

The complaint

Miss R is complaining about Bank of Scotland plc because she says it lent irresponsibly by providing a loan she couldn't afford.

What happened

In 2018, Miss R took out a loan with Bank of Scotland for £3,000. This was repayable over 48 months at £95 per month. Following a period where no repayments were received, the account was defaulted and the debt sold to a third party.

In response to Miss R's complaint, Bank of Scotland accepted it shouldn't have lent and applied a refund of interest to the account to reduce the balance owed. It also offered compensation of £100.

After the complaint was referred to me, I issued my provisional decision setting out why I believed it should be upheld and that Bank of Scotland needed to do more to put things right. My reasons were as follows:

Bank of Scotland appears to accept it shouldn't have lent to Miss R so I've limited my consideration of this complaint to how it should put things right.

The principal aim of any award I make must be to return Miss R to the position she'd now be in but for the errors or inappropriate actions of Bank of Scotland. But that's not entirely possible here as the lending provided can't be undone.

Because Bank of Scotland accepts it shouldn't have lent to Miss R, I don't think it's fair for her to pay interest or charges on the amount borrowed. But she has had use of the money that was lent, so I think it's fair she repays the amount borrowed (without the addition of interest or charges).

It appears Miss R believes Bank of Scotland should write off her debt entirely. I've considered this carefully but I haven't seen sufficient evidence of her current circumstance to demonstrate this is an appropriate outcome. Part of the remedy I've proposed is that Bank of Scotland should agree an affordable repayment plan with Miss R for any outstanding balance. I anticipate this would involve it reviewing her income and expenditure in detail to assess what she may be able to afford to pay. If it turns out she really can't afford to make any contribution to the amount owed, writing off some of the capital could be an option at that stage.

We have a typical approach to calculating redress in cases like Miss R's and I've set this out below. I note Bank of Scotland says it's refunded interest, but it's not clear from the correspondence I've seen that this approach was followed completely.

I'm also conscious the account was defaulted and Bank of Scotland has said the default was applied correctly and won't be removed. I don't agree with that answer. I understand it has a responsibility to report correctly to the credit reference agencies, but I don't think it's fair for Miss R's credit file to be detrimentally affected by a loan

she should never have been given. So, once any outstanding balance has been cleared, I'd expect Bank of Scotland to remove all adverse information relating to this loan.

Finally, it seems clear this episode has caused Miss R some unnecessary distress and inconvenience. Bank of Scotland has already offered additional compensation of £100 and I think that's reasonable in the circumstances.

Because my view on how things should be put right are different to the approach proposed by Bank of Scotland, I'm currently proposing to uphold Miss R's complaint.

Miss R made no further comment in response to my provisional decision. Bank of Scotland made the following points:

- It's already agreed to refund the interest paid. It bought this amount back from the third party to which the debt was sold and her account is no longer being charged interest.
- Miss R's debt was sold to a third party and it manages the debt. It's likely she already has a plan in place with the third party and she can contact it if she needs to review this.

It agrees to remove any adverse information from Miss R's credit file once any outstanding balance has been repaid. Miss R would need to contact Bank of Scotland once the debt has been paid as it can't be done automatically.

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 done so, my findings haven't changed from those I set out previously. From reading Bank of Scotland's response, it appears there may have been some misunderstanding about what it's required to do and I'll take this opportunity to clarify.

This complaint is about Bank of Scotland and I can't require the third party debt purchaser to take any action in this decision. It was Bank of Scotland that lent to Miss R when it shouldn't have and it's for Bank of Scotland to put things right. That includes agreeing an affordable repayment plan for any amount that remains outstanding after the total of all her payments towards the loan (including repayments of capital and interest) have been deducted from the amount borrowed. It's likely that Bank of Scotland will need to repurchase the debt to achieve this.

If the debt is repurchased in order to facilitate the arrangement of an affordable repayment plan, Bank of Scotland will know when the balance has been cleared and be in a position to amend Miss R's credit file as required.

I hope this clarifies the situation.

Putting things right

To put things right, Bank of Scotland needs to complete the following steps, some of which may already have been done:

- Calculate the total of all Miss R's payments towards the loan, including all interest,

fees, charges and insurances (not already refunded).

- If this exceeds the £3,000 borrowed, any excess above £3,000 should be paid to her with simple interest at 8% per year from the date of each overpayment to the date of settlement.

HM Revenue & Customs (HMRC) requires Bank of Scotland to deduct tax from any interest. It must provide Miss R with a certificate showing how much tax has been deducted if she asks for one. If Bank of Scotland intends to apply the refund to reduce an outstanding balance, it must do so after deducting the tax.

- If the total of all Miss R's payments doesn't exceed the £3,000 borrowed, Bank of Scotland should arrange an affordable payment plan with her for the shortfall.
- Remove any adverse information recorded on Miss R's credit file relating to this loan, once any outstanding balance has been repaid.

As Bank of Scotland no longer owns the debt, it should liaise with whoever does to ensure any payments Miss R has made since moving the account are factored into the calculation of the compensation that's due or the balance that remains outstanding.

In addition to the above, unless this has already been received, Bank of Scotland should also pay Miss R compensation of £100 for her distress and inconvenience.

In reviewing this complaint, I've also considered whether the relationship might have been unfair under Section 140A of the Consumer Credit Act 1974. However, I'm satisfied the redress I have directed above results in fair compensation for Miss R in the circumstances of her complaint. I'm satisfied, based on what I've seen, that no additional award would be appropriate in this case.

My final decision

My final decision is that I uphold this complaint. Subject to Miss R's acceptance, Bank of Scotland plc should now put things right as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss R to accept or reject my decision before 10 October 2024.

James Biles
Ombudsman