

The complaint

Miss L complains that Bank of Scotland plc agreed to a number of overdrafts on her account (in quick succession), which were unaffordable for her

What happened

Miss L applied for, and Bank of Scotland agreed to, the following overdrafts:

Overdraft	Date	Old Limit	Increase	New Limit
1	29/11/19	£0	£250	£250
2	29/11/19	£250	£250	£500
3	02/12/19	£500	£250	£750
4	06/12/19	£750	£500	£1,250
5	14/12/19	£1,250	£250	£1,500

In March 2022, Bank of Scotland took the decision to close Miss L's account and to transfer the overdraft debt of £1,557.98 to a third party.

In September 2022, Miss L complained to Bank of Scotland that it shouldn't have agreed to any of her overdraft requests on the grounds of affordability.

In the same month, Bank of Scotland issued Miss L with a final response letter ("FRL"). Under cover of this FRL Bank of Scotland said it accepts it shouldn't have agreed to overdrafts 4 and 5 (on the grounds of affordability) and for this it would:

- Refund all interest and charges debited to the account since 6 December 2019.
- Pay £100 in compensation.
- Backdate the registered account default to 6 December 2019.

In February 2023, unhappy with Bank of Scotland's FRL, Miss L complained to the Financial Ombudsman Service.

Miss L's complaint was considered by one of our investigators. They came to the view that Bank of Scotland shouldn't have agreed to any of the overdrafts Miss L applied for. The investigator then went on to explain what Bank of Scotland should have to do to compensate Miss L.

Bank of Scotland didn't agree with the investigator's view, so Miss L's complaint has been passed to me for review and decision.

I issued a provisional decision saying I did not think that Bank of Scotland needed to do anything further in relation to this complaint. Miss L responded to say that:

- She disagreed with my provisional decision because it was factually incorrect, and she did not believe it factored in all elements of her situation.

I asked Miss L to clarify what she felt was factually incorrect and what specific elements of her situation had not been factored in.

Miss L said that:

- Bank of Scotland had not paid her compensation in relation to irresponsible lending but because her account had not been closed for over a year after Bank of Scotland agreed to close it.
- She made clear to Bank of Scotland that she did not accept any compensation in relation to irresponsible lending because she wanted to complain about this to the Financial Ombudsman Service.
- The distress caused by the debt outweighed any financial gain from being able to use the borrowed money.
- Her income, disability, other issues, and banking history were not factored in by Bank of Scotland when agreeing to increase her overdraft within a very short period, as this ought to have made it clear that she was unlikely to be able to repay any borrowing.
- She was vulnerable at the time and in light of this Bank of Scotland did not treat her with appropriate levels of care.

I asked Miss L to confirm when she told Bank of Scotland of her disability, other issues and vulnerability, or to explain why she felt Bank of Scotland ought to have been aware of it at the time of agreeing the overdraft. Miss L responded to say that her only income was from benefits and this was a vulnerability on its own. She also objected to me making the final decision in this complaint, given that she disagreed with my provisional decision.

About our process

An ombudsman will be assigned to a complaint to make a final decision. Where their decision, or the reasons for it, are significantly different to what our investigator said, the ombudsman will issue a provisional decision. This gives the consumer and financial business an opportunity to respond before the same ombudsman makes a final decision. The ombudsman will then take any further information into account when making their final decision.

A different ombudsman would not be assigned to a complaint if a consumer or financial business disagrees with their provisional decision. If that were the case, no final decision would ever be made, because either the consumer or financial business will be in disagreement with the ombudsman's decision in most cases.

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.

Bank of Scotland will be familiar with all the rules, regulations and good industry practice we consider when looking at a complaint concerning 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.

I've taken into account Miss L's comments in response to my provisional decision. But my final decision is in line with my provisional decision for the following reasons:

- Bank of Scotland's final response letter in relation to Miss L's irresponsible lending complaint confirmed that it was making the following payments to Miss L's account:
 - £100 for the upset caused by the delay in account closure *and* that it should not have agreed to an overdraft on 6 December 2019.
 - £115.20 to refund all the overdraft and interest charges since 6 December 2019.
- I'm not persuaded that Bank of Scotland was or ought to have been aware of Miss L's disability and other issues at the time it agreed the overdraft (although it could see from her account history where her income was coming from). So, I would not expect it to do anything other than what is expected of a lender when agreeing to lend.
- Miss L did borrow and use the money, so I think it is fair and reasonable that she repay the amount borrowed.

The remainder of my findings largely match what I said in my provisional decision.

The investigator came to the view that Bank of Scotland shouldn't have agreed to any of the overdrafts Miss L applied for. I don't necessarily agree with our investigator, although I am not saying Bank of Scotland did nothing wrong. I am simply making no finding on whether Bank of Scotland should have agreed the overdraft.

I say this because, even if I was to agree with the investigator that the overdraft should not have been provided, I'm not persuaded that Bank of Scotland need do anything further to compensate Miss L. I say this for the following reasons.

- Miss L has had the benefit of the money she borrowed (on overdraft) and it's only fair that she repay this 'capital' sum.
- Bank of Scotland has already refunded to Miss L's account all interest and charges that were debited to it since 29 November 2019. Indeed, it's my understanding that Bank of Scotland has refunded more in interest and charges to Miss L's account than was debited to it.
- Payment of £100 is as much as, if not more than, I would have awarded Miss L for any distress and inconvenience Bank of Scotland's management and administration of her account caused her (including the delay in closing the account and the effect of lending to her irresponsibly).
- Bank of Scotland has backdated the account default further than I would have directed it to.

I appreciate Miss L will be disappointed by my decision. But, taking everything into account, I'm satisfied that Bank of Scotland need do nothing more to compensate Miss L for agreeing to her five overdraft applications and for its management and administration of her account.

My final decision

For the reasons I've explained, I've decided that Bank of Scotland does not need to take any further action in relation to this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss L to accept or reject my decision before 8 March 2024.

Phillip Lai-Fang
Ombudsman