

The complaint

Mr C has complained that Bank of Scotland plc has acted unfairly by continuing to apply charges to his overdraft when he was in financial difficulty.

What happened

Mr C has an account with Bank of Scotland and says that he has been in his overdraft constantly for at least seven years, most of which has been an unarranged overdraft. He says that for the first three years his wages weren't enough to get him out of his overdraft and with the charges being applied he has fallen further into debt and is now behind with his priority bills. He says that he has turned to gambling to try to make money and has other loans outstanding.

In response to Mr C's complaint, Bank of Scotland issued a final response letter dated 19 July 2023. It said the charges on Mr C's overdraft had been applied in line with the account terms and conditions and noted that on 17 March 2023 it refunded him £100 in unarranged overdraft fees to assist him.

Mr C wasn't satisfied with Bank of Scotland's response and referred his complaint to this service.

Our investigator explained the time limits in regard to the complaints we can consider and said his investigation would be into the charges applied from March 2017. He thought that Bank of Scotland acted unfairly when it continued charging overdraft fees from 31 March 2018, being the first time Bank of Scotland were due to review the overdraft that's clearly within our jurisdiction on this complaint.

Bank of Scotland didn't agree with our investigator's view and instead made an offer to refund interest and charges up to November 2020 along with interest from the date of payment to the date of the refund. It said its offer was fair because:

- Mr C had substantial credits during the assessment period which meant that £3,000 overdraft limit remained affordable.
- Mr C has another account with Bank of Scotland (jointly with a third party) which remained in credit during the assessment period and showed non-discretionary spending and no financial hardship.
- Mr C built up savings at different points in the assessment period which could have been used to remove or reduce the borrowing.
- Mr C was given an interest free buffer between April and July 2020 and in October 2022 and March 2023.
- It wrote to Mr C about his pattern of overdraft usage and reached out to him on several occasions up to August 2023, but he didn't respond.

- Based on Mr C's account management and broader account behaviour it wasn't clear that he was in financial difficulty, and it wasn't reasonable for the bank to assume this to be the case.

Mr C didn't accept Bank of Scotland's offer. As a resolution hasn't been agreed, this complaint has been passed to me, an ombudsman, to issue 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.

Bank of Scotland will be familiar with the factors we consider when looking at whether a bank treated a customer fairly and reasonably when applying charges to an overdraft. So I don't think it's necessary to set all of this out here.

Having considered everything provided, I think Bank of Scotland acted unfairly when it continued adding interest and associated fees and charges to Mr C's overdraft from March 2018. By this point, it was evident that Mr C's overdraft had become unsustainable for him and that continuing to provide it was likely to cause significant adverse consequences. I have set out my reasons for this conclusion below.

Mr C was provided with an overdraft before March 2017, but as our investigator explained our rules set time limits for the complaints we can consider. It was explained why we couldn't investigate any charges applied more than six years before the complaint was raised and this decision relates to the charges applied from March 2017 onwards.

Bank of Scotland is required to monitor a customer's repayment record and take appropriate action where there are signs of actual or possible repayment difficulties. While I think it likely that Mr C's overdraft usage and repayment history may have shown concerns before March 2017, as I am only considering Mr C's account for the six years prior to the complaint being raised and it is this time period that I have account details for, I have considered at what point it would have been reasonable, after March 2017, for Bank of Scotland to have undertaken a review. In this case, I think it reasonable that a review would have happened around every 12 months and so I have considered what Bank of Scotland would have identified had it reviewed Mr C's account in March 2018.

Looking at Mr C's statements leading up to March 2018 shows that he hadn't seen a credit balance for an extended period of time and so he had hardcore borrowing. Mr C's statements also show that direct debits were returned during this period, that Mr C exceeded his overdraft limit on several occasions and he was making frequent use of gambling sites. Mr C's income during this period wasn't enough to clear his overdraft and while it reduced it when received, the overdraft soon returned to being used at, near or beyond its limit. There was a larger income payment received in June 2017 but within two days of this Mr C had returned to being reliant on his overdraft.

So overall by March 2018, I think that Bank of Scotland ought to have realised that Mr C was struggling and unlikely to be able to sustainably repay his overdraft without help. In these circumstances, Bank of Scotland should have stopped providing the overdraft on the same terms. It should have instead treated Mr C with forbearance, even if this meant taking corrective action in relation to the facility.

Bank of Scotland sent Mr C letters in November 2021 and after this about his overdraft usage. But, in this case, I think the issues with Mr C's overdraft usage were apparent much sooner. As I think it would have been reasonable for a review to have been undertaken

around March 2018, and had this happened Bank of Scotland should have realised that Mr C wasn't using his overdraft as intended and the account conduct suggested it had become unsustainable, I think Bank of Scotland failed to act fairly and reasonably.

I note Bank of Scotland's comment about Mr C's account having periods in credit and the interest free buffers applied in 2020, 2022 and 2023 but as I think it should have taken action in March 2018, and it didn't, I find it reasonable to uphold this complaint from that time.

Bank of Scotland has also said that Mr C had other accounts which were in credit during the assessment period. I can see that Mr C's overdraft account recorded transfers in and out to other accounts. Bank of Scotland provided copies of statements from Mr C's savings account from July 2020. Again this is after the point at which I would have expected Bank of Scotland to have taken action. It also appears from the statements that the savings wouldn't have been sufficient to have cleared Mr C's overdraft at that time.

Putting things right

Bank of Scotland should:

- Re-work Mr C's current overdraft balance so that all interest, fees and charges applied to it from 31 March 2018 onwards are removed.
- If an outstanding balance remains on the overdraft once these adjustments have been made Bank of Scotland should contact Mr C to arrange a suitable repayment plan for this. If it considers it appropriate to record negative information on Mr C's credit file, it should backdate this to 31 March 2018.
- 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 C, 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 Bank of Scotland should remove any adverse information from Mr C's credit file.*

*HM Revenue & Customs requires Bank of Scotland to take off tax from this interest. Bank of Scotland must give Mr C a certificate showing how much tax it's taken off if he asks for one.

My final decision

My final decision is that Bank of Scotland plc should take the actions set out above in resolution of this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 12 March 2024.

Jane Archer
Ombudsman