

The complaint

In summary, Mr K complains about the provision of an overdraft on his current account, by Bank of Scotland Plc, trading as Halifax. He has asked for a refund of all interest and charges incurred as a result of having the overdraft. In bringing his complaint, Mr K is represented by a business I will refer to as T.

What happened

BOS provided Mr K with an overdraft facility on his current account in November 2017. The initial limit was £500. This was increased to £1,000, £2,000 and then £3,000 in December 2017. The limit was then increased again in May 2018 by £2,000 to £5,000. In October 2023, T complained to BOS on behalf of Mr K.

BOS investigated Mr K's complaint and rejected it. In its final response, BOS said it used the details Mr K gave it when he applied for the overdraft and what it already knew about him. It used his income and deducted any share of housing costs he declared and any minimum repayments on balances he already had, and an amount for day to day living costs. It also used information from credit reference agencies including credit scoring. It went on to say that it didn't check bank statements during an application as it believed it was up to a customer to make sure everything on the application was correct. It also said Mr K passed its checks and it agreed to the overdraft limits he requested.

In its submissions to this service, BOS said in its complaint review, it had considered whether the overdraft could have been repaid over a reasonable period of time, which it considered to be 12 months. Based on the information it had, it thought it could be. And it had concluded the overdraft was affordable for Mr K. It also said the level of income paid into the account supported the overdraft. In addition, it said Mr K had three accounts elsewhere that he used to fund the account and pay money into via this account. Overall, it considered the amount of money paid into the account, meant the overdraft was affordable, and could have been cleared either in full with the large deposits or over 12 months.

BOS also said it wasn't required by law, good banking practice, or current regulations to obtain proof of income, when agreeing unsecured borrowing which it considered to be standard industry practice. It said Mr K could repay the overdraft by reducing his non-essential expenditure. As a result, it wasn't able to refund any fees. In summary, it said that no error had been made in accepting Mr K for an overdraft, and it believed it was affordable for him. It thought there was a substantial surplus of money over his essential bills for him to spend on daily living and non-essential expenditure.

Mr K didn't agree with BOS' decision, so T referred the complaint to our service. One of our investigators looked into it. They upheld the complaint in part. They said that having considered everything provided, they thought BOS had acted unfairly when it increased Mr K's overdraft limit from £3,000 to £5,000 in May 2018.

In summary, they said in the time between the previous limit increase in December 2017 to May 2018, Mr K had not maintained a credit balance on the account, and the employed

income that came into the account didn't match what Mr K declared it was in his application. Mr K was using another bank account alongside this account, so they thought BOS should have asked further questions before increasing the limit, to get a better understanding of Mr K's situation. The statements for the other account provided by Mr K showed the account operated on a low balance and indicated only benefits as a regular income. In addition, they explained that BOS shouldn't have continued charging overdraft fees from 10 May 2019 as Mr K hadn't maintained a credit balance for an extended period of time.

T on behalf of Mr K asked why the investigator hadn't requested a rework of all the interest fees and charges applied from May 2018, regardless of the increase in the credit limit.

In response the investigator explained the initial application and first two increases were over a short period of time, which meant there wasn't enough time between those, to highlight any concerns with how the account was being managed. At the time of the final increase there were sufficient concerns when the application was received for the limit not to be increased. They went on to say those concerns hadn't continued over an extended period to suggest BOS ought to have stopped charging interest altogether. And, with the payment that cleared the account it was reasonable to think that it may change the way the account was being managed. It was only by the time of the annual review that it was evident the account was continuing to be managed in an unsustainable way, and over an extended period. So, from that point they thought BOS ought to have stopped charging interest and fees.

In response T said it didn't agree that charges should only be refunded from when the limit was increased from £3,000 to £5,000. It said Mr K was relying on the full overdraft and requested a refund of all overdraft charges from May 2018. It also asked for details of the payment that the investigator said had cleared the account. It believed all the overdraft charges should be refunded.

The investigator replied to T explaining in summary, that the recommendation was that all interest and charges should be refunded from the annual review, not just on the difference. At the annual review 12 months later, they thought there was information on a pattern of behaviour in how the account was being managed. They also explained that the large payment that had been referred to was made on the day of the final limit increase, which was a benefit payment of over £3,000 made to Mr K's other bank account, which was then transferred to his BOS account.

