DRN-5199833

The complaint

Mr S has complained that Bank of Scotland plc trading as Halifax ("Halifax") gave him loans he couldn't afford to repay.

What happened

Halifax advanced two loans to Mr S and a summary of his borrowing can be found below.

loan number	loan amount	total to repay	APR	agreement date	repayment date	number of monthly instalments	monthly repayment per loan
1	£19,000.00	£32,080.32	20.90%	28/03/2020	22/03/2023	72	£445.56
2	£13,500.00	£22,801.80	25.50%	07/01/2022	outstanding	60	£380.03

When these loans overlapped Mr S's commitment to Halifax increased to £825.59 per month. The final loan is outstanding with the loan entering into arrears in June 2023 before being passed to Halifax's recoveries department in March 2024.

Two final response letters have been issued in relation to these loans, but both times Halifax said that it hadn't made an error because it had carried out checks which showed the loans to be affordable. Unhappy with this response, Mr S referred the complaint to the Financial Ombudsman.

Mr S has also raised concerns about his overdraft but that is subject to a separate complaint and so I won't be dealing with it here. Instead, this decision will focus solely on Halifax's decision to lend the two loans listed at the start of the decision.

An investigator considered Mr S's complaint and he didn't uphold it. Mr S didn't agree with the investigator's findings and as no agreement could be reached the complaint was passed to me to decide. I then issued a provisional decision where I explained that I was upholding Mr S's complaint about loan 2 only.

Both parties were asked to provide any further submissions as soon as possible, but by no later than 6 December 2024.

In response to the provisional decision Mr S made the following comments;

- The adverse information should be removed about loan 2 and Halifax should also recover the debt from the third-party collection agency.
- Mr S provided some context as to what led him in to his difficulties, which was taking out loans to clear his rolling credit in order to provide a buffer should he have been furloughed during the COVID-19 pandemic.
- Mr S says at the time, the Halifax loan would've been insufficient to clear his outstanding debts.
- Mr S was only able to repay his first loan by taking out further credit.

Halifax said it agreed with the provisional decision and would settle the complaint in the way I suggested.

A copy of the provisional findings follows this in smaller font and forms part of this final decision.

What I said in my provisional decision:

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/irresponsible lending - including all of the relevant rules, guidance and good industry practice - on our website. And I've used this approach to help me decide Mr S's complaint. Having carefully considered everything I've decided to uphold Mr S's complaint in part. I'll explain why in a little more detail.

Halifax needed to make sure it didn't lend irresponsibly. In practice, what this means it needed to carry out proportionate checks to be able to understand whether Mr S could afford to repay any credit it provided.

Our website sets out what we typically think about when deciding whether a lender's checks were proportionate. Generally, we think it's reasonable for checks to be less thorough – in terms of how much information is gathered and what is done to verify it – in the early stages of a lending relationship.

But we might think more needed to do be done if, for example, a borrower's income was low or the amount lent was high. And the longer the lending relationship goes on, the greater the risk of it becoming unsustainable and the borrower experiencing financial difficulty. So, we'd expect a firm to be able to show that it didn't facilitate a customer's loans irresponsibly.

I've carefully considered all of the arguments, evidence and information provided in this context and what this all means for Mr S's complaint.

Loan 1

Mr S, as part of application declared he received £3,207 per month. It isn't clear what if any further checks were conducted into Mr S's income, at the time.

Halifax has provided a screen shot of Mr S's application data and under "Other Finance" he didn't declare any other sources of income, nor savings. But he did say he had £150 per month of existing credit commitments and £150 per month to cover a mortgage or rent.

Halifax has explained that the affordability assessment was based on the information Mr S provided about his income. It then took account what he said about housing and credit commitments, but it also cross referenced the information with a credit reference agency and then is used its own internal model to determine what his living costs may have been – beyond what he declared.

For loan one, it relied on the housing costs of £150, used monthly credit commitments of £229 and essential living costs of £434. Based on the results of its checks Halifax, concluded that Mr S could afford the payments he was committed to making.

Halifax, as part of its affordability assessment carried out a credit search and it has provided a summary of the results it received from the credit reference agency. And Halifax has explained that it doesn't receive the data in the same way a customer can review their own credit report. For example, it doesn't receive a list of other creditors.

The summary provided to me wouldn't solely have given Halifax any cause for concern. The *results showed no defaults or County Court Judgments (CCJ) and all the active accounts must have been up to date as there were no adverse payment markers were recorded.*

Halifax says it was also told that in the previous six months that there had only been 1 credit search carried out. This wouldn't have suggested to Halifax that Mr S was either overindebted or was taking out credit in order to pay other revolving credit.

Halifax has told us that it thought about how Mr S had used his two current accounts that he had with it – so I've reviewed the statements provided by Halifax to see whether there was anything it needed to have been concerned about.

Account ending 0155 had an overdraft of £750 but I can see from the start of March 2020 the account had breached the overdraft limit – indeed, by the end of the month the account was around £625 overdrawn. However, this account wasn't Mr S's main account and there are minimal living costs contained with it. I don't think that the overdraft limit along would've been enough to have prompted further checks.

