

## The complaint

In summary, Miss W complains that Bank of Scotland Plc (BOS), trading as Halifax, incorrectly reported a late payment for July 2022 on her credit card, to credit reference agencies. She is also concerned that it refused to remove the marker after an investigation confirmed there hadn't been a late payment for July 2022.

## What happened

BOS responded to Miss W's complaint in April 2023. It said a payment made in July 2022 had been made on the due date, so it wasn't reported as a late payment. It said that a payment had been missed in April 2022, so it was classed as a missed payment and reported to the credit reference agency. So, it didn't agree to uphold her complaint. Miss W's complaint was looked into by one of our investigators. They wrote to Miss W explaining why they didn't think BOS had done anything wrong, for essentially the same reasons provided by it.

Miss W disagreed and asked for an ombudsman to review her concerns. In summary, she explained that this was an issue of accurate reporting. She said the month selected by BOS didn't reflect the month it said the payment had been missed.

The investigator reviewed Miss W's concerns again considering her comments. He agreed that as there was no missed payment in July 2022 as evidenced by the card statements a missed payment shouldn't be reported for that month. He said BOS should remove the marker and pay Miss W £75 for the distress and inconvenience she had been caused. In response Miss W said she still wanted her complaint to be reviewed by an ombudsman. She didn't agree to her credit file being shared with BOS.

BOS provided further explanation. It said Miss W's April payment was due by 29/04 and would be classed as in arrears from her billing cycle date. It said Miss W's account notes showed she had a billing cycle date change from the 4<sup>th</sup> of the month to the 19<sup>th</sup> of the month.

It went on to say that due to this change her account didn't cycle until 19/05/22. It also said that it didn't report a customer as late until 14 days after the cycle date which took Miss W to 02/06/22. On working day 10 which would be the 14/06/2022 - this would have been the file cut-off date and the credit reference agencies would receive the file on 15/06/2022. The credit reference agencies check the file for data quality and the bureau would update at the end of June which would be when the data would then go live. It set out the timeline:

- Payment due date 29/4
- Cycle date 19/5
- Missed payment showing late 2/6
- File cut 14/6
- CRAs receive file 15/6
- CRAs check for data quality errors etc. 15/6 to 22/6
- Updated at bureau end of June.

- Data set to live.

Due to the circumstances and dates involved, BOS said it didn't think this was an error when Miss W's late payment was showing. It said it could understand why it may look a little odd to Miss W, but due to the processing time and her cycle date change it couldn't agree it was incorrect.

Miss C then provided further evidence and asked that the issue of misreporting be considered in light of the Financial Reporting Standards and the Financial Disclosure Code. She said that in line with good practice there should have been a record of what information was disclosed to the Credit Reference Agencies (CRAs).

The investigator wrote to BOS and asked why despite the cycle change, the credit file didn't show a missed payment for April. In response BOS explained again the change in the cycle date. It said the update date for the credit file was a month out, it classed the payment as being late in June. So, the late payment was reported in July but in relation to June's information, as it had to wait a month before it could report it. It wrote to the investigator again and explained that a customer didn't fall into arrears until the cycle and that was shown on the statement. It thought it would be fair to show the late payment marker as May as this was when the account was cycled. It thought that it was unfair that it reported a month later because of a cycle date change and its grace period.

Another of our investigators took over the conduct of the case. They reviewed the case and thought that BOS' offer to amend the credit file to reflect the missed payment from July 2022 to May 2022 was reasonable. And they said it should pay Miss W £100 for the distress and inconvenience she had incurred.

Miss W provided a lengthy response to the investigator's view. In summary, she didn't dispute that there were missed payments in the previous billing cycles. She reiterated that her complaint concerned a late payment marker for July 2022 reported 2 days after the payment was made. She said that the payment for that month was made before the due date. She referred to a CRA report which laid out the billing cycles and said that no missed payments were recorded for April and May 2022, and her account was brought up to date prior to the issue of a late payment in July. She didn't think a missed payment from three months before hand was relevant to a late payment in July. She thought the BOS' proposal to rectify the report was retaliatory.

