

The complaint

Mr H, who is represented by a third party, complains that Bank of Scotland plc ("BoS") acted irresponsibly when it provided him with an overdraft facility. He says the overdraft became unaffordable and has asked for the interest and charges incurred on the overdraft to be refunded.

What happened

In July 2019 Mr H was accepted for an initial overdraft on his current account of £200. Between July and November 2019 there followed eight overdraft increases, with the amount of overdraft credit reaching £1,300.

BoS didn't uphold Mr H's complaint. It said, having reviewed the account since the overdraft was first granted, the checks it carried out before granting the initial overdraft and the increases that followed were enough to show the overdraft credit was provided responsibly. BoS also said that Mr H was receiving a regular income but was choosing to use this for non-essential spending. If he had reduced such spending, BoS said it wouldn't have been necessary for him to use his overdraft so often and he could also have paid it off in a reasonable period of time.

One of our investigators reviewed what Mr H and BoS had told us. And she thought BoS had acted unfairly in charging overdraft fees from July 2020 – one year on from the overdraft first being granted. This was because Mr H hadn't been in a position to maintain a credit on his account for an extended period of time. So, had BoS properly monitored what was happening it would have seen that Mr H wasn't using his overdraft facility as intended and so it shouldn't have continued offering it to him on the same terms.

BoS disagreed with our investigator. Essentially, it said it was Mr H's choice as to whether he continued using his overdraft or reduced his reliance on it by cutting down on his non-essential spending. In a further response, BoS added that it was open to its customers to use an overdraft for other than short term use. Whilst it noted Mr H's repeat use of his overdraft, BoS didn't consider there to be signs of financial difficulties, and Mr H hadn't contacted BoS for help or support. BoS also suggested that had it taken action by withdrawing the overdraft facility, this may have resulted in pushing Mr H into real financial hardship because it would affect his ability to pay for essential household costs.

However, BoS decided to make an offer to settle the complaint, having seen that Mr H was using his account for a substantial level of gambling transactions in 2023. Mr H hasn't accepted that offer.

Since our investigator has said that the points BoS has made do not change the outcome she'd reached, the complaint has therefore been passed to me for an ombudsman's 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.

We've explained how we handle complaints about unaffordable and irresponsible lending on our website. And I've used this approach to help me decide this complaint.

Having done so, I will be upholding this complaint on a similar basis to our investigator. I will explain why.

BoS needed to make sure it didn't lend irresponsibly. In practice, what this means is BoS needed to carry out checks that were reasonable and appropriate in order to understand whether Mr H could afford to sustainably repay the overdraft credit it provided.

BoS carried out a series of checks before approving Mr H's overdraft. This included credit checks, information provided by Mr H and BoS's own affordability check.

Going forwards, I've looked at what happened with the account and have reviewed all of the available bank statements. I've seen that Mr H started using his new overdraft facility soon after it was granted and had used almost the full £250 available to him by the end of the month. His monthly income remained broadly consistent at around £1,200 to £1,500. Mr H used the credit made available by each overdraft increase almost immediately. By 11 November 2019 the overdraft had reached £1,300 with the final limit increase with Mr H using this to its near-fullest extent almost immediately. His overdraft usage remained at or close to the limit in the months that followed. Mr H was also regularly breaching the limit, dipping into an unarranged overdraft level.

I've also seen that Mr H took out an unsecured loan in September 2019 that went into default in March 2020 with a balance of £165. Another loan, which appears to be a mobile phone account repayment, went into default in August 2019 with a £23 default balance. Although these are relatively modest sums for defaults, it suggests that Mr H was already getting into some difficulty with borrowing elsewhere during the first year of overdraft use.

BoS say that it was up to Mr H to decide how he used his overdraft credit. It also says that it was open to him to use it longer term rather than as a short term or emergency facility. I don't agree. I've seen that Mr H was managing his account reasonably well before the overdraft was given to him. But as he increased his overdraft limit, he was increasingly reliant on it and was unable to reduce it to any significant extent, despite continuing to receive broadly the same amount of income. I agree with our investigator that this level of overdraft usage is something I would have expected BoS to pick up on as a concern when it carried out its annual review of the account, if not sooner.

BoS says it started sending Mr H letters about his overdraft in October 2020. I've seen copies of letters sent in September 2021, June 2022 and June 2023. I think BoS still had an obligation to take positive action to ensure Mr H wasn't using his overdraft in such a way that he was becoming dependent on it. As things stood, by one year after the opening it could be seen that, having received multiple increases to his overdraft over a five month period, he wasn't using the overdraft sustainably and was maintaining a high level of indebtedness relative to his income. It is then that BoS needed to step in to interact directly with Mr H and discuss options with the aim of reducing his reliance on his overdraft.

I therefore agree with our investigator that the annual review that took place represents a reasonable point by which I would have expected BoS to take action to ensure that Mr H became less reliant on the level of overdraft that was available to him.

Having seen what BoS said in response to our investigator's findings, I would like to add that I don't accept that Mr H's spending on items considered by BoS to be non-essential changes

the position. I also think it was reasonable for him to make regular cash withdrawals as needed. I think BoS had the same duty, having noted Mr H's heavy reliance on his overdraft, to monitor the account and take action to support him and change his pattern of use, once it could be seen that he was increasing his indebtedness in an unsustainable way. I think that obligation goes beyond writing to Mr H to let him know how much his overdraft was costing him.

It follows that I think after a year of having the overdraft, by July 2020, BoS was in a position to have identified Mr H's pattern of overdraft use when carrying out a review. By then BoS ought to have realised that the overdraft was not being used on a short-term, limited basis.

I therefore don't consider that BoS acted fairly in allowing Mr H to continue to operate his overdraft in this way from July 2020 onwards. It follows that I'm in agreement with our investigator that BoS didn't treat Mr H fairly.

I've considered whether the relationship between Mr H and BoS might have been unfair under S.140A of the Consumer Credit Act 1974. However, I'm satisfied the redress that I have directed should be carried out for Mr H results in fair compensation for him 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 – what BoS needs to do

BoS therefore needs to do the following:

- Re-work the overdraft balance so that all interest, fees and charges applied to it from 12 July 2020 onwards are removed.

AND

- If an outstanding balance remains on the overdraft once these adjustments have been made BoS should contact Mr H to arrange a suitable repayment plan for this.

OR

- If the effect of removing all interest, fees and charges results in there no longer being an outstanding balance, then any extra should be treated as overpayments and returned to Mr H, along with 8% simple interest on the overpayments from the date they were made (if they were) until the date of settlement. If no outstanding balance remains after all adjustments have been made, then BoS should remove any adverse information from his credit file. †

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

My final decision

For the reasons I've given, I am upholding this complaint and require Bank of Scotland plc to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 26 December 2024.

Michael Goldberg
Ombudsman