

## **The complaint**

Mr O is unhappy with Halifax, who is a trading name of Bank of Scotland plc. Mr O complains Halifax lent to him irresponsibly.

## **What happened**

Mr O has made several complaints to Halifax about irresponsible lending. This decision only addresses his complaint about four personal loans taken out between 2009 and 2015.

Halifax says it no longer has information available about Mr O's loans, including the information it considered before agreeing to lend. Mr O has held his main bank account also with Halifax since 2001, and he has submitted bank statements covering the time from before, during and after taking out the loans. These help to show information about his financial circumstances. He has also provided a copy of his credit file dated June 2017, which records details of the other active credit agreements he had over the previous six years.

In November 2009 Mr O took out a loan for £10,500 with Halifax – Loan 1. I understand that Mr O wouldn't have had to make a repayment during the first two months after the loan moneys were paid to him. He then needed to repay £355 a month over the next three years. The loan ran to term and ended in January 2013. Mr O repaid £12,780 in total.

In April 2013 Mr O took out a loan for £15,000 with Halifax – Loan 2. Unlike with his first loan, Mr O needed to make the first repayment the following month. He then needed to repay £486 a month over the next three years. Mr O settled the loan early and it ended in June 2014.

In August 2014, Mr O took out another loan for £15,000 with Halifax – Loan 3. Mr O needed to make the first repayment the following month. He needed to repay £448 a month over the next three years. Mr O also settled this loan early when he took out a fourth loan with Halifax in September 2015.

Mr O took out his fourth loan and borrowed an extra £10,000 on top of the £6,836 he needed to close his existing (third) loan, borrowing £16,836 in total – Loan 4. He needed to repay £494 a month over the next three years. Mr O also settled this loan a couple of months early and paid £980 to close it in July 2018.

Our Investigator concluded Mr O's complaint should be upheld in part. In summary, he did not find that Halifax had acted unreasonably in agreeing to Loans 1 and 2. But he thought Halifax should not have agreed Loans 3 and 4 because Mr O's pattern of repeat lending ought to have prompted Halifax to make further enquires before agreeing to lend. He thought that had Halifax looked more closely, it would have seen Mr O had become dependent on credit because he was spending significant amounts gambling and this had become unsustainable.

Mr O disagreed with our Investigator about Loans 1 and 2 as he thought these should be upheld too. So, he asked for an ombudsman to review his case.

Halifax did not reply to the Investigator's assessment but after he told it that Mr O had asked for an ombudsman to decide the case, it said it had nothing to add.

As our Investigator was unable to reach a resolution, the matter has come to me to decide. I issued a provisional decision on 26 February 2024. In summary, I provisionally decided to uphold Mr O's complaint about Halifax lending his first, third and fourth loans irresponsibly.

In my provisional decision I explained that:

*'Mr O brought his complaint more than six years after taking out his final loan with Halifax. But as Halifax has given its consent to our investigation into Mr O's complaint, I don't need to consider whether the time limits in which to bring a complaint apply to any of the loans in question.*

*We've set out our approach to complaints about unaffordable and irresponsible lending on our website. I've taken this into account in deciding Mr O's complaint. When the evidence is incomplete, inconclusive or contradictory, I've made my decision on the balance of probabilities – which, in other words, means I've based it on what I think is most likely to have happened given the available evidence and the wider circumstances.*

*Having done all of that, I'm not currently persuaded it was reasonable for Halifax to agree to lend three of the four loans he borrowed – I'll explain my reasons for each loan below.*

#### Loan 1

*Mr O took out his first loan in 2009. The rules and guidance in place today didn't exist at the time. The Finance and Leasing Association – a trade body representing lenders – published its Lending Code in 2006 setting out the standards its members should follow when lending to consumers. I've taken this to represent good industry practice at the time Halifax lent to Mr O in 2009. Amongst other things, The Lending Code 2006 set out:*

*"... As responsible lenders, under this Code (section 1C.1) we must make sure that all loan applications (including pre-approved loans and credit-card cheques) go through a sound and proper credit assessment.*

*This assessment may look at a combination of:*

- your credit commitments;*
- your ability to repay your loan;*
- how you have handled your financial affairs in the past;*
- information from credit reference agencies; ...*
- your income; ..."*

*Mr O applied to borrow a loan of £10,500 over three years with a monthly repayment of £355. Halifax says it hasn't retained any information from Mr O's application – for example the information Mr O gave when he applied or how it went about checking whether the information given was accurate. I find that reasonable given the loan account has been closed for over ten years. That said and with the good practice set out under the Lending Code 2006 in mind, I think it is fair to say Halifax, as a minimum, would have checked Mr O's income was enough for him to make his monthly repayments. I also think it is likely to have done so as Mr O's application came a year after the 2008 'credit crunch' and the start of the economic recession which followed and prompted lenders to generally be more cautious.*

*Halifax could've confirmed Mr O's income several ways – for example by requesting payslips or, noting his salary was credited to his Halifax current account, by looking at his bank statements. The methods lenders may use today to confirm income, such as account turnover checks through credit reference agencies were not yet available at the time of his loan application in 2009. But of course, as the provider of Mr O's current account, information about his account turnover was available to Halifax.*