The second investigator had said that it was "unclear to them" how the missed payments came to appear as a late payment for July. Miss W reiterated that the complaint concerned what BOS had reported to the CRA. She didn't agree that the billing cycle date automatically affected the day a missed payment was reported to the CRA. She questioned the rationale of the investigators assessments.

Miss W wrote to the investigator again explaining why she didn't agree with the explanation provided by BOS. In summary she said that even taking into account what it had said, the cut-off point was out of date and outside of the late payment in July. She also told the investigator that she had made a data subject access request (DSAR) to BOS and a CRA. She thought the information that would be provided would be relevant to the complaint. She subsequently provided information she had received through her DSAR, which showed one payment in arrears for June 2022.

The case was passed to me for review. I issued a provisional decision explaining why I was intending to uphold Miss W's complaint. In response, Miss W accepted my decision. BOS didn't. In summary it said:

- It had agreed previously to remove the late payment marker from July 2022 and move it to May 2022, as if there hadn't of been a cycle change, this was when it would have shown. It also said Miss W had confirmed "she didn't dispute that there were missed payments in the previous billing cycles". As Miss W did make a late payment, it said it must record correct and factual information to the CRA. So, it would not be removing the late payment marker altogether.
- It noted a credit report Miss W received from a DSAR showed a late payment from June 2022 also. It said it had explained previously July's 2022 credit report would have shown June's 2022 data. It attached the full email that was sent.
- It said there was only one late payment marker showing for 2022. It attached an email which it sent on the 27 September 2023, which it said explained and showed the late payment markers showing on Miss W's account. It also said the screen shot it provided was from the email sent on the 27 September 2023, which clearly showed only one missed payment in 2022 and 2 more recent missed payments in 2023.
- The late payment marker had never been moved from July 2022 to May 2022 as Miss W had never agreed to this.
- It had previously agreed to pay Miss W £100 for distress and inconvenience she had incurred (D&I), which it felt was fair and reasonable. It noted I said it should pay £350 and asked how I had arrived at this figure. Given that there were other late payments on Miss W's file, it said she would still be affected by them.

### **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 remain of the opinion that Miss W's complaint should be upheld. I'll explain why.

In reaching my findings, I haven't commented on every point of concern or submission Miss W or BOS have raised. I don't intend to offend Miss W or BOS by not doing so or mean any disrespect in taking this approach. This reflects the informal nature of this service. Instead, I've focussed on the key issues and information I think I need to consider, in deciding on whether BOS did anything wrong.

The crux of Miss W's complaint is that BOS incorrectly applied a missed payment marker on her credit file for July 2022. She says that she didn't miss a payment that month and that the marker applied by BOS is incorrect, irrespective of what it says about any missed payments in previous months.

So, in the first instance, I've considered what happened in and around July 2022. The statement dated 19 June 2022 states that a minimum payment of £44.35 need to reach Miss W's account by 14 July 2022.

The statement dated 19 July 2022, states that a minimum payment of £42.15 had to reach Miss W's account by 15 August 2022. It also records that a payment of £45 was entered onto Miss W's account on 14 July 2022. The statement dated 21 August 2022 records that a payment of £45 was received on 13 August and entered onto the account on 15 August 2022. I'm satisfied from this information that Miss W paid the contractual payments for June and July 2022.

As I've summarised above, BOS has explained how it reported a missed payment it says was made in April 2022 to CRAs. However, I find it difficult to reconcile that a payment it says was missed in April 2022 is reported as a missed payment for July 2022.

BOS has in essence, said that changes to Miss W's billing cycle resulted in the missed payment being reported in July. But I think in the circumstances of this particular case, the missed payment it has reported for July is clearly incorrect. And from the credit report provided to Miss W through her DSAR, that report shows a missing payment for June 2022 which is also incorrect.

The Information Commissioners Office (ICO) is the relevant organisation set up to deal with customer's personal information.

In July 2016 it updated a paper called "*Principles for the Reporting of Arrears, Arrangements and Defaults at Credit Reference Agencies.*" This document set out the principles that lenders such as BOS should adhere to when reporting information to credit reference agencies.

