

The complaint

Mr W complains about an overdraft facility given by The Royal Bank of Scotland Plc (RBS) on a personal bank account.

Mr W says the overdraft was unaffordable to him so RBS shouldn't have lent it to him.

Mr W is being represented in this complaint by his father, but for ease of reference I'll refer to him directly.

What happened

Mr W held a current account with RBS with a £250 overdraft. Mr W applied online for four increases to his overdraft in January 2018. RBS approved each increase up to a total limit of £12,000.

Mr W complained to RBS. He said he felt the funds were lent to him irresponsibly as RBS didn't carry out reasonable affordability checks to make sure he could pay back the overdraft. In addition, Mr W said he has a gambling addiction which affected him and placed him in a difficult financial situation.

RBS responded to Mr W. It said it had carried out credit checks at the time of each application, and the overdrafts were approved based on this information. So it didn't agree it had lent irresponsibly. RBS considered Mr W's financial situation and offered him an interest-free loan (subject to affordability) to clear the overdraft balance. It also refunded and waived some of the overdraft interest and charges accrued as a gesture of goodwill.

Mr W rejected RBS' offer and brought the complaint to our service. He said he wanted the overdraft balance written off, and all interest and charges paid on the overdraft to be refunded.

Our investigator looked at everything and recommended the complaint be upheld. He found Mr W had made a number of applications for credit during his account history with RBS. And he found that shortly after each of the overdraft applications Mr W had used the maximum amount available. He said that RBS should have regarded the information it previously knew about Mr W when assessing his overdraft applications. He highlighted the credit limit offered to Mr W represented around 50% of his annual net income. He concluded that if RBS had considered Mr W's circumstances in more detail, it shouldn't have lent to Mr W.

Our investigator recommended RBS refund all the interest and charges Mr W paid above the original £250 limit, and that it should waive any outstanding interest and charges, applying both figures to the outstanding debt. He said both parties should discuss an appropriate payment plan for the remaining balance, and he recommended RBS pay Mr W £250 in recognition of the upset caused. But he didn't recommend RBS write off the remaining overdraft balance, as he found Mr W had some benefit of the funds lent.

RBS accepted our investigator's findings. Mr W said that whilst he agreed with the investigator's conclusions around the irresponsible lending, he felt RBS should write off the

overdraft balance, and pay an increased amount of compensation in recognition of the upset caused.

Mr W provided further comments to support his position. In summary he said:

- Over the last year he had developed a serious heart condition which could be linked to the stress of the increasing overdraft debt, so £250 doesn't feel appropriate compensation for the upset caused;
- The proposed outcome doesn't feel fair as it only refunds the profit RBS made from the overdraft, and leaves him with a significant debt to repay;
- A repayment plan will not allow him to move on from the debt which shouldn't have been lent;
- He would prefer a settlement which leads to the overdraft being cleared; either by RBS writing it off but not requiring it to refund the interest and charges, or, writing off half the overdraft and using the interest and charges refunded to clear the other half;
- RBS continues to charge interest on the overdraft despite being made aware of his vulnerability.

Mr W requested an ombudsman's decision, so the complaint has been passed to me to decide.

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.

In this case, the question of whether RBS should have given Mr W the overdraft increases has already been determined. Both parties have accepted our investigator's findings on this point. So what's left for me to determine is whether the proposed settlement is fair and reasonable.

I've carefully considered Mr W's testimony and the impact this debt has had on him. I have a great deal of sympathy for his situation here. But having looked at everything, I think the settlement proposed by our investigator is reasonable. I'll explain why below.

Mr W has provided evidence to demonstrate his gambling problem. And I consider his circumstances mean that he was a vulnerable consumer. The Financial Conduct Authority (FCA) defines a vulnerable consumer as someone who, due to their personal circumstances, is especially susceptible to detriment, particularly when a firm is not acting with appropriate levels of care. And I think Mr W's circumstances show he was especially susceptible to detriment as a result of being given the overdraft, and the amount he borrowed. So what I need to consider is whether RBS ought reasonably to have known about Mr W's gambling problem and vulnerable situation before it increased his overdraft limit each time.

The Consumer Credit sourcebook – FCA Handbook (CONC) sets out what regulations a business must consider with respect to making a lending decision about authorised overdrafts. I've checked the relevant regulations that were in force in January 2018, specifically CONC 5.2.1R. This states that before making a regulated credit agreement, a firm must undertake an assessment of the creditworthiness of the customer. And it goes on to say a firm must consider *"the potential for the commitments under the regulated credit agreement to adversely impact the customer's financial situation, taking into account the information of which the firm is aware at the time the regulated credit agreement is to be made"*.

So I think this means that as RBS gave Mr W an overdraft on his personal bank account, it should have taken account of the historic activity on that account and considered if this would have adversely impacted Mr W's financial situation.

I've looked at Mr W's bank statements in the two months leading up to the first overdraft application in January 2018 (where his overdraft was increased to £3,000). RBS has said Mr W's account operated within its overdraft facility and received a number of credits including his salary. And from what I can see this appeared to be the case.

However, I can also see a number of transactions made to an electronic money provider which total around 20% of Mr W's net monthly income in November 2017. These transactions increase in both amount and frequency in December 2017 to around 50% of Mr W's net income, however Mr W also received additional income credit in the form of a loan of £1,000 in the same period.

Having carefully considered the transaction amounts, frequency, and how they appeared on Mr W's statements, I can't safely say that it would have been apparent to RBS these were for gambling at this stage. I've also not seen any evidence that RBS had been told about Mr W's gambling problem or been asked for help. So I'm unable to conclude RBS knew that Mr W would be vulnerable to the overdraft increase.

I've next considered Mr W's account activity in the periods between each of the three subsequent overdraft increases to see what RBS should have been aware of. Again, I can see a number of transactions made to an electronic money provider, and further transactions paid to a virtual currency provider. The virtual currency provider transactions make up around three quarters of the funds spent by Mr W during this period.

So, based on what I've seen, I can't reasonably say RBS should have been aware the majority of funds were being used for gambling prior to agreeing each overdraft increase. Whilst it has been agreed RBS lent irresponsibly due to the overdraft being unaffordable, I don't find it lent knowing the lending would make Mr W especially susceptible to suffering detriment. So I don't think it would be reasonable to require RBS to write off any money.

I understand Mr W's recent health problems have been attributed to a possible cause of stress from the outstanding debt. But as I've determined Mr W had some use of the funds, I find it reasonable for RBS to seek to recoup the money. RBS has offered Mr W an interest free loan, subject to affordability, as a way to repay the overdraft without incurring further fees and charges. I think this is reasonable in the circumstances, but I also think RBS needs to consider all available options with Mr W based on his current financial situation.

So for these reasons, whilst I appreciate my decision will come as some disappointment to Mr W, I can't reasonably require RBS to write off the overdraft amount in addition to our investigator's recommendation.

Putting things right

I require The Royal Bank of Scotland Plc to:

- Refund any interest and charges paid by Mr W on any overdraft amount above £250. RBS may apply this refund to the outstanding balance on Mr W's account;
- Pay Mr W £250 compensation for the distress and inconvenience caused;
- Remove any adverse information about the overdraft above £250 and up to the date Mr W tells us he accepts my final decision from his credit file.

The Royal Bank of Scotland Plc must pay the compensation within 28 days of the date we tell it Mr W accepts my final decision. If it pays later than this, it must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple.

My final decision

My final decision is that I uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 14 January 2021.

Dan Preveet
Ombudsman