

## The complaint

With the help of a professional representative (PR), Ms R complains that Bank of Scotland plc (BoS) lent to her irresponsibly and failed to step in when she became reliant on her overdraft. For ease, I'll mainly refer to the PR's actions as being those of Ms R.

## What happened

Ms R has had an overdraft on a joint account of £1,500 since 2009. The account was moved into her sole name in July 2020. Ms R complains that the relationship between her and BoS is unfair as described in Section 140A of the Consumer Credit Act 1974 (s.140). She says that's so because of the bank's "*failure to take into account patterns of reliance on debt and hardcore borrowing*". She said she has remained at the upper limit of the overdraft and has incurred significant charges as a result.

To resolve her complaint, Ms R asked BoS to refund all interest and charges she'd paid on the overdraft plus 8% interest on that. She asked for some compensation for distress and inconvenience and for all adverse information relating to the overdraft to be removed from her credit file.

BoS considered the complaint as being about the decision to agree of the overdraft initially in 2009. It said the complaint had been brought too late under the complaint handling rules of the Financial Conduct Authority (FCA) as more than six years had passed since the overdraft had been agreed. It didn't uphold the complaint.

Ms R didn't accept BoS's response so she referred her complaint to our service. One of our investigators looked into it. She felt BoS ought to have stepped in from July 2023 to support Ms R as it was evident that she was struggling with the overdraft, rather than continuing to levy charges and interest. She upheld the complaint on that basis.

Neither Ms R nor BoS accepted our investigator's recommendation of the complaint so, as there was no agreement, the complaint has been passed to me for 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.

I note BoS thinks the complaint is out of our jurisdiction due to the time limits in the FCA rules. That's because it focussed its final response letter on the lending decision. But Ms R has disagreed with that and has requested we consider the complaint under s.140. Her PR says we should do so and should consider the whole relationship. They contend the relationship started when the overdraft was agreed in 2009.

I agree with BoS that I can't look at the lending decision in 2009 under this complaint and I've written to Ms R's PR about that. They haven't responded to that point, so I assume they accept it. In summary, the reason I say this is because the relationship between the bank and Ms R changed when the account moved from a joint account to a sole one in July 2020.

As the account was in credit at that point, the joint relationship came to an end, and a new sole relationship was created. So I've looked at this complaint as being about Ms R's sole relationship with BoS – since July 2020 only. I don't have the ability to look at two different relationships (a joint and a sole relationship) on one complaint, so I've focussed on the sole one as the complaint was made to BoS by Ms R alone.

For completeness, I thought about the lending decision that allowed Ms R to continue with the overdraft in her sole name. At the time, the account was in credit by many thousands of pounds (which I'll touch on later herein) and she had a regular income in excess of the overdraft. While I don't have lots of detail about the decision, I think even if I did, I would find it wasn't unreasonable for BoS to have allowed the overdraft.

The rules regarding overdrafts are set out in the Consumer Credit sourcebook (CONC). CONC 5D came into force in December 2019 and sets expectations for lenders with regards to repeated use of overdrafts. CONC 5D.2.1 says lenders must periodically monitor and review customers' accounts for whom there is repeat use, and divide those into customers for whom there are signs of actual or potential financial difficulty and those who simply show a pattern of repeat use. 5D.3 sets out interventions lenders should take for customers in each category.

Following our involvement, BoS has said it wrote to Ms R "*offering support and to let Ms R know the door is open should she need us at any time*". So it's clear the bank identified her as a repeat user, but, it seems, didn't consider her to be in - or at risk of - financial difficulty.

BoS has said Ms R received various lump sums of money over the years, in particular £127,000 in July 2020 – just before the account moved to a sole account. After the account became sole, Ms R moved that money into a savings account. There have been other large payments (though not at this level) over the years, but Ms R has continued to use the overdraft. BoS feels she could have repaid the overdraft using these monies and indeed could afford to repay it over a reasonable period (as required by CONC) if she wished to through careful budgeting.

