

Complaint

Mr B has complained about the overdraft charges Bank of Scotland plc (“BOS”) applied to his current account. He’s said the charges were unfair and they are keeping him with in an overdrawn balance.

Background

Mr B’s complaint was looked at by one of our investigators. She didn’t think that BOS had done anything wrong and so didn’t uphold the complaint. Mr B disagreed with the investigator and asked for an ombudsman’s decision.

My findings

I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

Having carefully considered everything provided, I’m not upholding Mr B’s complaint. I’ll explain why in a little more detail.

Before I go any further, I want to be clear in saying that I haven’t considered whether the various amounts BOS charged over the years were fair and reasonable, or proportionate in comparison to the costs of the service provided. Ultimately how much a bank charges for services is a commercial decision. And it isn’t something for me to get involved with.

That said, while I’m not looking at BOS’ charging structure per se, it won’t have acted fairly and reasonably towards Mr B if it applied these interest, fees and charges to Mr B’s account in circumstances where it was aware, or it ought fairly and reasonably to have been aware Mr B was experiencing financial difficulty. So I’ve considered whether there were instances where BOS didn’t treat Mr B fairly and reasonably.

In other words, I’ve considered whether there were periods where BOS continued charging Mr B even though it ought to have instead stepped in and taken corrective measures on the overdraft as it knew he was in financial difficulty or it ought to have realised this was the case. I’ve looked through Mr B’s account statements throughout the period concerned. And I can’t see that BOS ought to have taken corrective measures in relation to Mr B’s overdraft during the period we’ve looked at.

It’s fair to say that Mr B used his overdraft. And might say this in itself was an indication BOS ought to have taken action. But I also think it’s important to look at Mr B’s incomings and outgoings as well as any overdrawn balance and whether it was possible for him to have stopped using his overdraft, based on this. After all if he was locked into paying charges because there was no prospect of him exiting his overdraft then his facility would have been unsustainable for him.

However, while I’m not seeking to make retrospective value judgements over Mr B expenditure, nonetheless there are significant amounts of non-committed, non-contractual and discretionary transactions as well as transfers going from Mr B’s account. Indeed, it’s

fair to say a significant proportion of Mr B's expenditure was discretionary. This was well in excess of the overdraft charges that he was incurring and the credits going into his account suggested he could have cleared his overdraft within a reasonable period of time had he wished to do so.

I don't think that Mr B using his overdraft, in circumstances where he was permitted to do so and where there were no other obvious signs of financial stress, means that it BOS ought reasonably to have taken unilateral action. This is particularly the case when considering the implications BOS taking such action would have had on Mr B.

I accept neither of these things in themselves (or taken together) mean that Mr B wasn't experiencing difficulty. But there isn't anything in these statements in themselves which ought to have alerted BOS to this.

So overall and having considered everything, I don't think that it was unreasonable for BOS to have proceeded adding the charges that it did – especially bearing in mind the implications of BOS taking corrective action in these circumstances would have been disproportionate.

For these reasons, I don't think BOS lent irresponsibly to Mr B or otherwise treated him unfairly in relation to this matter. I haven't seen anything to suggest that Section 140A Consumer Credit Act 1974 would, given the facts of this complaint, lead to a different outcome here. So I'm not upholding this complaint.

I appreciate this is likely to be very disappointing for Mr B. But I hope he'll understand the reasons for my decision and that he'll at least feel his concerns have been listened to.

Although I'm not upholding Mr B's complaint, I would remind BOS of its obligation to exercise forbearance and due consideration given what Mr B has said during the course of this complaint and it goes on to be the case that he experiences difficulty clearing what he owes going forward.

My final decision

For the reasons I've explained, I'm not upholding Mr B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 5 August 2024.

Jeshen Narayanan
Ombudsman