

The complaint

Mr S complains that Bank of Scotland plc trading as Halifax ("BOS") acted irresponsibly in providing him with overdraft facilities and increasing his limit.

What happened

Mr S held two accounts with overdraft facilities with BOS. In May 2016 BOS agreed to increase the overdraft limit on both accounts to £1,500.

Mr S's accounts were closed and transferred to BOS's recoveries team in April and May 2017.

Mr S complained to BOS in April 2022 that it should never have agreed an overdraft facility for him because it was unaffordable. BOS did not consent to this service looking at any applications prior to six years ago (April 2016).

BOS agreed that Mr S's applications for increases to his overdraft limits in May 2016 should have been referred rather than approved and arranged to refund all charges incurred on both accounts from May 2016 amounting to £286 and £290, as well as making a compensation payment of £55 for its error. It also backdated the defaults on the accounts to August 2016 when it says it should've started closing Mr S's accounts.

Mr S was unhappy with this and brought his complaint to this service. One of our adjudicators looked at Mr S's complaint and thought that we could only look at Mr S's accounts dating back to April 2016 as our rules usually only allow us to look at complaints made within six years of what is being complained about.

As BOS had already agreed to settle the complaint by refunding all charges for the period we could look at they didn't think BOS needed to do anything more.

Mr S was dis-satisfied with this. He would like all charges refunded from the point he was approved for an overdraft and all adverse information removed from this point and has asked for an ombudsman's decision.

Why I think we can only look at part of your complaint

The rules applying to this service say that, I can't look at a complaint made more than six years after the event being complained about – or (if later) more than three years after the complainant was aware, or ought reasonably to have been aware, of cause for complaint. This is Dispute Resolution rule 2.8.2R(2) – which can be found online in the Financial Conduct Authority's handbook.

Mr S raised his complaint in April 2022 in relation to his overdrafts dating back 10 years. Six years before he raised his complaint is April 2016. And as Mr S would've been aware of how he was using his overdrafts and his limits from when he was granted them, I think Mr S ought to have known enough to decide whether it was sustainable and the charges BOS applied were unfair or causing financial difficulty.

So, I don't think that three years from when he ought to be reasonably aware he had reason to complain provides Mr S with a longer period than the six year rule. So, I will only be looking at Mr S's overdraft usage and charges applied from April 2016.

I can still look into Mr S's complaint about his overdrafts outside this time if I'm satisfied the failure to complain earlier was due to exceptional circumstances. Mr S hasn't told us about any exceptional circumstances that apply and as that is the case, I am unable to look at Mr S's overdrafts and the charges applied before April 2016.

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.

Having carefully considered everything, I think that what BOS has already agreed to do to put things right for Mr S is fair and reasonable in all the circumstances of his complaint. I'll explain why I think this is the case.

Where a business accepts (or we decide) it did something wrong, we'd expect the business to put the consumer in the position they would be in if that wrong hadn't taken place. And in an ideal world, we'd tell a business to put a consumer in the position they'd now be in if they hadn't been charged the fees and given the credit they shouldn't have and we may award modest compensation for any distress and inconvenience caused.

So where a business provides a consumer with a credit facility which it shouldn't have we'd typically expect it to put the consumer in the position they'd be in now if they hadn't paid any interest and charges on that credit. This means we'd normally expect a lender to refund the interest and charges added to any credit from the point the lender ought to have realised the credit was wrongly provided.

But I don't need to make a finding on this point as BOS has already done what I'd expect it to do had I found it had lent irresponsibly from the point we are able to look back to (April 2016).

I understand Mr S is also unhappy about negative information being reported on his credit file and would like this information removed. But BOS does have a duty to make sure the information it reports on its customers affairs to the credit reference agencies it subscribes to is factually accurate and what BOS has reported is an accurate account of what would've happened if it had taken action when it should've.

So, bearing all this in mind, I'm satisfied that what BOS has already done for Mr S is fair and reasonable in all the circumstances of this case and I'm not requiring it to do anything more.

My final decision

For the reasons I've explained, I'm satisfied that what Bank of Scotland plc has already done for Mr S is fair and reasonable in the circumstances of this case. So I'm not requiring it to do anything more.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 13 October 2022.

Caroline Davies
Ombudsman