

Complaint

Mr B has complained that The Royal Bank of Scotland Plc ("RBS") irresponsibly increased his overdraft limit and provided him with a loan in 2019. He says that RBS ought to have realised he was a gambler and that's what he would be using the funds advanced for.

Background and my provisional decision of 8 July 2021

RBS increased Mr B's overdraft limit from £1,500.00 to £9,000.00 in April 2019. RBS also provided Mr B with a loan for £24,000.00 in April 2019. The loan had an APR of 3.8% and was to be repaid in 36 instalments of £706.13.

In 2019, Mr B complained that RBS irresponsibly lent to him. RBS didn't think that it had done anything wrong and so didn't uphold Mr B's complaint. Mr B remained dissatisfied and referred his complaint to our service.

One of our investigators looked at this complaint and didn't think that RBS had done anything wrong in relation to the overdraft. But she didn't think the loan should have been provided to Mr B. So she partially upheld the complaint. RBS didn't agree with our investigator and so the complaint was passed to an ombudsman for review.

On 8 July 2021, I issued a provisional decision setting out my initial findings on Mr B's complaint. I won't copy that decision in full, but I will instead provide a summary of my findings.

I started by explaining that we've set out our general approach to complaints about unaffordable/irresponsible lending - including the key rules, guidance and good industry practice - on our website. And that I referred to this when deciding Mr B's complaint.

I then went on to explain that RBS needed to make sure that it didn't lend irresponsibly. In practice, what this means is RBS needed to carry out proportionate checks to be able to understand whether Mr B would be able to repay what he was being lent before providing any credit to him. I referred to our website which sets out what we typically think about when deciding whether a lender's checks were proportionate. Generally, we think it's reasonable for a lender's checks to be less thorough – in terms of how much information it gathers and what it does to verify it – in the early stages of a lending relationship.

But we might think it needed to do more if, for example, a borrower's income was low or the amount lent was high. And the longer the lending relationship goes on, the greater the risk of it becoming unsustainable and the borrower experiencing financial difficulty. So we'd expect a lender to be able to show that it didn't continue to lend to a customer irresponsibly.

I set out that RBS appeared to have placed significant weight on Mr B's account conduct in the period leading up to the overdraft limit increase and his loan application. It said it agreed to these applications based on Mr B's account history and after Mr B provided details of his monthly income of £1,600.00. It says this showed Mr B would be able to comfortably to support the overdraft limit increase and monthly loan payments. And, in these circumstances, it was reasonable to lend to him.

I thought about what Mr B and RBS had said and the first thing I noted was that Mr B was granted a substantial amount of additional credit in a very short period of time. And there was an argument for saying that this in itself was concerning, although I did not think that this on its own was enough for me to say that the applications should have been declined.

That said, I was also concerned about an emerging pattern of Mr B using his overdraft to gamble in the 12-month period RBS appeared to have focused its analysis of Mr B's account conduct on. And I thought that the period leading up to Mr B's overdraft limit increase to £9,000.00 in April 2019 made it evident that this emerging pattern had developed into a reason not to lend.

A cursory look at Mr B's statements showed that he'd been gambling significant sums in the lead up to the overdraft increase. I accepted that these payments were made via a third party payment processor, but the name of a well-known betting company appeared on Mr B's statements. Mr B had gambled in excess of his declared monthly income and this had taken him close to and marginally over his existing credit limit in the month proceeding the increase. In these circumstances, I thought that it ought to have been apparent that there was a significant risk Mr B might have struggled to sustainably repay what he already owed. And he was therefore unlikely to have been able to repay any additional credit without undue difficulty or borrowing further.

Bearing this in mind, I was minded to find that RBS shouldn't have increased Mr B's overdraft limit April 2019 and also suspended the use of his facility. And considering the monthly loan payments of just under £800 also took up just under half his monthly income, I found that RBS shouldn't have provided Mr B with a loan in April 2019 either. It was my conclusion that RBS' decision to provide a substantial amount of additional credit in these circumstances meant that it increased Mr B's indebtedness in a way that it ought to have realised was unsustainable or otherwise harmful.

As this was the case, I thought that RBS treated Mr B unfairly both when it increased his overdraft limit to £9,000.00 and when it provided him with a loan for £24,000.00. Mr B was being expected to pay additional interest and charges on credit he shouldn't have been provided with in the first place. So I found that he lost out because of what RBS did wrong and that it needed to put things right.

Mr B's response to my provisional decision

Mr B responded to confirm receipt of my provisional decision and his acceptance of it. He confirmed that he's now entered into a debt management plan and this strengthens his argument he should never have been provided with this credit.

RBS' response to my provisional decision

RBS responded querying whether we had received its previous correspondence rejecting our investigator's assessment. After it was confirmed that we had and that this had been considered in my provisional decision. It provided nothing further for me to think about.

My findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I'd also like to confirm that I'd read and considered RBS' response to our investigator's assessment prior to reaching my provisional decision.

As neither party has challenged them, I see no reason to alter the conclusions I reached in my provisional decision of 8 July 2021. And as this is the case, I remain satisfied that RBS acted unfairly towards Mr B when it increased his overdraft limit and provided him with a loan in April 2019.

RBS treated Mr B unfairly and he is being expected to pay additional interest, fees and charges on credit he should never have been provided with in the first place. So I'm satisfied that Mr B lost out because of what RBS did wrong and it should put things right.

Fair compensation – what RBS needs to do to put things right for Mr B

Having thought about everything, I think that it is fair and reasonable in all the circumstances of Mr B's complaint for RBS to put things right by:

Overdraft

- Rework Mr B's overdraft balance to ensure that from April 2019 onwards all interest, fees and charges are removed to reflect the fact that Mr B's account conduct (which RBS says was considered as part of the successful applications for credit) warranted RBS taking corrective action in relation to the overdraft; and

AND

- If an outstanding balance remains on the overdraft once these adjustments have been made RBS should contact Mr B to arrange a suitable repayment plan for this. If it considers it appropriate to record negative information on Mr B's credit file, it should backdate this to April 2019.

OR

- If the effect of removing all interest, fees and charges results in there no longer being an outstanding balance, then any extra should be treated as overpayments and returned to Mr B along with 8% simple interest† on the overpayments from the date they were made (if they were) until the date of settlement. If no outstanding balance remains after all adjustments have been made, then RBS should remove any adverse information from Mr B's credit file.

Loan

- removing all interest, fees and charges applied to Mr B's loan from the outset. The payments Mr B has made should be deducted from the £24,000.00 he was originally lent. RBS should treat any payments made if and when the £24,000.00 has been cleared as overpayments. And any overpayments should be refunded to Mr B along with 8% simple interest †;
- remove any adverse information recorded on Mr B's credit file as a result of this loan should no outstanding balance remain.

† HM Revenue & Customs requires RBS to take off tax from this interest. RBS must give Mr B a certificate showing how much tax it has taken off if he asks for one.

Should an outstanding balance (or balances) remain on the accounts in question after all adjustments have been made RBS can use any compensation due to Mr B to reduce what

he owes. I'd also remind RBS of its obligation to exercise forbearance (and also respect any arrangements to pay bearing in mind Mr B's debt management plan) should outstanding balances remain after all adjustments have been made to Mr B's accounts and it's the case that he is experiencing financial difficulty.

My final decision

For the reasons I've explained, I'm upholding Mr B's complaint. The Royal Bank of Scotland Plc should put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 20 August 2021.

Jeshen Narayanan
Ombudsman