BOS didn't accept what our investigator said. It said it analysed the bank statements provided by Mr K. After allowing for contractual expenditure, it considered there was a surplus over both accounts which would allow for the overdraft to be repaid over a reasonable period of time if Mr K chose to do so. It thought Mr K's transfers to other people and high spending on the account was a main factor as to why the overdraft had been used to the limit, which it didn't think was indicative of affordability issues or financial difficulties. They thought there was a surplus which would have allowed Mr K to repay the overdraft, and it couldn't suggest how Mr K spent his money.

In response the investigator acknowledged BOS' view on how the overdraft could have been repaid. They remained of the view that Mr K wasn't managing his finances in a way that would have allowed him to do that.

In response, BOS offered to support Mr K clear his overdraft by speaking to its customer financial assistance team (CFA). It thought this was a fair resolution as:

- It could evidence Mr K's income was much higher than his essential spend/contractual spend.

- There was opportunity to reduce or remove the overdraft within a reasonable amount of time.
- It found no evidence of unaffordability or financial difficulties, nor had it been put on notice of any change in Mr K's circumstances.
- Mr K's high spending on the account has affected the overdraft usage.
- It said no distinction had been made under the two categories of users which are defined under CONC 5D.2.1 as: -
 - customers in respect of whom there are signs of actual or potential financial difficulties. All other customers who show a pattern of repeat use (that is, all customers within CONC 5D.2.1R(2) who are not in category (a)).
 - It said Mr K's usage fell into the second category, B. Interventions for Category B users differ from Category A, which it believed had been conflated in the view.

As there was no agreement, the complaint has been passed to me for review. I issued a provisional decision explaining why I thought the complaint should be upheld. BOS didn't agree. In summary it said:

- Due to the length of time that had passed it no longer held credit application data.
- Its affordability assessment considered a customer's income and expenditure.
- It referred to CONC guidance as to how it could assess creditworthiness. It had used bank statements and it explained why it believed the outcome would be the same based on the information it had.
- It said its calculations evidenced that the overdraft could be repaid over a reasonable period of time if Mr K chose to.
- It didn't think there was anything in the regulators rules, guidance or good industry practice which indicated that it would be a matter of fact that a customer would be struggling financially in the way Mr K was.
- As Mr K's other account had remained in credit by a few hundred pounds each month he had the opportunity to repay towards his overdraft facility.
- It remained of the view that its checks were proportionate to make sure the facility was affordable to be repaid in a reasonable period of time.
- It didn't agree there were any signs of financial difficulties as set out in CONC 1.3, or that it had been put on notice of any.
- It didn't think it was proportionate for it to have demanded Mr K immediately repay his overdraft, where there was a realistic prospect of him clearing it in a reasonable period of time.
- It thought he could have repaid it in a reasonable period of time, but he chose not to.
- It didn't agree Mr K had a low income. It said he had income of approximately £2,221 per month across his two accounts and his contractual spending was £1,544.92. It said the CONC rules were only set up from November 2018 when it was being asked to uphold from May 2018.

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.

In reaching my findings, I haven't commented on every point of concern raised by the parties. This reflects the informal nature of this service. Instead, I've focussed on the key issues I think I need to consider, in deciding whether BOS did anything wrong. But I want to

reassure Mr K and BOS, that I have read and thought about, all the information and submissions I have been provided with.

We've set out our approach to considering unaffordable and irresponsible lending complaints on our website - including the key relevant rules, guidance, good industry practice and law. And I've considered this approach when deciding Mr K's complaint.

In its response to my provisional decision, BOS has said the rules it acted fairly by, were only set up from November 2018. As BOS will be aware, there were pre-existing CONC rules in relation to what businesses needed to do, particularly in the context of reasonable and proportionate checks, at the time of the limit increase in May 2018. It is that regulatory framework at the time of the credit limit increase in May 2018 that it needed to follow. And those rules were updated in November 2018.

Having reviewed everything again, I remain of the opinion that Mr K's complaint should be upheld. I'll explain why.

There are several questions that I've thought about when deciding if BOS treated Mr K fairly and reasonably when it provided him with the overdraft.

- 1) Did BOS complete reasonable and proportionate checks to satisfy itself that Mr K would be able to repay his overdraft in a sustainable way?
- 2) If BOS didn't complete reasonable and proportionate checks, what would reasonable and proportionate checks have shown at the time?
- 3) Ultimately, did BOS make a fair lending decision?