Account ending 4018 was hardly used at all – the only regular payment was to a credit reference agency subscription service. This was also the account where the loan funds were deposited. Again, there was an overdraft on the account, and I can see that in the weeks before the loan being approved Mr S was close to his limit.

However, given Halifax would've concluded that Mr S wasn't using his Halifax accounts as his main current account and apart from a credit search hadn't really an idea as to whether Mr S's income was accurate or what his living costs were, I do think, like the investigator that further checks needed to have been made.

That doesn't mean that further checks would lead to it declining the application. Afterall, if further checks were conducted which demonstrated Mr S could afford the monthly repayment than Halifax wouldn't have made an error in approving the loan even if at the time it hadn't done enough.

I've therefore gone on to consider what further checks are likely to have shown Halifax if those checks were conducted at the time. Mr S had accounts with other banks and he's provided copies of these other statements including with a bank within the same banking group as Halifax. In the absence of anything else from Halifax relating to what its checks indicated, I think it's perfectly fair, reasonable, and proportionate to place considerable weight on information it could've gathered at the time from Mr S.

And further checks would've given Halifax an indication of Mr S's income as well as his actual living costs. To be clear, I do think for a first loan that there wasn't a need for a forensic review of the statements, but what Halifax needed to do was consider whether there was anything that stood out that may have led it to conclude the loan was either unaffordable or unsustainable for Mr S.

I can see that Mr S was paid weekly and these amounts at times did vary but given what I can see in the months before the loan was approved, I think the amount Halifax used for its affordability assessment was about right and fair.

The bank statements Mr S has provided, show that the day (or the day after) Mr S received his salary there is a transfer to another person and this amount is £550 – this is made every week.

Mr S has explained the transfer was for his share of the living costs including covering the mortgage and all other household costs. This is consistent with the other information contained within the bank statements because there are no signs living costs that you'd expect to see for example, council tax, utilities or insurances. And so I think if Halifax had taken a closer look at Mr S's finances it would've seen that Mr S's share of the living costs was around £2,200 per month.

There are payments to credit cards and a mobile phone but given these would've come under the credit commitments that Halifax was told about from the credit reference agency these had already been counted at £229 per month. This left sufficient amount in disposable income to afford the loan.

So, although Halifax hadn't carried out proportionate checks before it lent to Mr S had Halifax taken steps to check Mr S's income and outgoings it still would've thought the loan was just about affordable for Mr S.

I am therefore not upholding Mr S's complaint about loan 1.

Loan 2

Halifax carried out the same sort of checks for this loan as it had done so before it advanced loan 1. This time Mr S declared he had a monthly income of £3,467.

For Mr S's monthly outgoings Halifax used the same sort of calculation that it had done for the first loan. Mr S declared £150 per month for housing, it used an internal model to work out other living cost of £455, it used credit file data which suggested that this time Mr S's monthly credit commitments were £1,146 and then to this it added a further buffer of £50.

Halifax says it also would've considered his two bank accounts which he held with it at the time. Account ending 0155 this time had a larger overdraft limit, but in the months before the loan Mr S wasn't always making use of the full limit – again this account had minimal other living costs apart from a payment to a credit card company.

Account ending 4018 was still significantly overdrawn but as before it wasn't being used as Mr S's main account and so there are minimal living costs.

The credit check results, which have the same sort of caveats showed that Mr S didn't have any defaults, CCJS or delinquent accounts. As with loan 1, the active accounts Mr S had appeared to be managed well. Overall, based on Halifax's checks the loan would've appeared affordable.

However, I do have some concerns with the checks Halifax carried out. Firstly, the credit check results showed that Mr S's monthly credit commitments had jumped significantly, in the period of time between loans 1 and 2. Although Halifax may not have known exactly what accounts had been taken, the increase in monthly payments do suggest that Mr S's overall indebtedness was significantly greater than it had been only two years before. Halifax was also on notice, before this loan granted already paying close to a third of his income on servicing credit commitments, before any other costs were considered.

Secondly, loan 1 was still running, while the statement of account shows that loan had been making his payments, Mr S was nonetheless returning for a further loan, while still having a significant balance owing to Halifax on loan 1 and was going to after the approval of loan 2, paying Halifax nearly £826 per month.

Halifax was also on notice that Mr S had other debts because when Mr S applied for this loan – he said he would use it to clear his debts with another bank. So, I do think, that before this loan was granted Halifax needed to at the very least check Mr S's income and get to the bottom of his actual living costs – rather than solely relying on its calculations. I say this bearing in mind Mr S was further committing himself to a loan for a further five years and already having a loan outstanding.

As with loan 1, just because I think Halifax needed to conduct further checks that doesn't mean those further checks would lead to it declining the application and I say this because Halifax may have carried out further checks which showed the loan to be affordable. I've therefore gone on to consider what further checks are likely to have shown Halifax if those checks were conducted at the time.

I've used the copy bank statements Mr S has provided from the same account providers that *he had provided information for loan 1 and I think it's fair, reasonable and entirely proportionate to consider these in order to establish what Halifax may have seen had it made better checks.*

As before the income recorded by Halifax appears to be broadly accurate because he continued to be employer by the same company and so he still received similar his wages on a weekly basis. Although, he was earning more per week then when loan 1 was granted.

