

The complaint

Mr M has complained that Bank of Scotland plc ("BOS") trading as Halifax continued charging him excessive amounts for his overdraft when he was in financial difficulty.

What happened

Mr M has complained about unaffordable lending relating to overdraft increases. He says the overdraft charges caused him financial difficulty. BOS didn't uphold the complaint. And as Mr M was dissatisfied they referred the complaint to our service.

Mr M's complaint was considered by one of our adjudicators. She thought that BOS ought to have realised that Mr M was experiencing financial difficulty by March 2017 and so shouldn't have added any more interest, fees and charges from this point onwards. BOS didn't respond so the case was passed to an ombudsman.

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.

BOS will be familiar with all the rules, regulations and good industry practice we consider when looking at whether a bank treated a customer fairly and reasonably when applying overdraft charges. So I don't consider it necessary to set all of this out in this decision.

Having carefully considered everything provided, I'm intending to find that BOS acted unfairly when it continued charging overdraft interest and associated fees after it increased Mr M's overdraft in March 2017. By this point, it ought to have been clear that Mr M was in no position to sustainably repay what he owed within a reasonable period of time.

BOS ought to have realised that Mr M's use of his overdraft was unsustainable. Mr M's statements show significant gambling and that he was in a cycle of repeated other high-cost borrowing. In these circumstances, BOS ought to have realised that Mr M was at a significant risk of being unable to repay what they already owed. So BOS should have stopped providing the overdraft on the same terms and treated Mr M with forbearance rather than charge even more interest, fees and charges on the overdraft.

Mr M ended up paying additional interest, fees and charges on their overdraft and this ended up exacerbating difficulties he already had in trying to clear it. So I think that BOS didn't treat Mr M fairly and they lost out because of what BOS did wrong. And this means that it should put things right.

Putting things right

Having thought about everything, I think that it would be fair and reasonable in all the circumstances of Mr M's complaint for BOS to put things right by:

- Reworking Mr M's current overdraft balance so that all interest, fees and charges applied to it after the limit increases from March 2017 onwards are removed. This means interest can only be charged on the first £500 of any overdrawn balance.

AND

- If an outstanding balance remains on the overdraft once these adjustments have been made BOS should contact Mr M to arrange a suitable repayment plan for this. If it considers it appropriate to record negative information on Mr M's credit file, it should reflect what would have been recorded had it started the process of taking corrective action on the overdraft in March 2017.

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 M 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 Mr M's credit file.

† HM Revenue & Customs requires BOS to take off tax from this interest. BOS must give Mr M a certificate showing how much tax it has taken off if they ask for one.

My final decision

For the reasons I've explained, I'm upholding Mr M's complaint. Bank of Scotland plc should put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 6 October 2021.

Caroline Davies
Ombudsman