

The complaint

Mr D says Bank of Scotland (“BOS”) trading as Halifax acted unfairly by continuing to apply charges to his account when he was struggling financially. If BOS had reviewed his overdraft usage it would’ve realised he wouldn’t have been able to repay what he owed within a reasonable period of time.

What happened

Mr D held an account with an overdraft facility with a limit of £10,000. Mr D’s account was continually overdrawn and didn’t see a credit balance until he repaid his overdraft with funds he received from an inheritance in September 2021. Mr D complained to BOS regarding the overdraft charges applied to the account which he says caused him financial difficulties.

BOS says all the charges were correctly applied in line with the terms and conditions of the account. It says it supported Mr D by writing to him regarding the status of the account and asking him to contact its financial support team and providing the details of external debt advice organisations that could help but that Mr D never got in touch with it regarding financial difficulties.

Mr D’s complaint was considered by one of our adjudicators. They thought having reviewed Mr D’s statements from March 2016 that BOS should refund all fees and charges applied to Mr D’s account between 18 March 2016 to 7 September 2021 (when Mr D paid the overdraft off) because Mr D’s account hadn’t seen or maintained a credit balance for a considerable amount of time and a review of his accounts would’ve suggested that he was at risk of not repaying this credit facility.

BOS disagreed. It says since 2019 it had supported Mr D by writing to Mr D about his overdraft usage, but Mr D hadn’t responded. BOS says Mr D received regular high credits from several sources and that it was Mr D’s choice to transfers funds received out of the account rather than pay down his overdraft.

So the complaint came to me for a 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.

Firstly, to be clear this decision covers the period from March 2016 to when Mr D received BOS’s final response letter in March 2022.

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 in agreement with our adjudicator and think BOS acted unfairly when it continued charging overdraft interest and associated fees

from 18 March 2016. By this point, it ought to have been clear that Mr D was in no position to sustainably repay what he owed within a reasonable period of time.

By this point, BOS ought to have realised that Mr D's use of his overdraft was unsustainable. Mr D's statements show that he was consistently overdrawn and near the top of his limit and although in most months Mr D received a regular salary which brought the overdraft down, within days, as soon as his bills were paid, he would once again be near his overdraft limit. Overall Mr D's overdraft was not reducing.

I accept that some of the transactions on Mr D's account were discretionary, non-committed transactions but the vast majority of transactions were for the payment of loans, credit cards and essential bills and living.

BOS says that Mr D had the opportunity to pay down his overdraft on a number of occasions when large credits were received into his account in 2017, 2020 and 2021. But Mr D has explained, and the bank statements show that the credit to his account in 2017 was for an estate which hadn't yet been settled and the later credits were income support grants during the pandemic when Mr D had a reduced income. And despite these payments Mr D's account remained overdrawn - as it had been for a number of years. BOS ought to have realised that Mr D was at a significant risk of being unable to repay what he already owed.

BOS say Mr D's never contacted it about being in financial difficulty. But by BOS's own admission it says it wrote to Mr D on a number of occasion's regarding the use of his overdraft and offering support. So I think it was clearly aware Mr D wasn't using the overdraft as intended. BOS should have stopped providing the overdraft on the same terms and treated Mr D with forbearance rather than charge even more interest, fees and charges on the overdraft.

Mr D ended up paying additional interest, fees and charges on his overdraft and this ended up exacerbating difficulties he already had in trying to clear it. So I think that BOS didn't treat Mr D fairly and he 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 D's complaint for BOS to put things right by:

- Reworking Mr D's current overdraft balance on account so that all interest, fees and charges applied to it from 18 March 2016 until 7 September 2021 are removed.

AND

- 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 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 Mr D's credit file.

† HM Revenue & Customs requires BOS to take off tax from this interest. BOS must give Mr D 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 uphold Mr D's complaint against Bank of Scotland plc and direct it pay the fair compensation I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 19 December 2022.

Caroline Davies
Ombudsman