

The complaint

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

What happened

Miss M took out three credit cards from Halifax, the first in July 2017 with a limit of £6,400; the second in February 2021 with a limit of £6,000 and the third in February 2022 with a limit of £5,000. She stopped using the first card in May 2019 and closed the account in May 2022. The other two cards have outstanding balances.

Miss M says she has had debts for years and has had to borrow from other lenders or family and friends to make her repayments. If her credit file had been checked properly she should never have been accepted.

Halifax says Miss M's applications all passed the relevant checks and were deemed to be affordable.

Our investigator did not uphold Miss M's complaint. She said Halifax did not carry out proportionate checks but had it done so no concerns about affordability would have emerged.

Miss M disagreed with this assessment and asked for an ombudsman's review. She said better checks would have shown she was on a lower income than Halifax used and on benefits. She was reliant on informal borrowing. She was making minimum repayments and now has a substantial amount of debt.

I reached a different conclusion to the investigator so I issued a provisional decision. An extract follows and forms part of this final decision.

Extract from my provisional decision

To decide if Halifax lent responsibly I need to consider if its checks were proportionate; if not what would better checks most likely have shown; did it make fair lending decisions; and finally, did it treat Miss M unfairly in some other way.

The information is limited in places on this case. Halifax has not provided all the information requested, nor has Miss M. So I have reached my provisional decision based on the balance of probabilities, in other words, based on what I think is most likely given the available evidence and the wider circumstances.

Halifax has sent in evidence to show its checks for the first card included asking Miss M about her monthly income (£2,077) and housing costs (£1,327). It obtained details of her monthly credit commitments from its credit check (£132) and estimated her living costs using national statistics (£300). From these checks combined it concluded Miss M could afford a card with a credit limit of £6,400 as she had monthly disposable income of £317.

I am not wholly persuaded these checks were proportionate. Halifax had learnt Miss M was

single with one dependent and knew her mortgage payment was almost 65% of her declared income so I think it ought to have carried out a more detailed financial review. Miss M has provided her bank statements from the months prior to this application. This allows me to understand what Halifax would most likely have learnt had it carried out better checks. There are none of the typical signs of financial pressure such as the reliance on an overdraft, the use of payday loans or returned direct debits. So I think Halifax could fairly have made the same lending decision as it did. Miss M was also taking out the card for a balance transfer so she was not increasing her indebtedness, rather she was reducing the interest she was paying on existing debt. So I don't think there were any indicators Halifax's lending decision was unfair or would likely cause Miss M financial harm.

It follows I don't think Halifax was wrong to give the first card to Miss M.

For the second and third cards Halifax has not provided the affordability assessments it carried out, nor the results of its credit checks, just Miss M's declared income and mortgage costs. So I cannot know in the round whether its checks were proportionate. Miss M however has provided some bank statements which allow me to again recreate what proportionate checks would most likely have shown – and I can therefore decide whether Halifax made fair lending decisions.

My findings for card two are the same as for card one. Miss M's declared mortgage costs had dropped significantly to £900 and her declared income had increased to £3,208. From the statement I can see the mortgage reduction was largely accurate (£927). It is hard to assess Miss M's actual income as there are transfers in from other accounts but from the November 2020 statement Miss M shared it seems this was largely accurate taking into account her benefits and inter-account credits. It is fair and reasonable for a lender to take into account an applicant's benefits as part of their income, and within regulatory guidelines. Again, there are none of the typical signs of financial pressure such as the reliance on an overdraft, the use of payday loans or returned direct debits.

Halifax also had Miss M's account history from her first card to inform its decision. She had stopped using this card in May 2019 and it had a zero balance, she appeared to have managed the account well incurring no overlimit or late fees from what I can see. So in the round I think it was fair for Halifax to lend again to Miss M in February 2021.

However by the time Miss M applied for a third card I think Halifax ought to have made a different decision. Miss M still had a balance on card two at this time and she was typically only making slightly more than the minimum payment. This was the third time Miss M had wanted more credit to move balances which I think ought to have suggested to Halifax she may now be reliant on credit and in a spiral of debt. Had it completed proportionate checks it would have seen Miss M was by then persistently reliant on her overdraft facility. I assume its credit check would have shown she had opened three other new credit cards in the previous eight months. Overall, had it completed better checks I think it ought to have realised there was a high risk further credit would cause Miss M financial detriment at this stage.

It follows I think Halifax was wrong to give the third card to Miss M.

I have not seen any evidence Halifax acted unfairly towards Miss M in some other way.

Both parties responded to the provisional decision. Halifax accepted it but Miss M disagreed and asked for an ombudsman's review. She did not provide any specific reason as to why she disagreed with my findings about the first two cards. But she asked what information she had not provided and said that Halifax's failure to provide all the information requested is a breach of data protection guidelines.

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.

As some of the information is incomplete I have reached my provisional decision based on the balance of probabilities, in other words, based on what I think is most likely given the available evidence and the wider circumstances.

Halifax will be familiar with all the rules, regulations and good industry practice we consider when looking at a complaint about unaffordable and irresponsible lending. So, I don't consider it necessary to set all of this out in this decision. Information about our approach to these complaints is set out on our website.

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

To address Miss M's queries, she did not submit statements for all of the three months prior to her application for card three. But this was not to her detriment as with the available information I could fairly conclude the third card should not have been given. I would add, for clarity, that Miss M did send a copy of her credit file and this fed into my finding about the third card.

Halifax did not provide all the information we requested but the rules we follow (specifically DISP 3.5.9, part 3) allow that *'the Ombudsman may reach a decision on the basis of what has been supplied and take account of the failure by a party to provide information requested.'* In terms of Miss M's comment that Halifax breached data protection guidelines, if she wishes to report a potential data breach she should contact the Information Commissioner's Office (www.ico.org.uk).

It follows, my decision remains the same and I find Halifax was wrong to approve Miss M's application for card three.

Putting things right for card three

As Miss M has had the benefit of the money lent to her it is fair she should repay the capital borrowed, but she has also paid interest and charges on a third card that should not have been given.

So Halifax should:

1. Refund all the interest and charges Miss M has paid on card three.
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 can firstly be used to reduce the balance on card two, then any surplus should be given back to Miss M and 8% simple interest* should be added to the surplus.
4. Once Miss M has cleared any outstanding capital balance on card three, any adverse information recorded in relation to card three 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 M 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 M's complaint in part. 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 M to accept or reject my decision before 6 February 2024.

Rebecca Connelley
Ombudsman