In addition, Mr S was still paying his partner £550 per week – albeit in the month before the loan was granted, he had switched the account he was paying her from to his Halifax account ending 0155. But as I'm satisfied this was for Mr S's living costs, then Mr S had monthly payments due of at least £2,200 to that we added together the cost of the existing credit commitments which Halifax knew to be over £1,100 per month – and to that a further £380 needs to be added to cover the cost of the repayment of this loan.

I accept that Mr S told Halifax as part of his application that this loan was going towards repaying debts with another bank. But nonetheless, given the monthly living costs, his income, and his existing credit commitments I still think a further check would've shown the loan to be unaffordable.

Overall, given his income, his existing commitment towards bills and what Halifax knew about his other commitments the loan was unaffordable and so shouldn't have been granted.

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've taken on board what Mr S says about why he was taking out loans to clear his revolving credit. This has been useful to know, but in the circumstances it doesn't change the outcome I've reached and I've explained why below.

The credit check results Halifax received for loan 1 didn't suggest Mr S was over indebted or had been seeking out and being granted new credit on a regular basis. And even if Halifax had taken a closer look at Mr S's bank statements – which contained his living costs it would've likely concluded that loan 1 was affordable for him. I've not seen enough in the evidence provided to say, that Halifax was wrong to have provided loan 1.

In terms of loan 2, neither Halifax nor Mr S disagree with the reasoning as to why the complaint should be upheld. However, Mr S has queried whether the adverse information should be removed.

Halifax will need to ensure that the redress is carried out below, and if the account has been sold to a third party then it will need to decide whether if it wishes to bring the debt back and then work with Mr S to repay what is owed. This is Halifax's choice and isn't something that I would look to interfere with primarily because it isn't always certain that a debt can be repurchased once sold. But what Halifax will need to do is ensure that Mr S doesn't repay more than the capital that be borrowed for loan 2.

I also understand why Mr S wants the adverse information removed from his credit file in relation to loan 2 now. I've thought about that carefully, but I have to consider that the current position is that Mr S has been advanced funds and had the benefit of them but hasn't been able to repay the capital that he borrowed.

In cases where we've upheld a loan, we can, as far as practically possible, put a consumer back into the position they would've been had the loan not been advanced. But that isn't always possible, after all the funds have been lent and used.

In the circumstances of this complaint, an outstanding balance is still likely to be owed, even after the removal of the interest and in those circumstances, it isn't fair for Halifax to remove the adverse information from Mr S's credit file unless, the refund due clears the outstanding balance that is owed.

I say this because, an outstanding balance will still remain, and if adverse is removed now then it possible that further adverse information could be reported later – such as if any repayment plan fails – which could further impact Mr S for a further 6 years.

As I've said above it's not always possible to put a consumer in the position, they would've been in had the credit not been provided, it's about doing what we can now, given the circumstances of the complaint. As such, I see no reason to depart from the redress that I've outlined in the provisional decision and what I've set out below.

So, I've reached the same conclusions as I reached before, about this complaint. I still think Halifax needed to have carried out further checks before it lent loan 2, and had it done so it would've likely discovered the loan was unaffordable.

I've also considered whether the relationship might have been unfair under s.140A of the Consumer Credit Act 1974. However, I'm satisfied the redress I have directed below results in fair compensation for Mr S in the circumstances of his complaint. I'm satisfied, based on what I've seen, that no additional award would be appropriate in this case.

Putting things right

As I don't think loan 2 should've been granted it therefore follows that Mr S shouldn't have been charged any interest or charges but as he's received the funds and spent them its only fair and reasonable that he repays the capital.

If Halifax has sold the debt then it can if it wishes buy the debt back, if that isn't possible, then it will need to work with the new owner to achieve the results set out below.

Having thought about everything, Halifax should put things right for Mr S by:

- remove all interest, fees and charges applied to Mr S's second loan from the outset. The payments Mr S made, whether to Halifax or to a third party should be deducted from the new starting balance – the £13,500.00 originally lent. If Mr S has already paid Halifax more than £13,500.00 then it should treat any extra as overpayments. And any overpayments should be refunded to Mr S
- adding interest at 8% per year simple on any overpayments, if any, from the date they were made by Mr S to the date of settlement†
- If however, an outstanding balance remains due, if appropriate Halifax and Mr S should try and come to a mutually agreeable repayment plan. I would remind Halifax of its obligation to treat Mr S fairly and with forbearance
- if no outstanding balance remains after all adjustments have been made, all adverse information Halifax recorded about this loan should be removed from Mr S's credit file.

† HM Revenue & Customs requires Halifax to take off tax from this interest. Halifax must give Mr S a certificate showing how much tax it has taken off if he asks for one.

My final decision

For the reasons I've explained above and in the provisional decision, I'm upholding Mr S's complaint in part.

Bank of Scotland plc trading as Halifax should put things right for Mr S as directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 13 January 2025.

Robert Walker
Ombudsman