

The complaint

Miss H says Bank of Scotland plc, trading as Halifax, irresponsibly lent to her.

What happened

Miss H applied for a credit card from Halifax in May 2007. She recalls she was given a credit limit between £1,000 and £2,000. Halifax cannot confirm the value but from the available evidence I can see the limit was £3,750 by July 2013 and from there it was reduced six times to £1,000 by October 2018.

Miss H says Halifax did not carry out appropriate affordability checks before issuing the card. Halifax initially said Miss H had brought the complaint too late so it could not consider its merits. The investigator explained why we could, and whilst Halifax then gave its consent it said it no longer held any of the information relevant to the application, or the subsequent limit increases.

Our investigator did not uphold Miss H's complaint. He said given the limited information he could not conclude Halifax had done anything incorrectly.

Miss H disagreed and asked for an ombudsman's review.

I reached a different conclusion to the investigator so I issued a provisional decision. An extract follows and forms part of this final decision. I asked both parties to send any comments or new information by 26 December 2023.

Extract from my provisional decision

Halifax cannot provide us with details of the checks it carried out or the results. This is not unreasonable due to the age of the account. However, Miss H has been able to share her Halifax current account statements from the two months prior to her application which give an insight into her financial circumstances at the time.

I do not know if Halifax reviewed Miss H's current account when she applied for the card, and I appreciate that Halifax's lending decision was most likely fully automated by 2007. But this does not mean that obvious available information could be ignored. Halifax had an excellent source of data about Miss H's financial circumstances – its own internal records. Miss H had an existing relationship with Halifax as she held her current account at the bank. This information was easily accessible and clearly relevant to her credit card application, and I think that Halifax should have taken this into account, if it didn't.

From the bank statements Miss H has provided, I can see that she was persistently reliant on her overdraft facility and not using that borrowing facility as intended - so Miss H was clearly already struggling financially. It was also unclear what the value of her regular fixed income was. And due to the nature of this lending - i.e. a credit card – I think it is reasonable to conclude Miss H wasn't consolidating debt and planning to repay her overdraft.

The regulatory requirements in 2007 were not as they are today, but Halifax subscribed to the Banking Code at the time and section 13.1 of the relevant code (March 2005) made clear that a lender ought to consider how an applicant has managed their finances in the past when assessing new lending. And I find in this case had Halifax done this it would have been clear that Miss H's finances were not stable, and so to increase her indebtedness at this time was irresponsible.

It follows I think Halifax was wrong to give this card, and logically all subsequent limit increases, to Miss H.

I then set out what Halifax would need to do to put things right.

Halifax accepted my recommendations. Miss H did not respond.

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.

We've set out our general approach to complaints about unaffordable and irresponsible lending - including the key relevant rules, guidance and good industry practice - on our website and I've taken that into account when considered Miss H's complaint.

As neither party sent in any new information I have no reason to change the findings or the outcome I set out in my provisional decision.

It follows I find Halifax was wrong to lend to Miss H.

Putting things right

As I don't think Halifax ought to have opened the account, I don't think it's fair for it to be able to apply any interest or charges under the credit agreement. But I do think Miss H should pay back the capital she has borrowed as she has had the benefit of that money.

Therefore, Halifax must:

1. Refund all the interest and charges Miss H has paid.
2. If the borrowing is still in place, Halifax should reduce the outstanding capital balance by the amount calculated at step 1.
3. If, after step 2, there remains an outstanding capital balance, Halifax should ensure that it isn't subject to any historic or future interest and/or charges. But if step 2 leads to a positive balance, the amount in question should be given back to Miss H and 8% simple interest* should be added to the surplus.
4. Once Miss H has cleared any outstanding capital balance, any adverse information recorded in relation to the account should be removed from her credit file.

*HM Revenue & Customs may require Halifax to take off tax from this interest. If it does, Halifax must give Miss H a certificate showing how much tax it's taken off if she asks for one. If it intends to apply the refund to reduce an outstanding balance, it must do so after deducting the tax.

My final decision

I am upholding Miss H's complaint. Bank of Scotland plc, trading as Halifax, must put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H to accept or reject my decision before 31 January 2024.

Rebecca Connelley
Ombudsman