I think that Principle 1 is relevant to the July 2022 missed payment marker. This says that data that is reported on a credit file must be fair, accurate, consistent and up to date. I don't think what BOS has done in Miss W's case is in line with this principle. I say that because as I've explained above, Miss W's credit card statements show that the marker applied for July isn't an accurate record, as no payment was missed in June or July 2022. And BOS itself has accepted in its e-mail to the investigator of 9 August 2023, that it seemed unfair that it reported the missed payment a month later because of a cycle date change and its grace period. So, I agree with BOS that it hasn't treated Miss W fairly in the way it has reported this marker, and as I've explained, I think it should have taken steps to rectify her credit record by removing the inaccurate record.

BOS has argued and it has repeated that argument again in its response to my provisional decision; that although the credit marker may have been reported a month later than it should have been, there should still be a missed payment marker added to Miss W's credit file. But as I've said, BOS hasn't amended Miss W's credit file and as I've explained I think it should have ensured that Miss W's credit file was accurate. I don't think it needed Miss W's agreement to ensure it accurately reported information to credit reference agencies. And the complaint that Miss W has made is about the accuracy and fairness of the marker that it did report to CRAs, which showed her as having a missed payment in July 2022.

As I said in my provisional decision, I can't consider a complaint that hasn't been made and which is about something that hasn't yet happened. For the avoidance of any doubt, I am not making any findings on - or commenting on - the appropriateness of BOS changing the missed payment marker to another month. That would be a matter for it to decide if it considers that is what it needs to do. If it does that, and if Miss W disagrees with any steps that it takes; then it would be open to her to raise those concerns with BOS in the first instance. And she could refer those concerns to this service if she couldn't resolve them directly with BOS.

### **Putting things right**

For the reasons I've explained, I remain of the opinion that BOS hasn't acted fairly in applying a late payment marker to Miss W's credit file for July 2022. It has said that in its response to my provisional decision that there was only one late credit marker for 2022, which was in July. However, I can see that the credit report provided by Miss W, shows a late payment marker for June 2022. So, BOS needs to take the appropriate steps with the CRAs to have any late payment markers that show late payments for June and July 2022, removed from Miss W's credit file.

In addition, it should pay Miss W compensation for the distress and inconvenience she has incurred as a result of the inaccurate marker being applied to her credit file. Deciding on an

appropriate sum to compensate for distress and inconvenience is not an exact science. I can only consider the impact on Miss W of BOS' actions. And I don't have the power to make any punitive awards against a business such as BOS. BOS doesn't agree with the figure I set out in my provisional decision, and it said it doesn't understand how I reached that figure. It thinks its offer of £100 is sufficient compensation.

As I explained in my provisional decision, the inaccurate marker has remained on Miss W's credit file for over a year. And I'm satisfied from everything that I have been provided with, that this marker being applied has had quite some impact on Miss W. She has not only had the inconvenience and upset of having the incorrect credit marker on her file; but has also had the inconvenience of trying to persuade BOS to remove the incorrect late payment marker, which it wouldn't do. As a result, I don't think the £100 BOS offered to pay her adequately reflects the distress and inconvenience caused to her as a result of BOS' mistake. And that is why I think BOS should pay Miss W £350, which I believe is a more appropriate sum to compensate her for the distress and inconvenience she has incurred as a result of its mistake.

BOS said in response to my provisional decision that there were other late payment markers on Miss W's credit file. In my provisional decision, I said I had noted that in one of her responses to one of our investigator's views, Miss W didn't dispute that there were missed payments in the previous billing cycles. And I've not seen any evidence that Miss W has suffered any direct financial loss as a result of the inaccurate missed payment marker being applied to her credit file. So, I'm not persuaded that she has suffered any direct financial loss. But for the reasons I have set out above, I do think she has suffered distress and inconvenience which warrants a compensatory award of £350.

### **My final decision**

My decision is to uphold Miss W's complaint. If Miss W accepts my decision, Bank of Scotland Plc should pay Miss W £350. And it should amend her credit file as I have set out in the putting things right section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss W to accept or reject my decision before 18 January 2024.

Simon Dibble  
**Ombudsman**