

The complaint

B, a limited company, complains that Bank of Scotland plc won't allow it to transfer its overdraft to a new account following fraud.

What happened

It isn't in dispute that B was the victim of fraud. In February, March and April 2022 a fraudster was able to impersonate the director of B and change the account details. Just over £5,000 was withdrawn without B's authorisation. A complaint about this was resolved with B and the money refunded. But this complaint is that B then wanted to change its account details as it was concerned these had been compromised. And that Bank of Scotland said it would need to apply for an existing overdraft facility again and which the director of B didn't think was reasonable.

Bank of Scotland said in its final response that *"as the fraud has been dealt with and the account is secure, a new BCA [Business Current Account] is not necessary. As a result, you'd need to apply again for the overdraft if you choose to operate the business from a new BCA."* When it submitted its business file to this service it said that *"as this would represent borrowing on a new account we would need the customer to apply for any overdraft"* and that *"there is no provision to simply move existing borrowing from one account to another."* It went on to say that *"as a responsible lender, we have a duty to ensure that any borrowing we grant has been properly applied for and that this application can be evidenced."*

Our investigator didn't recommend that the complaint be upheld. She said that it was a matter for Bank of Scotland to decide what processes to put in place and that as B had asked to operate a new BCA this was fair and reasonable.

B didn't agree and wanted its complaint to be reviewed. The director explained that he didn't think it safe to carry on with the same business account. The fraudster still had B's details and he wanted to take this further.

My provisional decision

I issued a provisional decision on 29 December 2022. I set out below what I said.

I'd asked through our investigator Bank of Scotland a number of questions about its position on this complaint and for documentation about its processes. I pointed out that it seemed to have given two explanations for not transferring the overdraft without a further application. One in the final response was that a new BCA wasn't necessary and so B would need to make a further application. And the other relating to its processes and the need to act responsibly. It didn't provide any documentation to support those processes.

I'd noted that B's existing overdraft had been due for renewal on 12 September 2022 based on its bank statement. So, I'd asked why this clearly recent review couldn't be taken into account but didn't get a response about that. Bank of Scotland was unable to provide a copy of B's current overdraft facility letter but provided a template. It said no decision in principle about a new overdraft could be given. I'd also asked what measures had been put in place

to protect B's existing account. Bank of Scotland said any blocks had now been removed so B could use it and it was waiting for B to attend the branch to update the mandate. It has added warning notes to the account.

I said I was going to make my assessment in two stages noting that I thought Bank of Scotland has now had an adequate opportunity to provide information.

The first question is about whether it is reasonable for B to want a new BCA. That is something Bank of Scotland took issue with in the final response letter. The factual background here is that B was clearly targeted for fraud. Bank of Scotland says that the instructions on the account from the fraudster had an 'exact copy' of the director's signature. In any event if B didn't authorise any of these changes then they were made in error and that's why it was refunded for the payments. I wasn't convinced by Bank of Scotland's explanation of future protection for the account and how updating the signature on the mandate (which seems to be genuine already) will resolve things. Given the time over which this happened and the persistent nature of the fraud I thought it is reasonable for B to expect a new BCA and this seems to be possible and has been discussed based on what Bank of Scotland has said.

I then needed to turn to the process involved. There has been some ambiguity in what Bank of Scotland has said about this and the reasons why. I had none of its internal documentation to support its position and show what that process is. But I noted from the template overdraft facility letter (with my emphasis in bold added) that it states:

*We, [] (the "Bank"), are pleased to provide you [] with an authorised overdraft facility on account number «Srt_Cd» «Acc_No» **or any other account that may be opened as a replacement or substitution for it, on the following terms and conditions...***

Frankly, I wasn't persuaded on what I'd seen that a new application is necessary for B an existing customer with an existing facility. There is no change in risk I could see, and B appears in any event to have been due to have its overdraft reviewed recently for another year. In addition, the facility letter template appears to envisage circumstances where an overdraft may simply be moved to a new replacement account but of course remain with the exact same borrower and on the same terms.

I recognised that an overdraft by its nature is repayable on demand and there is no guarantee it will continue. And I also needed to allow Bank of Scotland to apply its own process as it thinks fit. But I could appropriately think in all these circumstances about the reasonableness and impact of such for B which has been the victim of fraud and has justified concerns about the security of its existing account. And so here I considered on the information I'd seen that B is being caused unnecessary and unexplained inconvenience. I found Bank of Scotland is responsible for this and I said I intended to award B £250 to reflect it. I needed to tell B that I wasn't reasonably able to direct Bank of Scotland to change its commercial process as B wants although I still invited Bank of Scotland to reconsider its position in light of my assessment.

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.

Bank of Scotland said it had no more information to provide and would wait for my final decision.

B said that there were several things that weren't correct. It didn't consider that the account was secure, and it didn't see what would prevent fraudsters, in possession of its existing account details, doing the same again. B explained that it didn't use internet banking but telephone banking before. And due to blocks on telephone banking it couldn't now pay its bills other than by going to a branch. B said that no one had requested the director update the mandate.

I have no reason to doubt what B says about the position with its account now. I said in my provisional decision that I didn't think that the protection for the account would resolve things for B. And it remains reasonable for B to want a new BCA. That's why I considered what would be involved with this and B's complaint point about the related need to apply for a new overdraft.

Bank of Scotland hasn't made any further comments about the requirements for that. I can't reasonably require Bank of Scotland to change its processes as I've explained. And so instead I have considered the inconvenience for B. I don't have a basis to change the level of compensation I provisionally thought was reasonable for that. This will mean that as B has ongoing concerns its remedy will be to open a new account. And I award £250 for the inconvenience of it particularly needing to reapply for an overdraft as part of that process in all the circumstances I've set out here.

My final decision

My decision is that I uphold this complaint and I require Bank of Scotland plc to pay B £250.

Under the rules of the Financial Ombudsman Service, I'm required to ask B to accept or reject my decision before 8 March 2023.

Michael Crewe
Ombudsman