*Mr O has information available to show his circumstances at the time he entered the loan agreement. He has his Halifax bank account statements covering the months either side of this loan application and a copy of his credit file from 2017, showing active credit accounts dating back to the time of his application and beyond.*

*Our Investigator concluded that Mr O could've afforded the loan repayments if Halifax understood the purpose of the loan was to consolidate his other credit commitments. This may have been so. But I think it's important for me to set out that good industry practice at the time would've looked beyond just whether the loan payments were technically affordable on a strict pounds and pence calculation. And a 'sound and proper credit assessment' ought to have considered any wider circumstances which may have prevented Mr O from sustainably making his loan repayments.*

*I think Halifax would have checked Mr O's income was enough for him to make his monthly repayments and in the absence of the actual information it considered, I have reviewed his bank statements from August 2009 until he took his loan in mid-November 2009. Mr O's salary income varied little across this time, ranging between £1,770 and £1,820. The same cannot be said about the turnover of funds on his account – in August 2009 £2,608 was credited and £2,419 debited, totalling £5,026; in September 2009 £9,298 was credited and £6,454 debited, totalling £15,753; and in October 2009 £8,527 was credited and £13,264 debited, totalling £21,791.*

*So, had Halifax only considered the turnover on Mr O's account and not direct evidence of his salary credits, the monthly fluctuation between August 2009 and October 2009 ought to have been of concern and at the very least, prompted a closer review before agreeing to lend. Mr O has told us about his gambling addiction and had Halifax reviewed his current account activity, it would have seen that in August 2009 he had spent £750 towards gambling, in September 2009 the figure had increased to £4,100 (more than double his salary), and in October it had increased to £10,620 (almost six times his salary). I've seen that during the first half of November 2009 before applying for his loan, Mr O had spent a further £10,470 gambling.*

*Mr O has framed his complaint about irresponsible lending around his gambling addiction, rather than about affordability. Even a cursory examination of Mr O's current account statements shows that he was gambling heavily. Moreover, I think the degree of the gambling fits the broad definition of problem gambling – gambling that was disruptive or damaging to Mr O. I've also seen that during the first half of November before applying for the loan, he had increased the overdraft limit on his Halifax current account and had taken a £3,300 cash advance from a credit card. This information was available to Halifax. I think Halifax ought reasonably to have realised that Mr O was having serious difficulties managing his finances and that he was most likely borrowing because of his gambling. So, it should reasonably have concluded that it was not appropriate to lend to him. I therefore think Mr O's complaint about Loan 1 should be upheld.*

## Loan 2

Mr O applied for his second loan in April 2013. By this time, the Office of Fair Trading had issued its guidance on irresponsible lending and I've considered it when reaching my outcome.

Mr O applied to borrow a loan of £15,000 over three years with a monthly repayment of £486. Halifax again says it hasn't retained any information from Mr O's application. I also find that reasonable given the loan account has been closed for nearly ten years. That said, I don't think the details of Halifax's checks on this occasion is critical to the outcome given the information available about Mr O's circumstances which is shown in his bank statements from the time.

Mr O's application came three months after he paid his final instalment on his first loan in January 2013. So I've reviewed Mr O's bank statements from February 2013 until he applied for his loan mid-April 2013. Having done so, I think his financial position was much improved compared to the one Mr O was in when he applied for his first loan. For example, his salary had increased, averaged at £2,300 per month. I also note that Mr O's spending towards gambling was much reduced and a fraction of his income, not a multiple. Looking at his statements, while Mr O spent shy of £1,000 on gambling in the February 2013 before his loan, he only spent £205 in March 2013 and just £25 in April 2013 (and May 2013 too). So, I think it is fair to say Mr O was in greater control of his gambling at the time of this application.

I have also considered Mr O's credit file from 2017 and I haven't seen that he took out new lines of credit since taking out his loan in 2009 – and he was maintaining his existing credit card accounts. I also note from the statements that the loan moneys were largely used to repay other debts including his overdraft and credit cards. And as Mr O only spent £25 gambling in April 2013 and May 2013, the loan moneys weren't used for that purpose.

All things considered, I think Halifax lent Mr O's second loan responsibly and I don't think his complaint about this loan should be upheld.

#### Loans 3 and 4

I note that Halifax hasn't challenged our Investigator's findings or recommendation to uphold Mr O's complaint about his third and fourth loans. I have considered these loans together given similarities in the circumstances leading up to each application. Both loans were taken out after the regulation of consumer credit activities had passed to the Financial Conduct Authority and I have considered Halifax's obligations under the handbook.

Mr O applied for his third loan a couple of months after he repaid his second loan early, a year into its three-year term. I've seen from Mr O's banks statement from the time the loan drew down that he used the most part of the loan moneys to repay three of his credit cards, with around half going towards his Halifax credit card. These were the same credit cards that he repaid using the moneys from loan 2, which he had taken out 16 months prior. I've also seen from Mr O's bank statements for the months preceding the loan that his application came following a setback in the control of his gambling addiction – in July 2014 he spent £3965 towards gambling (approaching twice his then monthly salary of £2,200) and in August 2014 he spent £895.