Did BOS complete reasonable and proportionate checks to satisfy itself that Mr K would be able to repay his overdraft in a sustainable way?

The rules that BOS had to follow, required it to carry out checks that would enable it to reasonably assess, whether Mr K could afford to repay the overdraft he wanted to take out. This is often referred to as an “*affordability assessment*”.

The rules don't set out what specific checks BOS needed to carry out, but they do explain that those checks needed to be proportionate to the circumstances of the application. I think what this meant in practice, was that the scope and extent of BOS' checks needed to reflect the nature of the lending, bearing in mind things such as the amount of credit, the interest rate, and any indications of customer vulnerability. This isn't an exhaustive list.

The checks BOS needed to carry out as part of its affordability assessment, had to be “*borrower focussed*”. What I mean by this, is that the checks needed to consider whether the overdraft provided, and the repayments, would cause Mr K any difficulties or have any adverse consequences for him.

And because of the above, I think reasonable and proportionate checks needed to be more thorough if Mr K had a low income. This would reflect that it could be more difficult for him to repay the overdraft with a low income. It would also need to be more thorough the higher the amounts he had to repay, as it would be more difficult to make higher monthly repayments on a given income.

Mr K's overdraft facility was a form of revolving credit. This means that when assessing whether Mr K could repay any overdraft limit provided to him on a sustainable basis, it needed to consider whether he could repay the amount he owed within a reasonable period of time.

The initial credit limit and the majority of the subsequent limit increases all took place within the space of a few weeks between November and December 2017. BOS has explained that it used the details Mr K gave it when he applied for the overdraft, and what it already knew about him. It used his income and deducted any share of housing costs he declared and any minimum repayments on balances he already had, and an amount for day to day living costs. It also used information from credit reference agencies including credit scoring.

BOS went on to say that it didn't check bank statements during an application, as it believed it was up to a customer to make sure everything on the application was correct. It also said Mr K passed its checks and it agreed to the overdraft limits he requested. BOS has provided more information about the checks it says it carried out. It's not provided details of the credit checks it says it carried out.

I'm surprised by what BOS has said regarding not checking bank statements, and that it believed it was up to a customer to make sure everything on the application was correct. I don't disagree that it's not unreasonable to expect customers to provide accurate information. However, the CONC rules under which BOS operated at this time do anticipate that borrowers may not always provide accurate information. These rules require lenders to take proportionate steps to establish whether an applicant can afford the credit being applied for. And where appropriate to the circumstances of a case, this can include taking steps to verify customer declarations about income and expenditure.

It seems logical to me that in the context of the overdraft and limit increases applied for by Mr K, a review of his current account statements that BOS had access to, might have been appropriate, as this would show his income and expenditure. It would also show how he was managing the account that BOS was considering providing an overdraft for. So, considering the lack of evidence BOS has provided in respect of the checks it says it carried out, when it approved the overdraft limit and increases, I'm still not persuaded in the particular circumstances of this case, that BOS carried out reasonable and proportionate checks when it provided Mr K with the overdraft and limit increases.

If BOS didn't complete reasonable and proportionate checks, what would reasonable and proportionate checks have shown at the time?

Mr K has provided copies of his other bank account statements, and BOS has provided statements for the account which is the subject of the complaint.

It seems to me taking into account the transfers between the two accounts that Mr K was managing his finances utilising both of these accounts. And I think these statements give an indication of the information about his financial circumstances and income that reasonable and proportionate checks might have shown.

I've reviewed Mr K's bank statements dating back to 2017 which have been provided by BOS. In November 2017 when the first limit of £500 was provided, Mr K's BOS account was in credit and had been in credit in the previous three months. Taking into account Mr K's financial circumstances and the relatively low overdraft limit, I don't think it was unreasonable of BOS to have provided Mr K with an overdraft for that amount.

The next three credit limit increases took place over the course of a week between the 2 and 8 December 2017. And the overdraft limit increased from £500 to £3,000 in that short period of time. Mr K's account was in credit in the preceding months with a few occasions when the account was overdrawn. One of those occasions was because of a transfer to Mr K's other bank account. Overall, both accounts were in credit in the preceding months. I do find it

surprising that BOS increased Mr K's overdraft several times from £500 to £3,000 over the course of a few days. But, from the statements I've seen, for the three months prior to the credit limits being increased, the credit balances and credits going into the accounts do suggest that Mr K would have been able to repay the overdraft within a reasonable period of time. So, on balance, I don't think BOS made unfair lending decisions when it increased Mr K's overdraft limits in December 2017.

