

complaint

Mr C complains that Bank of Scotland Plc (BoS) wrongly allowed him to increase his overdraft through online applications, despite knowing he had a gambling problem. Mr C had an overdraft of £5,000, which he reduced to £500. He told the bank of his gambling problem and a note was added to his customer records to prevent further lending. However, Mr C was able to increase his overdraft to £4,200 over several online applications. He then spent the money on gambling.

Mr C says that, as BoS should not have allowed him to borrow the money, he should not have to repay it. He also complains that the bank has applied excessive charges to his account which have caused him considerable distress.

background

The adjudicator recommended that the complaint should be upheld in part. He considered that Mr C is liable to repay the overdraft, as he has had the benefit of it. However, he considered that BoS had not treated Mr C fairly, in that it should have been able to apply the agreed limit of £500 to Mr C's overdraft. He also considered that BoS had not responded positively and sympathetically to Mr C in applying fees for the overdraft which it had allowed him to have.

He recommended that BoS should pay Mr C £300 compensation for distress and inconvenience and that it should agree a manageable repayment arrangement with him. Mr C does not agree, saying that as the bank knew what would happen if it made the money available to him, he should not be liable to repay it.

my findings

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

It is very rare for this service to waive a debt where the borrower has had the benefit of the money. I appreciate that Mr C has a gambling problem which influenced his decision to make multiple online applications to increase his overdraft. However, he did spend the money, incurring a debt and I find that he is liable to repay it.

I do consider that Mr C has not been treated fairly by BoS. He had told it of his gambling problem and the bank responded by saying it had placed restrictions on his account to prevent him from incurring further debt. However, an error by the bank meant the restriction on his overdraft was set well above the agreed limit of £500 and Mr C was able to circumvent the restrictions by increasing his overdraft online.

That BoS allowed Mr C to incur a debt of £4,200 caused him considerable distress and inconvenience and I agree with the adjudicator that compensation is appropriate in the circumstances. I also consider that the bank should now agree a manageable repayment arrangement with Mr C which takes account of his circumstances and that it should refrain from listing adverse information on his credit file so long as that repayment arrangement is adhered to.

I also consider that BoS has not responded to Mr C's situation in a positive and sympathetic manner. The overdraft debt he incurred was as a result of its error, so I do not consider it

was fair or reasonable for the bank to apply substantial unarranged overdraft charges to the account, or to send demand letters when it did agree to freeze charges.

BoS had agreed to pay Mr C £300 compensation for the distress and inconvenience its errors have caused him, to refund charges already applied and to freeze further charges on the overdraft and to agree a manageable repayment arrangement. I understand it has since listed a default on Mr C's credit file, closed the account and has continued to pursue recovery activity against him, contrary to its acceptance of the adjudicator's opinion. I do not consider this to have been fair or reasonable treatment.

While I do not consider it is necessary for BoS to re-open the account, I do consider it should take several steps to otherwise restore Mr C to the position he would have been in had the errors not occurred.

my final decision

My decision is Bank of Scotland Plc should:

- Pay Mr C £350 compensation for distress and inconvenience;
- Refund charges applied to the overdraft from 1 January 2013;
- Remove the default listing on his credit file; and
- Agree a repayment arrangement with Mr C and refrain from listing adverse information on his credit file while the arrangement is adhered to.

Catherine Wolthuizen
ombudsman