

## **The complaint**

Mrs D has complained that Bank of Scotland (“BOS”) trading as Halifax acted irresponsibly by agreeing an overdraft and increasing her limit. She says BOS acted unfairly by continuing to apply charges to her account when she was in financial difficulty.

## **What happened**

Mrs D complained to BOS that it acted irresponsibly by lending to her and allowing her to increase her overdraft limit on a number of occasions. BOS didn’t uphold the complaint. And as Mrs D was dis-satisfied she referred the complaint to our service.

Mrs D’s complaint was considered by one of our adjudicators. They thought that there wasn’t anything in the information provided by Mrs D, her account history or credit checks that suggested the lending was unaffordable and she didn’t think there were any signs of financial difficulty before Mrs D got in contact with BOS about this.

Mrs D doesn’t agree. She says the charges on her overdraft were crippling, she can’t afford the monthly payments and that she is paying debt with debt and asked for an ombudsman’s decision.

So the complaint came to me for a decision. I issued my provisional decision in July 2022. In my provisional decision, I explained why I was proposing to uphold Mrs M’s complaint.

I invited both parties to let me have any further submissions before I reached a final decision. BOS agreed to settle Mrs D’s complaint in line with my recommendations on the basis that if she wasn’t in a position to settle the outstanding balance after any refunds were applied that she set up an arrangement with BOS to pay back the outstanding balance. If an arrangement was agreed a marker for this will be placed on her credit file.

Mrs D didn’t wish to accept BOS’s offer as she didn’t want to incur negative markers on her credit file.

## **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.

In my provisional decision I said that:

*“BOS needed to make sure that it didn’t lend irresponsibly. In practice, what this means is it needed to carry out proportionate checks to be able to understand whether Mrs D would be able to repay what she was being lent before providing any credit to her. Our website sets out what we typically think about when deciding whether a lender’s checks were proportionate.*

*Mrs D's overdraft is what we refer to as an open-ended credit facility. This means the checks BOS carried out had to provide enough for it to be able to understand whether Mrs D would be able to repay her overdraft within a reasonable period of time.*

*In the six years before raising her complaint BOS approved overdraft limit increase's from £1,500 to £2,500 in 2017 and then up to £2,800 in 2018. All further applications for increases were declined. The applications for the limit increases were made on line. BOS says all applications were credit scored taking into account information Mrs D provided about her income and how she had managed her account with it, as well as information held by other lenders provided through credit reference checks. And based on this information BOS was satisfied her score was high enough to provide her with the overdraft facility she requested.*

*I accept that Mrs D's financial position may well have been worse than the credit checks carried out showed or in any information she disclosed to BOS at the time. And it is possible that further checks might have told BOS this. But BOS was reasonably entitled to rely on the credit check it carried out.*

*And having viewed Mrs D's statements leading up to the increases I can see that although Mrs D did use her overdraft she was regularly able to bring it right down with incoming credits and often saw and was able at times to maintain a credit balance. She had a number of particularly large transfers coming into the account from the end of 2017 and throughout 2018 where her credit balance was in the thousands. I also note that Mrs D's credit report showed up no adverse data at the time the overdraft limit increases were approved. So I think BOS's checks went far enough and I don't think BOS acted unfairly in increasing her limit.*

*But by the renewal date shown on her bank statements of 22 August 2020 I think it was evident she was in financial difficulty. Mrs D's statements showed that she hadn't seen or maintained a credit balance for an extended period of time and spent the majority of time at the top of her limit. BOS's own literature suggests that overdrafts are for unforeseen emergency borrowing not prolonged day-to-day expenditure. Mrs D's statements show she was clearly struggling to manage her overdraft limit with BOS there was little if no money coming in and in July 2020 I can see there were a number of returned direct debits*

*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.*

*And having carefully considered everything provided, I'm currently intending to find that BOS acted unfairly when it continued charging overdraft interest and associated fees after the renewal date of 22 August 2020. By this point, it ought to have been clear that Mrs D was in no position to sustainably repay what she owed within a reasonable period of time.*

*So I think that Mrs D's overdraft usage should have prompted BOS to have realised that Mrs D wasn't using her overdraft as intended and shouldn't have continued offering it on the same terms. As BOS didn't react to Mrs D's overdraft usage until she contacted it about her financial difficulties in November 2021, I think it failed to act fairly and reasonably.*

*Mrs D ended up paying additional interest, fees and charges on her overdraft and this ended up exacerbating difficulties she already had in trying to clear it. So I think that BOS didn't treat Mrs D fairly and she lost out because of what BOS did wrong."*

*As neither party has provided any further evidence or arguments for consideration and Mrs D doesn't wish to accept BOS's offer I see no reason to depart from the conclusions set out in my provisional decision. It follows that I uphold this complaint.*

## **Putting things right**

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

- Reworking Mrs D's current overdraft balance so that all interest, fees and charges applied to it from 22 August 2020 are removed.

AND

- If an outstanding balance remains on the overdraft once these adjustments have been made BOS should contact Mrs D to arrange a suitable repayment plan for this. If it considers it appropriate to record negative information on Mrs D's credit file, it should reflect what would have been recorded had it started the process of taking corrective action on the overdraft on 22 August 2020.

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 Mrs D 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 Mrs D's credit file.

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

## **My final decision**

I uphold Mrs D's complaint against Bank of Scotland plc and direct it pay the fair compensation outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D to accept or reject my decision before 15 September 2022.

Caroline Davies  
**Ombudsman**