

The complaint

Mr P complains that Bank of Scotland plc trading as Halifax lent to him irresponsibly.

What happened

In November 2020, Mr P applied to Halifax for a loan of £18,000 which was agreed. It was to be repaid by 60 monthly instalments of £423.47 and was to repay other debts. Mr P says that Halifax failed to properly check the loan was affordable for him. He says if it had carried out proper checks, it would have seen he had taken a consolidation loan around 14 months earlier and ought to have refused to lend to him. He complained to Halifax.

Halifax looked into Mr P's complaint and issued its final response. It said Mr P had told it he was employed full time and earned £52,724 per year and had outgoings of £650 per month. It had conducted its usual checks on his application including credit reference agency evidence and statistical information about expenditure. Halifax calculated Mr P had a monthly disposable income of £1,496, so it was satisfied the loan was affordable for him.

Mr P didn't accept Halifax's response and referred his complaint to our service. One of our investigators looked into it. Based on the term and cost of the loan, she said she didn't think the checks Halifax carried out were sufficient and it ought to have done more. She felt it was wrong for Halifax to rely on statistical information for Mr P's expenditure and it ought to have gained a more thorough understanding of his situation.

Our investigator noted that the loan was to repay two credit agreements Mr P already had and calculated they were costing him £421 per month at the time. She said this new loan would be £423 and was over an extended term. She believed Mr P's overdraft usage prior to this loan (and which continued afterwards) was an indication that the loan was likely to be unsustainable. Our investigator said that if Halifax had done further checks it would have refused the loan.

Mr P accepted what our investigator said, but Halifax didn't. In summary it said Mr P had a disposable income in excess of £1,000 so the repayments were comfortably affordable. It said that usage of an overdraft isn't necessarily an indication of financial difficulty.

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.

Having done so, I disagreed with our investigator, so I issued a provisional decision saying:

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

Halifax needed to carry out reasonable and proportionate checks to ensure that it didn't lend to Mr P irresponsibly. I think there are key questions I need to consider to decide what is fair

and reasonable in the circumstances of this complaint:

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

It's not about Halifax assessing the likelihood of it being repaid, but it had to consider the impact of the loan repayments on Mr P. There is no set list of checks that it had to do, but it could take into account several different things such as the amount and length of the loan, the amount of the monthly repayments and the overall circumstances of the borrower.

Did Halifax carry out reasonable and proportionate checks to satisfy itself that Mr P was able to sustainably repay the loan?

It's clear that this loan was a significant commitment and over a significant period of time. So I think it's important that Halifax ought to have made sure it had a thorough understanding of Mr P's financial circumstances to ensure it lent responsibly.

Halifax says the loan went through its usual automated process and was agreed on that basis. But I'm not persuaded that was enough on this occasion. Mr P's application indicated that he was seeking to refinance debts within the banking group of which Halifax was a part. But the "lending summary form" Halifax has provided as part of its file, says it no group products were open at the time.

Furthermore, Mr P declared an annual income of £52,724 with monthly expenditure of just £650. Halifax said it had no reason to think that was inaccurate. My experience is that it's likely someone who earns as much as Mr P has declared, is unlikely to only spend £650 per month. In the event that they did, I can't see a reason why they'd be looking to repay other debts over 60 months – they'd be able to comfortably repay them much sooner.

I appreciate the lending decision in this case was automated and reached quickly. But that doesn't necessarily mean the checks carried out were reasonable and proportionate given the inconsistencies I've indicated above. I think the bank ought to have asked further questions of Mr P to understand what he was seeking to repay and to ensure the loan would be affordable for him. I don't think the checks it carried out were reasonable and proportionate on this occasion.

What would reasonable and proportionate checks have shown at the time and did Halifax make a fair lending decision?

There is no set list of checks the bank ought to have carried out – there are many ways of obtaining information about a customer's circumstances. A lender might speak to a customer and obtain bank statements to see for sure what a customer received and what they spent. Mr P has provided us with information including his bank statements from the three months leading up to his loan application.

I think a good starting point for a consolidation loan such as this, is to understand what it is the customer is looking to repay. Mr P has told us that he repaid a hire purchase agreement (HP) for £6,083, a loan of £9,764 and the remainder went to a credit card. The repayments to the HP and loan were £205 and £217 respectively, and I can see from his bank statement that he paid at least £150 to the credit card each month. He's said the minimum payment to the credit card was in the region of £33. So his actual repayments to the debts he was seeking to repay totalled £572, albeit he was committed to £456.

Mr P says he needed to repay the HP due to an issue with the car it related to, and he could not dispose of it until the HP was cleared. He was able to replace the car with the help of family.

Using just the minimum repayment to his credit card, this new loan reduced his expenditure so there was a benefit to him from that. His payments would reduce by around £30 per month on that figure, but significantly more based on what he was actually paying. He'd also have the comfort of knowing there was an end date to the debt – something less clear based on paying a minimum payment on a credit card.

There was an increase in the cost of the borrowing based on the loans which were at a lower rate and Mr P has said the credit card was in an interest free period. However, interest free periods on credit cards are typically far shorter than the 60 months this loan was scheduled for, and interest costs then typically become higher than this loan. So on the face of it, the request for a loan to consolidate these debts on to one doesn't seem unreasonable.

I've gone on to look closely at Mr P's bank statements and can see that he clearly spent more than £650 per month (even excluding the payments he made to the loans and credit cards set out above) and this would have been evident to Halifax had it carried out reasonable and proportionate checks.

But I can also see that the account is a joint account, so it's difficult to establish how much of the expenditure is his and how much is the joint account holders. Both our investigator and Halifax calculated his disposable income as in excess of £970 a month so it seems he had sufficient income to meet the repayments on this new loan. The overdraft of £3,500 was used significantly, but as this was a joint debt, I wouldn't expect it to be repaid by this consolidation loan.

I also note that the statements show a regular payment of £575 from another source (other than either account holder's employment). I think it's likely that Halifax would have questioned it had it looked at the statements as part of the application process. Mr P tells us this is in respect of a property he owns and rents out, paying a mortgage of £395 on it. This gives him an income as well as equity he could potentially call on if he found himself in financial trouble.

All things considered, if Halifax had carried out further checks and asked further questions of Mr P, it is my view that it would have been satisfied with the answers it is likely to have received from him. The loan enabled Mr P to repay the HP and dispose of the car while wrapping his monthly repayments up into one and reduce them. I think it would have agreed to lend to Mr P even if it had carried out further checks, and that it reached a fair decision to do so.

Did Halifax act unfairly or unreasonably towards Mr P in some other way?

I've carefully read and thought about all the evidence provided by each party to this complaint. Having done so, I don't think Halifax has acted unfairly or unreasonably towards Mr P in some other way."

Neither Halifax nor Mr P have responded to my provisional decision, so I see no reason to depart from it.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 24 May 2024.

Richard Hale
Ombudsman