

complaint

Mr D complains that Bank of Scotland plc (“Intelligent Finance”) has held him responsible for a debt created on his account when he made transactions which left it over £13,000 overdrawn. This was despite the authorised overdraft limit being less than £1,000.

background

The circumstances leading to this complaint were set out in my provisional decision of 23 June 2014, a copy of which is attached and forms part of my final decision. I was minded to uphold the complaint as, although I did not require the bank to write off any of the spending that Mr D undertook on the account by use of unauthorised overdraft, I considered that the actions of the bank – in allowing such a sizeable unauthorised overdraft to cover his spending - caused him substantial distress and suffering and it should therefore pay Mr D compensation of £600.

I invited the parties to provide me with any further submissions they wished to make in response to my findings.

Intelligence Finance accepted my provisional findings and conclusions and had nothing further to add. Mr D did not agree with those findings and conclusions and is still seeking that the bank write off the debt he accumulated with the bank.

Mr D says that there is no prospect of the debt being repaid. And, quite simply, on the basis that I concluded that the unauthorised overdraft which the bank allowed use of was most excessive, Mr D says he should not have to repay the debt which he should never have been allowed to accumulate.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

I recognise that Mr D’s personal circumstances mean that he may never be able to repay the debt or be able to repay significant sums at any time. However, I am not persuaded that I may fairly and reasonably say that there is no prospect of the lending ever being repaid. I say that taking into account Mr D’s age, if nothing else.

It also remains that Mr D used the funds as he chose to do and at his discretion. So, in light of everything, I do not consider that the bank needs to go so far as write off the debt. Mr D is though able to agree an affordable repayment plan for him with the bank and I again remind all the parties of the bank’s obligations to treat Mr D positively and sympathetically in this connection.

I am still of the opinion that the bank ought to pay compensation on the basis I set out previously. I should make clear, though, that I require the £600 to be paid to Mr D and not to be set off against his debt with the bank.

For these reasons I do not depart from my provisional decision.

my final decision

My final decision is that I require Bank of Scotland Plc (trading as Intelligence Finance) to pay £600 directly to Mr D in full and final settlement of the complaint. However, I do not require the debt to be written off by the bank.

Ray Neighbour
ombudsman

EXTRACT FROM PROVISIONAL DECISION

complaint

Mr D complains that Bank of Scotland plc (“Intelligent Finance”) has held him responsible for a debt created on his account when he made transactions which left it over £13,000 overdrawn despite the authorised overdraft limit being less than £1,000.

background

Mr D accepts that he made the transactions – largely payments to online gambling companies - but he believes that the bank should not have allowed him to do so. He is asking the bank to take responsibility for its actions and for him not to be held responsible for repayment of the debt. Mr D has described personal circumstances that he says suggests that he, in particular, should not have been able to spend the amount that he did, beyond his overdraft limit.

Our adjudicator recognised that Mr D had found himself in an unfortunate situation. But, he explained that when he was making the transactions, Mr D was in effect requesting the bank to allow a payment which was not covered by the agreed overdraft but which he wished to make. This request was authorised by the bank and he was able to make the payments he wanted. This was in line with the account terms and conditions and the adjudicator did not consider it unfair or unreasonable for the bank, in principle, to allow the individual payments requested.

As the bank had chosen to authorise the payments that had been requested, and it was entitled to do that, the adjudicator said it would not be fair and reasonable to recommend that the bank refund payments to the account; nor did he think he could recommend that on the basis that Mr D had subsequently decided he did not want the payments to be made.

The overall amount that Intelligence Finance had allowed Mr D to exceed his agreed overdraft by seemed excessive to the adjudicator. But he did have to weigh that there was no limit to the level of unauthorised overdraft that can be granted and therefore at which point might it be reasonable for the bank to start declining payments. And the bank had, ultimately, allowed Mr D to make the transactions he wanted to make and run the account as he wished to do.

