

## **complaint**

Mr U, represented by his partner Ms V, complains about irresponsible lending to him by Bank of Scotland plc.

## **background**

Bank of Scotland provided Mr U with two personal loans of increasing size – the second in part being used to repay the first. The money was also used to repay Mr U's credit card debt to the same bank and the bank also increased Mr U's credit card limit.

Mr U, who withdrew virtually all the money from his current and credit card accounts in cash, had a gambling addiction and can no longer work due to injury. He is therefore unable to service the debts to the bank which were covered by Ms V from March 2009 to January 2011. She can no longer afford to do so.

Our adjudicator recommended that the complaint should be upheld. He noted that although we will not normally challenge commercial decisions made by the bank, including its decision on whether to lend to a customer, we will look to see if a logical and reasonable appraisal was made before it decided to lend.

In this case the adjudicator was not persuaded that Bank of Scotland had carried out a reasonable assessment before agreeing to the various facilities. In summary, the adjudicator considered that:

- the income declared by Mr U is not reflected in the wages credits on his account, it was a substantial difference and clearly had not been checked by the bank;
- the current account debits were mostly in cash suggesting a desire to mask how money was being spent and this is possibly a sign of gambling or other abuse;
- substantial portions of the loan monies were used to repay Mr U's credit card debt to the bank;
- Mr U continued to run up credit card debt even after taking out the new loan suggesting he was unable to live within his means but despite this the bank increased his credit card limit;
- the 2007 loan had higher repayments despite the fact Mr U could not manage the lower repayments without incurring increased credit card debt;
- the bank did not remove or reduce his credit card limit but in fact increased it suggesting it was not properly assessed by it; and
- The bank had made no conscious assessment of Mr U's circumstances but actively assisted him to an inappropriate financial position where he could not afford the credit made available to him.

Overall, the adjudicator concluded that Bank of Scotland had acted in an irresponsible manner, ignoring its customer's situation and making additional credit available to Mr U without regard to his ability to repay it. The adjudicator acknowledged that Mr U had received the benefit of the funds advanced but recommended that the bank should refund all interest

and charges incurred since the date the second loan was drawn. That refund should be used in the first instance to reduce the amount outstanding on Mr U's loan account.

Bank of Scotland did not accept the adjudicator's recommendations and asked for the complaint to be reviewed by an ombudsman, as it is entitled to do. It says in summary that:

- the second 2007 loan was granted at a time when both regular and *ad hoc* credits were being received on Mr U's account;
- it is not the bank's normal procedure to remove or reduce a credit card limit once it has been repaid; and
- a system review allowed an increase in the credit card limit.

### **my findings**

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

Having done so, I agree with the conclusions reached by our adjudicator for broadly similar reasons.

It is not the role of this service to dictate how a bank carries out its business or what procedures or policies it should have in place or to interfere in it exercising its commercial judgement. But we are concerned to see that its customers are treated fairly as individuals with due regard for their specific circumstances when lending decisions are made. If a bank automates such decisions, it will appreciate that sometimes those decisions will turn out to be incorrect.

In this case the bank has accepted that it approved the loan in 2007 in good faith and in response to and as part of a loan campaign. It has conceded that no credit check was carried out at the time the loan was agreed and that the application was assessed based on its relationship with Mr U. It also relied on Mr U's declared statement of his income. It also says that its systems allowed his credit card limit to be increased.

Although I accept that the bank cannot monitor every withdrawal made by Mr U on his account and credit card I am not persuaded that it carried out an adequate assessment of his circumstances or ability to pay off his liabilities. The bank says that Mr U had made regular salary and *ad hoc* credits to his account but it does not appear to have checked or verified these figures. Ms V has clearly set out the average sum paid in for Mr U's earnings in 2007 which was considerably lower than the declared figure which was accepted without question by the bank. Furthermore she points out that the *ad hoc* credits were in fact from the sale of Mr U's assets, money borrowed from friends and the occasional gambling win.

I am not persuaded that the bank took any, or any reasonable steps, to verify that these sums were actually Mr U's earnings – particularly as he was self employed – or the apparent discrepancy between the figures he declared and that received into the account. I consider the bank could reasonably have done more in 2007 to assess Mr U's financial situation and ability to repay his liabilities. Had it done so I consider that it would, more likely than not, have been apparent that the income figure used was, for whatever reason, mis-stated and over inflated, that Mr U was in financial difficulty and would not have been able to afford the loan as quickly later became apparent.

It is also clear that Mr U was having problems meeting the commitment of the first loan and this is acknowledged in the bank's final submissions. Those problems required the loan and credit card debt to be consolidated, eventually reducing his outgoings.

I accept that it was not the bank's practice to remove or reduce the credit limit on a credit card when it was paid off but its failure adequately to consider Mr U's underlying financial circumstances (including the fact that the credit card balance was only repaid from other money borrowed) clearly led to the credit limit being increased. But I note that the bank has already written off the credit card balance.

So I also consider that it is fair and reasonable that in all the circumstances Bank of Scotland should refund all the interest and charges on the loan account since the second loan was taken out and that this sum should first be applied to reduce the amount outstanding on the loan account and, if this puts the account into credit then that credit balance should be paid to Mr U.

Although Mr U may have been caused some distress and inconvenience by the bank's handling of this matter I am not persuaded that he should be awarded any compensation for any distress and inconvenience caused. Not least as he appears to have contributed to the situation by submitting incorrect income information to the bank and, as it says, he could have brought his financial difficulties to its attention more explicitly and forcefully at an earlier stage and asked for his credit card limit to be reduced. He has also had the benefit of the money loaned.

### **my final decision**

My final decision is that I uphold this complaint. In full and final settlement of it I order Bank of Scotland plc to refund all interest and charges applied to the loan account since 27 July 2007 and, if this leaves the account in credit, to pay any credit balance to Mr U.

Stephen Cooper  
**ombudsman**