

The complaint

Miss M has complained that Bank of Scotland plc (“BoS”) acted irresponsibly when it provided her with an overdraft facility in October 2019. She says the bank should’ve realised she was in financial difficulty, not managing her overdraft correctly and proactively removed the facility.

Background

Miss M applied for a £200 overdraft facility from BoS in October 2019. That request was accepted, and the following month Miss M asked for her limit to be increased to £500. BoS approved that limit increase, and over the next two months there were two further increases in January 2020 to £1,000, and then again in February 2020 to £1,500. The facility was eventually removed from Miss M’s account following her complaint to BoS in early 2023.

Miss M has said that the overdraft facility was never genuinely affordable for her and that if BoS had checked her account properly it would’ve seen significant volumes of gambling as well as a high dependency on credit. She has said BoS should’ve realised she was dependant on the overdraft facility almost from inception and that it should refund all the interest and charges associated with it from October 2019.

BoS has said that at the Miss M applied for the overdraft facility in 2019 it ran all the necessary checks required by the rules set out in The Consumer Credit sourcebook (“CONC”).

However, it does accept that by February 2021 it should’ve realised that Miss M wasn’t managing her overdraft properly and steps should’ve been taken to remove the facility. In its response to Miss M, it clarified that in October 2021 a letter was sent to her explaining she was regularly using her overdraft and how much it cost her. The letter included an offer of support if she was struggling. BoS has said Miss M never contacted it for any support following the October 2021 letter and so it didn’t think it needed to refund interest or charges beyond that date as by that time Miss M would’ve known she could ask for help but chose not to.

I issued a provisional decision on Miss M’s complaint on 9 January 2024. In it I found that BoS should have realised that Miss M was struggling to manage her overdraft facility and that it was causing her financial stress. I recommended it refund all interest and charges linked to the overdraft from October 2020 onwards.

I gave both parties until 6 February 2024 to respond with any additional comments or information they wanted me to consider.

Since then both Miss M and BoS have responded to say they accept my findings and have no further submissions to make.

As neither party has raised any additional points for me to consider my findings remain the same. For the sake of fullness and clarity I will repeat them here.

My findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so I agree BoS should've realised before February 2021 that Miss M wasn't managing her account effectively and that the credit facility was causing her problems. However, I don't agree that the facility itself was inherently unaffordable or that BoS needs to refund all interest and charges added since October 2019.

When consumers apply for credit there are various checks that businesses need to perform to ensure that any credit given is most likely to be affordable and sustainable throughout its term. The rules that govern what businesses should do have been set out by the Financial Conduct Authority ("FCA") in CONC.

BoS has said that at the time Miss M applied for the overdraft to be added to her account it followed the guidance set out in CONC and ran all the necessary checks. Having reviewed the information provided by BoS I agree that at the time Miss M applied for the overdraft it gathered the information it was required to and there was nothing there that indicated Miss M couldn't afford the facility. And despite the repeated limit increases over the following months, I still don't think there was anything at that time that could've alerted BoS to the fact that Miss M wasn't going to be able to manage her overdraft.

I say this because, even though Miss M immediately started to use the overdraft facility and her account balance was in a deficit for the majority of the time, not enough time had passed to show a clear pattern of how Miss M was going to use the facility. And each month she did clear the balance, albeit for increasingly shorter periods of time.

So, I think the initial lending decisions were fine, including the three limit increases, and agree with our investigator on this point. Which means I won't be asking BoS to refund all the interest and charges from October 2019 onwards.

However, I don't agree that there were no indications of stress throughout 2020 or that BoS shouldn't have realised that Miss M was experiencing financial difficulties sooner than it did. CONC not only sets out what a business needs to do at the point consumers apply for credit, but also what it needs to do through while the credit facility is active. In particular CONC 5D talks about how businesses should monitor overdraft usage specifically and potential vulnerability while CONC 6.7.2 talks about monitoring accounts and taking appropriate action where there are signs of financial difficulties, or the potential for financial difficulty to occur.

As soon as Miss M had access to her overdraft facility she began to struggle to maintain it and was reliant on it to cover her monthly expenses. Notes on her account indicate that the facility should be affordable if Miss M reduced her nonessential spending. But it was clear Miss M was struggling to do this. I think her account should've been reviewed after the first year the facility had been added to it. And I think a review would've noted that for almost the entire year she'd had the overdraft her account was overdrawn. The reality was she would receive her monthly salary which would clear the overdraft but within a few days she'd be back in it and would remain overdrawn until she was paid the following month. Some months her salary didn't clear the balance for more than a few hours before she was overdrawn again.

So, I think it should've been apparent to BoS by October 2020 that Miss M wasn't properly managing her overdraft facility and steps should've been taken to remove it at that time.

Therefore, I'm upholding Miss M's complaint from October 2020 and asking BoS to refund all interest and charges related to the overdraft facility from that time. It can deduct any refund it has already paid from the total amount due.

Putting things right

In order to put things right Bank of Scotland plc should:

- refund all interest, fees and charges associated with Miss M's overdraft facility from 01 October 2020 until the date this complaint is settled.
- It can deduct any refund from that time period already paid to Miss M from this amount
- If, once the adjusted refund amount has been calculated, there no longer an outstanding balance on the account, then any extra should be treated as overpayments and returned to Miss M, 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 linked to the overdraft from Miss M's credit file.

† HM Revenue & Customs requires BOS to take off tax from this interest. BOS must give Miss M a certificate showing how much tax it's taken off if she asks for one.

My final decision

For the reasons set out above I uphold Miss M's complaint against Bank of Scotland plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 15 February 2024.

Karen Hanlon
Ombudsman