On balance, the adjudicator did not consider it fair and reasonable that the bank should be responsible for the payments Mr D knowingly and willingly made. He considered that he could not recommend that funds actually spent should be written off. However, it seemed inappropriate that the bank should be able to charge interest on the amount that the bank allowed him to spend. But he noted that the bank had refunded interest – as well as charges applied in respect of the unauthorised overdraft created – and the account was frozen with no further fees being applied. The adjudicator considered that was fair and reasonable.

Mr D has asked that his complaint be referred to an ombudsman for review. He believes that greater regard should be given to the extent to which the bank allowed him to exceed his overdraft; his personal circumstances at the time that he carried out the spending; and the difficulty he will have in repaying the debt.

my provisional findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

I am sorry to hear of the difficult personal circumstances of Mr D and how he says they contributed to the financial issues that have arisen for him, following the bank allowing him to make the transactions by use of unauthorised overdraft. I do not doubt the financial difficulty that Mr D has found himself in nor that the lending provided represents funds which he now has difficulty in repaying and wishes he had not been granted access to by the bank. I have taken into account what Mr D has said about these matters.

However, as the adjudicator said, the bank is entitled to allow spending by use of an unauthorised overdraft and it is its decision to make as to whether an individual transaction, when the account holder seeks to make a payment, can be made or not.

And while the extent of the spending that the bank allowed Mr D to carry out – beyond the already agreed overdraft – was most excessive, it remains that Mr D did make use of the funds that were provided by the unauthorised overdraft and I do not consider that I may fairly and reasonably say that there is no prospect of the lending ever being repaid. It would be inappropriate for the bank to gain any financial advantage, in my opinion, for allowing Mr D to spend so far beyond his agreed overdraft limit – I will return to that point - but on the basis that interest and charges have been waived in respect of the debt created by the spending at issue here, and as the bank is only seeking repayment of the principal sum spent, I do not consider that there are grounds for me to require the bank to write off that amount.

I appreciate that this still leaves Mr D with lending to repay. But while he remains in financial difficulty, and unable to significantly reduce the debt at issue here, I remind the parties that the bank is required to treat him positively and sympathetically in its dealings with him about repayment of the unauthorised overdraft spending. Specifically, in establishing appropriate arrangements for the repayment of the debt, the bank's requirements to treat Mr D positively and sympathetically will need to be taken into account.

That all said, as I have mentioned, I consider that the extent of the spending that the bank allowed Mr D to make, beyond the limit of the authorised overdraft, was most excessive. And while I cannot say that the bank is not entitled to, for instance, allow an account holder to make a single transaction that relies on the use of unauthorised overdraft – or any particular amount of such transactions - I am required to determine complaints by reference to what I consider to be fair and reasonable in all the circumstances.

Over 14 days, Mr D made approximately 260 transactions, with a total value of approximately £43,500. These were predominantly payments for online gambling and ultimately Mr D relied on the use of an unauthorised overdraft facility of over £13,000 when he had an authorised overdraft facility of only £990. He was spending in excess of the authorised overdraft for a number of days without, as far as the bank has presented me evidence of, Mr D being contacted about the situation.

Despite the bank's reliance on its entitlement to allow payments to be made by use of an unauthorised overdraft facility, it seems to me that it is fair and reasonable to say that it should not have allowed Mr D to spend to the extent that he did and over the period that he did given the lack of funds in his account and the reliance of an unauthorised overdraft facility.

In the circumstances, I do not consider that it is necessary for me to conclude when the bank should have not allowed Mr D to make further use of the unauthorised overdraft facility. I do not require the

bank to write off any of the spending that Mr D undertook and it can seek recovery of the debt on the account as I have determined.

But Mr D has explained his historical and current personal circumstances which are not disputed by the bank. And as a result of the debt that he now has and should, in my opinion, not have been able to accrue to the value it did, I have no doubt that Mr D's concerns about how he has spent the funds, his concerns about repayment of the debt and worries for the future management of the debt have caused him substantial distress and suffering.

In light of that, I am minded to require the bank to pay Mr D compensation of £600.

my provisional decision

My provisional decision is that I am inclined to uphold this complaint and require Intelligence Finance to pay £600 directly to Mr D in full and final settlement of the complaint. However, I do not require the debt to be written off by the bank.

Ray Neighbour
Ombudsman