Mr O applied for his fourth loan after repaying his third loan for a year of its three-year term. The balance of his third loan stood at £6,836, which is lower than I would expect this far into the term. So, I think Mr O may have been overpaying and/or had made a lump sum payment towards the balance – I can see from his credit file that the balance decreased by an extra £2,500 between December 2014 and January 2015. I have also seen from Mr O's credit file that at the time of this fourth application, the three credit cards he consolidated into loan 3

*had new balances totalling in excess of £11,000. He was also carrying a £12,000 balance on a fourth card.*

*Again, I can see from Mr O's bank statements that this application followed a further setback in the control of his gambling addiction – in August 2015 he spent £4,475 towards gambling and in September 2015, Mr O had spent £15,905 towards gambling until to the day of his application.*

*I think the above pattern of repeat borrowing, early repayment and cycle of consolidating credit card spending ought to have been of concern for Halifax. Although Halifax is unable to demonstrate the checks it made before lending to Mr O, noting the size of the loans, I nevertheless think it ought to have had a thorough understanding of Mr O's financial circumstances. I can't ignore that much of the information was available to Halifax via the accounts he held and his longstanding relationship with the bank. I can't fairly say Mr O attempted to conceal his problem gambling from the lender and I think Halifax should have reacted differently to the information it held. To put it very simply, I cannot agree it is responsible to lend to a person spending more than seven times their take home pay towards gambling in the same month of an application for a loan.'*

#### Responses to provisional decision

Mr O confirmed receipt of the provisional decision and when doing so, he asked whether the redress directions I planned to tell Halifax to follow went far enough? He also pointed out that the salary figure I had quoted for Loan 2 included expenses refund payments from his employment and his basic salary was around £300 less a month. He has asked me to reconsider whether this loan was affordable.

Halifax has not responded to the provisional decision.

#### **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.

I note that Mr O asked that I reconsider whether Loan 2 was affordable given the figure I had considered as his income included expenses refunds from his employer. The short answer is that I do. I say this because the expenses refunded also reflect in Mr O's expenditure and they contra each other to have a neutral effect. But more importantly here, Mr O used the loan funds to repay his around £12,000 towards his credit card and overdraft debts. It is not clear from Mr O's bank statements how much he paid each month towards those commitments but if I were to assume he repaid 3% off the balances, he would have paid £360 a month. The monthly repayment for Loan 2 was £486. So, Mr O would only pay an extra £156 month, which I find more likely than not was affordable for him.

Mr O also asked whether the redress directions (set out in the below) that I planned to tell Halifax to follow went far enough? He points to the other cases he referred to the Financial Ombudsman Service about Halifax which found it had lent to him irresponsibly. While I acknowledge Mr O's concerns, there are limits to my powers. The Financial Ombudsman Service was set up to deal with individual complaints, so it is not for this service to interfere with a business's processes, systems or controls; nor is it for this service to fine or punish a business – these are all considerations for the regulator.

I've carefully considered all Mr O's comments but I'm not persuaded they change the decision I set out in provisional decision. That is, it was unreasonable for Halifax to agree to lend three of the four loans he borrowed, so I am upholding his complaint about Loan 1,

Loan 3, and Loan 4.

### **Putting things right**

When I find that a business has done something wrong, I'd normally direct that business – as far as it's reasonably practicable – to put the complainant in the position they *would be in now* if the mistakes it made hadn't happened.

In this case, that would mean putting Mr O in the position he would now be in if he hadn't been given the loans in question (Loans 1, 3 and 4).

However, this isn't straightforward when the complaint is about unaffordable lending. Mr O was given the loans and he used the money to settle other lending. In these circumstances, I can't undo what's already been done. So, it isn't possible to put Mr O back in the position he would be in if he hadn't been given the loans in the first place.

I must consider another way of putting things right fairly and reasonably given the circumstances of this complaint. Having done so, I think Halifax should:

- a) Remove all interest, fees and charges applied to each loan from the outset. The payments Mr O made should then be deducted from each new starting balance. If the payments Mr O has made to each loan total more than the amounts he was originally lent, then any surplus should be treated as overpayments and refunded to him.
- b) Add 8% simple interest\* calculated on any overpayments made, from the date they were paid by Mr O to the date the complaint is settled.

\*HM Revenue & Customs may require Halifax to deduct tax from this interest. Halifax should give Mr O a certificate showing how much tax it's deducted.

I have reviewed a copy Mr O's credit file. I've not seen adverse information recorded on his credit file by Halifax in respect of the loans in question and, noting the time which has passed since these were all repaid, I don't expect any changes in the reporting of them to be made to the credit reference agencies.

### **My final decision**

For the reasons I've explained, I uphold Mr O's complaint in part and to direct Bank of Scotland plc, trading as Halifax to put things right for him in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 8 April 2024.

Stefan Riedel  
**Ombudsman**