

The complaint

Mr S complains that Bank of Scotland (“BoS”) acted irresponsibly when it granted him an overdraft and subsequent increase and failed to consider patterns of reliance on debt and hardcore borrowing

What happened

Mr S has held a current account with BoS for a number of years and in October 2008 was granted an overdraft with a credit limit of £400. The credit limit was increased to £1,000 in November 2008 where it remained until September 2023 when Mr S cleared the outstanding debt and cancelled the overdraft.

In October 2024 Mr S complained to BoS about his overdraft facility.

On 10 December 2024 BoS issued Mr S with a final response letter (“FRL”). Under cover of this FRL, BoS said it was satisfied the overdraft and limit increase had been affordable for Mr S and didn’t uphold the complaint.

Unhappy with BoS’s FRL, Mr S brought his complaint to us in June 2024.

BoS consented to us considering Mr S’s complaint from the first granting of the overdraft in 2008. Mr S’s complaint was considered by one of our investigators who concluded that BoS hadn’t acted fairly and upheld Mr S’s complaint from the November 2011 review.

BoS didn’t accept the investigator’s view so this complaint has been passed to me for review and 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.

Having done so, I’ve reached the same conclusion as that of our investigator for broadly the same reasons and I don’t think BoS has acted fairly in this case.

I’m aware that I’ve summarised this complaint above in less detail than it may merit. No discourtesy is intended by this. Instead, I’ve focussed on what I think are the key issues here. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts.

If there’s something I’ve not mentioned, it isn’t because I’ve ignored it, I haven’t. I’m satisfied I don’t need to comment on every individual argument to be able to reach what I think is the right outcome. I will, however, refer to those crucial aspects which impact my decision.

Lastly, I would add that where the information I’ve got is incomplete, unclear or contradictory, I’ve to base my decision on the balance of probabilities.

Before authorising the overdraft limit of £400 in October 2008 and then increasing it to £1,000 the following month, BoS was required to complete proportionate affordability checks to ensure the credit was affordable and sustainable. What is considered proportionate will vary depending on the specific circumstances of each case, as there isn't a set list of checks that had to be completed.

Our website sets out what we typically think about when deciding whether a lender's checks were proportionate. Generally, we think it's reasonable for a lender's checks to be less thorough – in terms of how much information it gathers and what it does to verify it – in the early stages of a lending relationship.

But we might think it needed to do more if, for example, a borrower's income was low or the amount lent was high. And the longer the lending relationship goes on, the greater the risk of it becoming unsustainable and the borrower experiencing financial difficulty. So we'd expect a lender to be able to show that it didn't continue to lend to a customer irresponsibly.

Did BoS conduct proportionate checks prior to making its lending decisions?

BoS told us that as Mr S's applications were more than six years ago (2008), it no longer held any of the credit risk, affordability or application data for either of his applications. But both Mr S and BoS have kindly provided us with the current account statements from 2008 onwards. So whilst I can't see what BoS based its initial lending decision on, I can see what the financial situation was regarding Mr S, from his statements from 2008 onwards. And whilst I can't make a judgement on whether the checks BoS conducted in October and November 2008 were proportionate, I can say whether the initial credit limit granted in October 2008 and the increase in November 2008 were responsible or not.

BoS told us that it assessed Mr S's applications using details he had provided, information it already knew about him and information from credit reference agencies. Mr S told us he was earning approximately £1,100 a month, but paid weekly and looking at the statements, that is mostly commensurate with what I've seen as there were fluctuations weekly with his pay. And although he was making a number of cash withdrawals and a number of payments towards other credit (such as car finance) and utility payments, it appeared the last credit increase to £1,000 would have been both affordable and sustainable going forward.

And it's important to note that an overdraft is designed for short term borrowing. I'd also expect BoS to think about Mr S's ability to repay the whole borrowing in a reasonable period.

The only guidance within the regulations about what constitutes a reasonable period of time is that the lender should have regard to the typical time required for repayment that would apply to a fixed-sum unsecured personal loan for an amount equal to the credit limit. So in these circumstances, given the relatively low amount of the maximum limit of £1,000, I would consider 12 months to be a reasonable period of time to repay the whole of the borrowing and this is a period that BoS has also acknowledged as being reasonable. So this would equate to approximately £84 a month, not including any interest, fees or charges.

So on balance, I think BoS made fair lending decisions when it first granted the overdraft in October 2008 and then increased it to £1,000 a month later.

Did BoS monitor Mr S's repeated use of his overdraft?

