

## **The complaint**

Mr L, through his representative (a family member) complains that Bank of Scotland plc (BOS) has lent to him irresponsibly.

Mr L has asked that BOS provides a full refund of all overdraft fees, charges & interest incurred over the period.

Mr L says that the BOS complaint procedure took too long and the delay was detrimental to him.

Mr L has asked for compensation to cover distress and inconvenience caused by BOS going back to 2015.

## **What happened**

Mr L had a bank account with BOS. There were periods when Mr L ran up unarranged overdraft fees on that account. And there were periods when Mr L applied for and was granted an overdraft and/or a limit increase which were approved by BOS. Mr L says this was wrong.

BOS issued Mr L's representative with its final response letter (FRL) in June 2020. BOS did apologise for the delay in relation to the complaint handling and apologised for the way he had been treated during a call in or around January 2020. For both incidents, BOS credited Mr L's bank account with £200. Mr L's representative has said that Mr L does not accept that. I come back to this later in the decision.

In that FRL, BOS explained that unarranged overdraft costs were a different category to that of arranged overdrafts and so it dealt with them separately. In relation to the unarranged overdraft costs it did not uphold Mr L's complaint.

During the times that Mr L did have an arranged overdraft facility, intermittently from December 2017 to January 2020, BOS was satisfied that it had not made a mistake. BOS said it had responsibly approved the overdraft facilities and limit increases when applied for. And BOS said it had applied the fees and charges correctly.

Mr L's representative was not content and wrote to Lloyds Banking Group Plc Group Chief Executive at the time and Mr L received a second FRL dated 9 July 2020. The BOS complaints manager replied on behalf of the Lloyds Banking Group CE. That FRL made no alterations to its initial view of the complaint points and so there was no change to the outcome for Mr L.

One of our adjudicators looked at the complaint and thought that BOS had acted unfairly when it applied an overdraft to Mr L's account in December 2017. Our adjudicator thought that BOS needed to put things right for Mr L from December 2017. BOS agreed with our adjudicator's view and sent calculations to show the sums for the redress.

Mr L's representative replied to accept that part relating to refunds from December 2017. But

Mr L's representative's opinion was that the refund should be back-dated to around February 2016.

Our adjudicator issued a second view to address some of the points Mr L's representative had raised. In that second view our adjudicator explained further about the periods when Mr L was using the account for transactions when the account did not have enough money to cover those transaction sums. And with no overdraft in place, our adjudicator explained that '*...a bank can make commercial decisions*' whether to allow the customer to use that money (the amount needed to cover a payment in an unarranged overdraft situation), and the bank is:

*'...entitled to charge for using unarranged lending. So, I cannot ask Bank of Scotland to repay those charges but I can ask them to repay charges applied for arranged lending when I don't think the agreed lending was correct.'*

Mr L's representative replied with several additional points all of which I have reviewed.

The complaint remains unresolved and was passed to me to decide.

### **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 think that BOS acted unfairly when it continued charging overdraft interest and associated fees from December 2017. And as BOS has accepted this I do not need to go into further detail as that part of the complaint has been resolved. I set out at the end of this decision what I think BOS should do to put things right and as BOS has already agreed to do that, the redress section is included here for completeness.

The other part of the complaint is that relating to Mr L's unarranged overdraft costs and Mr L has referred to the period from around December 2015 to December 2017. During that time Mr L, in his own letter of complaint (written by his representative) accepted that BOS did react positively to his telephone call queries to BOS about these unarranged charges in February 2016, November 2016 and September 2017. Mr L received refunds of those fees and charges around those times. So I do not think there is any issue arising out of those.

Mr L's representative has requested that we listen to those call recordings, but as they date back to 2016 and 2017 its highly unlikely that these will be available to us. Its usual that firms and banks keep their recordings of telephone calls for a relatively short period. That's not unreasonable. Even without the call recordings, we have an idea as to what was discussed in those calls as Mr L received refunds of fees and charges for the unarranged overdraft lending on each occasion. So, his requests were acceded to.

More fundamentally, when Mr L was using money as an unarranged overdraft source of funds, then the legal position between Mr L and BOS differs. I am not able to look at whether that was a fair or reasonable lending decision, or whether the charges were fair, as this was a service attached to his current account. No formal lending decisions were made. A Supreme Court case in November 2009 looked at this issue about the status of unarranged overdrafts carefully and determined this was a service for the account holding customer and

that those charges cannot be assessed for fairness.

Having considered the evidence from BOS and Mr L then I do not think that BOS did anything wrong for that period before December 2017. And, if it did, BOS has already compensated Mr L for those alleged errors and those have been accepted by Mr L. So, I do not think there is anything further for me to add on that period.

The £200 already paid to Mr L for some delay in handling the complaint and in relation to a telephone conversation with a BOS representative was satisfactory in my view and I do not think anything further is necessary.

As for additional distress and inconvenience for Mr L, having looked at the complaint and considered all that's been said I do not think any further compensation for distress and inconvenience is warranted. I realise Mr L will be disappointed.

### **Fair compensation – what BOS needs to do to put things right for Mr L**

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

- Reworking Mr L's current overdraft balance so that all interest, fees and charges applied to it after the renewal in December 2017 are removed.

AND

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

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

### **My final decision**

My final decision is that I uphold Mr L's complaint in part and I direct that Bank of Scotland plc does as I have outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 11 March 2022.

Rachael Williams  
**Ombudsman**