I've gone on to consider the final credit limit increase in May 2018, when Mr K's overdraft limit was increased from £3,000 to £5,000. Mr K's overdraft had only been in place since November 2017. And I think his existing limit of £3,000 was already a significant overdraft limit. He had requested a further significant limit increase, within five months of the last increase. I think this should have alerted BOS to ensure reasonable and proportionate checks were carried out, so it could be satisfied that the proposed new limit was affordable for Mr K. This was a new lending decision, not merely a case of just reviewing the existing limit on the account.

It seems to me that Mr K's account usage showed signs of financial difficulties from the last overdraft limit increase. I say this because his BOS account had become or remained overdrawn in every month since the overdraft began. And for significant periods of time, the overdraft came close to and on occasion exceeded the existing credit limit of £3,000.

Mr K's other bank account, whilst it was in a credit balance during the period since his last overdraft limit increase, had a consistently low running credit balance for the majority of that time, of a few hundred pounds. Also, Mr K's wages that had been paid into that account stopped being paid into that account from December 2017 onwards. The credits paid into that account appear to be mainly transfers made by Mr K from other accounts and work and child tax credits. And looking at the statement summaries for September 2017 to March 2018, the amount paid in and out of the account was pretty much the same. So, I'm not persuaded that the bank statements for both accounts demonstrate that Mr K had the means in May 2018, to repay any increased overdraft within a reasonable period of time.

BOS has argued that Mr K could have reduced his overdraft within a reasonable timescale by managing his account and reducing non-essential spending. And in its response to my provisional decision, BOS considers that its analysis of Mr K's bank statements shows that he could have afforded to repay the overdraft in a reasonable period of time. It set out again the calculations it had provided in response to the investigators view.

BOS has also referenced the average income that it says Mr K had across his accounts. Even if I were to agree with the figure it has calculated, the overdraft limit was well in excess of the credits paid into his BOS account at that time. And the increase in the overdraft limit to £5,000 a few months after the overdraft had been provided and increased, was over twice the amount of the average monthly income that BOS calculated. In my opinion, this only exacerbated Mr K's financial difficulties which were evident from the way he was managing his accounts. And irrespective of what BOS considered to be contractual spend which it hasn't clearly explained how it had reached that figure, Mr K was managing his account in such a way that it was constantly overdrawn.

Given Mr K's level of indebtedness, I find it difficult to understand why BOS gave Mr K the increased overdraft limit that it did. Notwithstanding the submissions put forward by BOS, I remain unpersuaded for the reasons I've set out above, that he would realistically be able to pay off his overdraft in a reasonable period of time.

Overdrafts are intended for short term emergency borrowing and aren't designed for long-term borrowing or prolonged day to day expenditure. As a result of being allowed to run his

account in almost constant overdraft since 2018, Mr K has paid a significant amount in charges and interest.

Did BOS make a fair lending decision?

I consider that if BOS had properly assessed Mr K's financial circumstances when it provided him with the increased overdraft limit in May 2018, I don't think it should have provided him with the overdraft limit of £5,000. And it should have realised during the course of that assessment that Mr K couldn't sustainably afford to repay the overdraft he already had. And if it hadn't continued to provide him with an overdraft, he wouldn't have paid the charges and interest for the use of the overdraft. So, I think it's appropriate that the charges and interest paid should be returned to Mr K.

Putting things right

To resolve Mr K's complaint, I think BOS should:

Re-work Mr K's account so that all interest, fees and charges applied to it from May 2018 onwards are removed.

AND

If an outstanding balance remains on the overdraft once these adjustments have been made, BOS should contact Mr K to arrange a suitable repayment plan for this. If it considers it appropriate to record negative information on Mr K's credit file, it should backdate this to May 2018.

OR

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 K, 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 K's credit file.* BOS can also reduce Mr K's overdraft by the amount of the refund if it considers it appropriate to do so.

*HM Revenue & Customs requires BOS to take off tax from any interest. BOS must give Mr K a certificate showing how much tax it's taken off if he asks for one.

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

My final decision

For the reasons given above, I've decided to uphold this complaint about Bank of Scotland plc in part. It needs to calculate and pay any redress using the methodology I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or

reject my decision before 1 April 2025.

Simon Dibble
Ombudsman