Up until the £1,000 increase the account had been reasonably well managed although there was only a month between the initial limit being granted and the £1,000 limit increase. However, once the £1,000 was granted, Mr S was constantly overdrawn and very close to

the limit. In July 2009 he exceeded the limit which he did so again several times, with some overdraft fees taking him over the limit. And Mr S continued to be overdrawn and never returned to a credit balance with his weekly income insufficient to do this.

So by the time of the November 2011 review, I think there were signs that indicated Mr S was becoming over reliant on hardcore borrowing. I say this as over a two year period, Mr S was constantly overdrawn and at times exceeded the agreed limit which caused Mr S to incur additional fees and charges which continued and made this cycle of debt worse. And since November 2009, Mr S had been constantly in his overdraft and never once, from the evidence I've seen, returned to a credit balance. And whilst BoS told us that it identified Mr S to be a repeat user of his overdraft around 2020, when it started sending repeat user letters, I think there was evidence of both over reliance and financial difficulty several years before this.

The regulations put the onus on lenders that an overdraft is not generally suitable for long term use. So as well as needing to act responsibly when it took the decision it agreed to grant and increase Mr S's credit limit – ensuring that the overdraft was sustainably affordable without the need for Mr S to borrow more – BoS also needed to monitor and review his overdraft usage. And where it identified a pattern of repeat usage, as with Mr S's account, it needed to take steps to try and reduce it. And on balance, I'm not satisfied BoS have done this. I say this as although more stringent regulations were introduced in relation to overdraft usage in 2019, prior to this BoS still had a responsibility to monitor and review Mr S's usage and treat customers fairly. And this included ensuring Mr S was using his overdraft in the way it was intended – as a short term or emergency credit facility. And where there was evidence of financial hardship, it needed to take appropriate action.

BoS said Mr S's persistent overdraft usage was due to how he chose to manage his account and not due to financial difficulties and maintained he would have had sufficient funds to repay the outstanding debt within a reasonable period of time. But I disagree. It was obvious by the November 2011 review, that Mr S was in a cycle of debt and over reliant on hardcore borrowing. And just because Mr S chose not to reduce any non-essential spending doesn't excuse BoS from the need to take positive action to support Mr S and work with him to reduce his over reliance on his overdraft and the way he was using it, which wasn't in line with its intended purpose, as BoS is well aware.

And so I think BoS needed to consider other options such as but not limited to reducing or waiving interest or reducing the limit. But I can't see that BoS considered any of these options at this time.

So taking into consideration BoS's obligations, I'm not satisfied it did enough to support Mr S. I say this because I think Mr S was showing signs of financial difficulty by the time of the annual review in November 2011 and BoS should have done more to help him to explore different options to reduce the debt. Because of this, I uphold this complaint from the date of the annual review in November 2011.

Did BoS act unfairly in any other way?

Mr S has told us he was making a lot of cash withdrawals after being granted the overdraft limits which he was using to gamble. Having looked at the statements provided, whilst I can see that Mr S was making a lot of cash withdrawals, I can't see any evidence linking this to any gambling. And I can't see from the evidence I've looked at, that he made BoS aware of this gambling issue until he raised his complaint. And within it's FRL, BoS referred Mr S to organisations that may be able to help Mr S. And I'm pleased to know that Mr S has since reported that his gambling is now under control. But in relation to BoS, I can't see that this gambling issue would have been evident to it. Whilst in the more recent statements, there is evidence of using well known betting sites, I don't think the amounts and frequency would or should have raised concerns for BoS.

I've also considered whether BoS have acted unfairly or unreasonably in any other way and if an unfair relationship existed between BoS and Mr S, as defined by section 140A of the Consumer Credit Act 1974. However, I'm satisfied the redress I've directed above results in fair compensation for Mr S 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.

Putting things right

BoS should:

- Re-work Mr S's current overdraft balance so that any additional interest, fees and charges applied from November 2011 onwards are removed.

AND

- If an outstanding balance remains on the overdraft once these adjustments have been made, BoS should contact Mr S to arrange a suitable repayment plan for this. If it considers it appropriate to record negative information on Mr S's credit file, it should backdate this to November 2011.

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 S, along with 8% simple interest (yearly) on the overpayments from the date they were made (if they were) until the date of the settlement. If no outstanding balance remains after all adjustments have been made, then BoS should remove any adverse information from Mr S's credit file.*

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

My final decision

My final decision is that I uphold this complaint. Bank of Scotland 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 S to accept or reject my decision before 20 November 2025.

Paul Hamber
Ombudsman