DRN-4752119

The complaint

Mrs L complains that Bank of Scotland plc trading as Halifax was irresponsible in its lending to her. Mrs L is represented by a family member but for ease of reference I have referred to Mrs L throughout this decision.

What happened

Mrs L was provided with a £6,000 loan by Halifax in December 2021. The loan was repayable over 60 months with monthly repayments of around £181. She says that given her age and credit commitments at the time of the loan application, the lending shouldn't have been provided. She says she is now not able to reduce her work hours despite it affecting her health as she cannot afford to maintain her repayments on the loan and other commitments. She also complaint that the interest rate was extortionate. She wants the interest rate reduced, and all excessive repayments refunded.

Halifax issued a final response dated 13 December 2023. It said that before the loan was provided checks were carried out to see if the repayments were affordable. It said it gathered information about Mrs L's income and share of housing costs and used information from the credit reference agencies to estimate monthly repayments of other existing credit commitments. It then used third party data to estimate general living costs. It said that Mrs L passed its checks which was why the loan was provided. Regarding the interest rate it said that its decision to lend and the interest rate charged was based on the credit score given from its internal review and that it had offered the best interest rate it could at that time.

Mrs L wasn't satisfied with Halifax's response and referred her complaint to this service.

Our investigator upheld this complaint. He didn't think that the checks carried out before the lending was provided were proportionate considering the loan term, size and repayments compared to Mrs L's declared income. He said that had further checks been carried out Halifax would likely have realised that once considering Mrs L's costs (including her spend on gambling) compared to her income there was little disposable income for the loan repayments. Therefore, he thought that appropriate checks would have shown the lending to have been irresponsible.

Halifax didn't agree with our investigator's view. It said that Mrs L took out the loan through its online platform and signed the loan terms and conditions which set out the interest rate. It said she didn't make it aware of any financial difficulties at the time and its checks didn't raise any concerns that she was struggling financially.

Halifax also didn't agree that having looked at Mrs L's income and expenses the loan was unaffordable. It said that the checks carried out before the loan was provided were proportionate and there wasn't any requirement for it to consider additional information such as Mrs L's bank statements. However, it said that even if further checks were required it didn't accept these would have shown that Mrs L was in financial difficulty and her statements showed she was receiving a regular income and had disposable income after paying her expenses.

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.

Our general approach to complaints about unaffordable or irresponsible lending – including the key rules, guidance and good industry practice – is set out on our website.

The rules don't set out any specific checks which must be completed to assess creditworthiness. But while it is down to the firm to decide what specific checks it wishes to carry out, these should be reasonable and proportionate to the type and amount of credit being provided, the length of the term, the frequency and amount of the repayments, and the total cost of the credit.

Mrs L applied for the loan online and as part of this process she declared that she was employed with an annual income of £18,000. She was recorded as being a homeowner with a mortgage but didn't provide any information about her expenditure. A credit search was carried out which recorded her monthly payments for credit commitments as £362 and didn't record any adverse information such as defaults, county court judgements or recent arrears. Halifax estimated Mrs L's essential living costs as £371 and after applying a buffer of £50 this gave Mrs L a monthly disposable income of £475.

While the credit check didn't raise any obvious signs that Mrs L was in financial difficulty, given Mrs L's net monthly income compared to her credit commitments and noting the size and term of the loan, I think Halifax should have carried out further checks to ensure it had a full understanding of Mrs L's financial circumstances to assess whether the loan was sustainably affordable over its term. I say this because Mrs L's net monthly income based on a gross annual salary of £18,000 would have been around £1,350 (although I note an amount of £1,500 was recorded for net monthly income elsewhere). Mrs L's existing credit commitments at the time of the loan application were recorded as £362 a month meaning that once including the Halifax loan repayments these would increase to around £543 a month (this is around 40% of a £1,350 monthly net income or around 36% of a £1,500 net monthly income). So, in this case, I think it would have been reasonable for Halifax to have carried out further checks.

While Halifax wasn't required to request copies of Mrs L's bank statements, as I think it should have carried out further checks to get a clear understanding of her financial circumstances, I have looked at the information in her statements for the months leading up to her loan application to understand what Halifax would likely have identified had further checks taken place.

Mrs L's statement show she was receiving a regular income but that this varied. Taking the average over the three months gave a monthly income of around £1,534. However, this average includes a much higher payment in November 2021 (around £2,017) and as Mrs L needed to be able to sustainably afford the repayments each month of the 60-month term I think that a higher buffer should have been included to reflect that some months her income was much lower (around £1,190 in October 2021).
Mrs L's statements don't show any payments for costs such as housing costs / utilities, but she did make transfers to another account from which these payments were made. Additional to these transfers, Mrs L was paying for her existing credit commitments (loan, two credit cards and a communications contract) as well as some general living costs. Taking this all into account resulted in Mrs L having average monthly outgoings of around £1,200. Given the variance in Mrs L's income I think this raises concerns about her ability to sustainably meet the loan repayments over the term (noting her net monthly income was lower than this amount in certain months). Additional to this, Mrs L's statements show that

she was making frequent payments to gambling sites. I note the comment Halifax has made about Mrs L receiving winnings from her gambling but I do not find it reasonable to include this as income and I think the amounts she was spending raises further concerns that she wouldn't have enough to sustainably afford the loan repayments as well as further concerns about how responsible the lending was.

Taking everything into account, I think that Halifax should have carried out further checks before providing the loan to Mrs L. And, having considered what I think it would have more likely than not identified through those checks, I think this would have raised concerns that providing this loan to Mrs L wasn't responsible and that the payments weren't sustainably affordable.

Putting things right

Mrs L should only have to repay the money she borrowed and had the use of. So I think Halifax should refund all of the interest and charges Mrs L has paid on this loan.

Halifax should add up the total amount of money Mrs L received as a result of having been given the loan. The repayments Mrs L made should be deducted from this amount.

a) If this results in Mrs L having paid more than she received, any overpayments should be refunded along with 8% simple interest (calculated from the date the overpayments were made until the date of settlement).*

b) If any capital balance remains outstanding, then Halifax should arrange an affordable and suitable payment plan with Mrs L. Once Mrs L has cleared the balance, any adverse information in relation to this loan should be removed from her credit file.

*HM Revenue & Customs requires Halifax to take off tax from this interest. Halifax must give Mrs L a certificate showing how much tax it's taken off if she asks for one.

My final decision

My final decision is that Bank of Scotland plc trading as Halifax should take the actions set out above in resolution of this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs L to accept or reject my decision before 6 June 2024.

Jane Archer
Ombudsman