that Halifax lent responsibly in respect of the credit card. In fact, looking at Mr C's situation at that time, his dependence on short-term lending, and his obvious severe difficulties with gambling as clearly shown on his bank account statements which had gone on for several years prior, I consider that Halifax acted recklessly in agreeing to grant Mr C the credit card.

This decision to lend put Mr C into even more of a financial hole (or 'even greater financial difficulty') and allowed him to continue to feed his gambling addiction. It's clear to me that Mr C was in an extremely vulnerable position at this point and, not only had to repay the short-term lending he had taken out at presumably a high interest cost, but he was still using any available credit to gamble. Allowing Mr C even more access to credit only exacerbated this situation even further.

### **What Halifax needs to do put things right**

Mr C has told me that he has managed to keep his gambling under control since 2017. So, it would seem reasonable to take that into account here.

Having carefully considered everything, I find that it would be fair and reasonable in all the circumstances of Mr C's complaint for Halifax to put things right in the following way:

#### *The overdraft limit increases*

- rework Mr C's current account balance so that all interest, fees and charges applied to it from November 2011 to June 2017 are removed;
- remove all adverse entries from Mr C's credit file from November 2011 to June 2017.

#### *The loans*

Typically, when we decide credit has been irresponsibly lent, we ask the creditor to refund all interest and charges. However, in this case, I consider Halifax's actions in granting the loans to have been so irresponsible, it verged on being reckless and led to Mr C suffering severe detriment over several years.

I say this because, from what I can see, Mr C had to pay Halifax back with no apparent disposable income but from other borrowing. And he didn't have the 'benefit' of the money borrowed; he used it solely to gamble and, like the winnings he received at certain points, this was used until it was actually spent in full. I think it would have been reasonably foreseeable to Halifax that Mr C would not have been in a position to repay the capital amount of the loans back from disposable income.

I have thought about Mr C's contribution to his situation as it's of course clear that he applied for the loans and chose to gamble the money he received. So, it could be argued that the responsibility for taking out the loans should be shared between both parties. However, I think it fair to hold Halifax responsible taking into account all of the circumstances of the case.

Mr C's pattern of gambling was, in my view, extreme and I have outlined why I think that in my comments in the previous section of my decision. Given that, and the level of borrowing taken out to fund this, Halifax ought to have been alerted to the fact that, in all likelihood, Mr C's gambling had become an addiction, over which he had little control.

As such, I think it ought to have been apparent to Halifax that Mr C's gambling was not a controlled hobby or that Mr C was gambling purely for entertainment. If that were the case, I could see the argument that Halifax would not look to interfere with that. But that is so clearly not the case here. And the reality for Mr C would be not only having an addiction of which he had little control, but the knowledge that he was moving ever further into debt because of this.

So, I don't consider that simply refunding interest and charges on the loans goes far enough. I currently think it reasonable for Mr C not to have repaid Halifax the capital borrowed on this facility.

I propose therefore to instruct Halifax to:

- refund all interest and charges;
- refund the capital amounts of each loan; and
- remove all adverse information from Mr C's credit file.

#### *The credit card*

I consider the same sort of approach to the loans to be reasonable for the credit card, bearing in mind Mr C's circumstances had worsened by this point to the extent that he had taken out nearly 60 payday/short-term loans in the preceding two years.

I note though that Halifax sold the outstanding credit card debt on to a debt purchaser recently.

So, Halifax should:

- take steps to buy back the debt from the debt purchaser;
- rework the credit card balance to refund all interest, cash fees and charges to Mr C. It should also refund him any capital that he borrowed using the card.
- remove all adverse information from Mr C's credit file.

I am mindful that Mr C's situation would have had a serious impact on his wellbeing and that Halifax facilitated that by granting him access to credit when it should not have done. I have



taken this into account and feel that my proposed direction to Halifax as set out above addresses this.