Ms R has told us the £127,000 came from the sale of the matrimonial home (around the time the account became a sole account) and that she used the vast majority of the money to buy a new house for her and her children. She has now provided us with statements for the savings account and while they are not entirely clear (some dates and some balances are cut off the copies provided), I can see that around £114,000 was transferred in two transactions, essentially clearing the balance of the savings account. I'm satisfied that this fits with Ms R's version of events and I note the address on the account was updated in November 2020 which would appear to coincide with the information I have.

Since then, Ms R has continued to use the overdraft most months. Her salary over the years has increased from around £1,600 to around £2,300, so her account generally returned to credit each month before going back into the overdraft. And there were, as the bank has said, occasions where she received lump sums that were transferred into her savings account and transferred back throughout the following months. The account would sometimes be in overdraft while there were funds available on the savings account which could have repaid – or at least reduced – the overdrawn balance and therefore the charges. However, for the majority of the time there was little money in the savings account.

As I've explained above, BoS had a duty to monitor Ms R's account "*periodically*" for signs of actual or potential difficulties. There is no set definition for 'periodically', but I can see from the statements provided by BoS that it set renewal dates for Ms R's overdraft at quarterly intervals. I've considered this when reaching my decision, although I won't go into detail quarter by quarter and will look at things on an annual basis which I think makes trends more

evident.

As Ms R's sole relationship began with BoS from July 2020, I've looked at things annually from there.

#### *July 2021*

At the review which would have taken place around July 2021, the bank will have seen a steady income (around £1,600 at the start of the year rising to £1,900 by the end, plus £260 or so in benefits) which returned the account to credit each month. And for a reasonable period of the year, Ms R could have repaid the overdraft in full from her savings account. She'd received other lump sums to the account on top of the house sale monies.

BoS did write to Ms R to explain the costs of borrowing using an overdraft – as CONC obliged it to do – but I don't think there were any particular signs of actual or potential financial difficulties at this point.

#### *July 2022*

By this review, Ms R's salary had increased to around £2,100 so her account continued to move to credit each month. BoS had reduced her limit to £1,450 in the April and there were a few returned direct debits (three I can see). Ms R no longer had any money on her savings account. So it seems she was beginning to struggle with the overdraft and was potentially at risk of financial difficulties.

That being so, I would have expected BoS to begin to reach out to Ms R highlighting the need to take action to reduce her reliance on the overdraft. One of the interventions suggested by CONC 5D.3.3(4) includes "*advice on budgeting and money management*" which may have been prudent at this stage.

#### *July 2023*

While Ms R's income improved again over the course of the year, her account spent less time in credit. BoS has told us that it feels Ms R could afford to repay the facility within a reasonable time and I can see why it thinks that.

But there were several unpaid items – more than one a month – including some to communications suppliers and a finance company. There were several payments to debt collectors, and it was evident that Ms R was reliant on her overdraft to meet her regular essential commitments. I think it is clear by this stage that Ms R was probably experiencing financial difficulty and BoS ought to have stepped in to help her rather than adding to the burden by continuing to charge fees and interest.

#### **Putting things right**

As I think BoS should have stepped in to support Ms R to reduce or repay her overdraft from July 2023, I don't think it should benefit by charging for the facility from that date. I think it should:

- Re-work Ms R current overdraft balance so that all interest, fees and charges applied to it from July 2023 onwards are removed.

AND

- If an outstanding balance remains on the overdraft once these adjustments have been made BoS should contact Ms R to arrange a suitable repayment plan for this. If

it considers it appropriate to record negative information on Ms R's credit file, it should backdate this to July 2023.

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 Ms R, along with **8% simple interest per year**\* 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 Ms R's credit file.

\* If BoS considers that it's required by HM Revenue & Customs (HMRC) to deduct income tax from that interest, it should tell Ms R how much it's taken off. It should also give her a tax deduction certificate if she asks for one, so she can reclaim the tax from HMRC if appropriate.

### **My final decision**

My final decision is that I uphold this complaint. Bank of Scotland plc must put matters right as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms R to accept or reject my decision before 23 February 2026.

Richard Hale  
**Ombudsman**