

The complaint

Mr M has complained that The Royal Bank of Scotland Plc (“RBS”) acted irresponsibly by increasing the limit on his overdraft when he was in financial difficulty and that the fees charged were unfair.

What happened

One of our adjudicators looked at this complaint and thought that RBS should have stopped charging overdraft fees from 28 November 2019 as by this point it was clear Mr M was in financial difficulty and RBS shouldn’t have accepted Mr M’s request of an overdraft limit increase.

RBS didn’t accept the adjudicator’s view but as a gesture of goodwill it was prepared to make an offer in-line with the adjudicator’s recommendation but that it would deduct the £246 in charges already refunded from the interest refund and credit the remainder to Mr M’s outstanding debt. It would also reduce the overdraft facility to £2,200.

Mr M disagreed, he thinks increase to his overdraft in December 2014 was unaffordable and wants to be compensated for this and asked for an ombudsman’s decision.

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 carefully considered everything, I think that what RBS has already agreed to do to put things right for Mr M is fair and reasonable in all the circumstances of this complaint. I’ll explain why I think this is the case.

It might help for me to start by explaining that where a business accepts (or we decide) it did something wrong, we’d expect the business to put the consumer in the position they would be in if that wrong hadn’t taken place. And in an ideal world, we’d tell a business to put a consumer in the position they’d now be in if they hadn’t been charged the fees and given the credit they shouldn’t have.

So where a business increases or continued to allow a consumer to use a credit facility which it should have realised was unsustainable, we’d typically expect it to put the consumer in the position they’d be in now if they hadn’t paid any further interest and charges on that credit. This means we’d normally expect a lender to refund the interest and charges added to any credit from the point the lender ought to have realised it was unsustainable – in this case from 28 November 2019. And if those interest and charges were paid also add 8% simple interest per year.

RBS has told us that Mr M is left with an outstanding debt, once all adjustments have been made, and he’s been ‘refunded’ all of the interest, fees and charges caused by his overdraft increase from 28 November 2019. So while Mr M has been left with a balance and he might be unhappy with this, RBS has done what I’d normally expect it to do here.

That said, we do look at each case individually and on its own particular merits. And while we have a general approach to how we might tell a lender to put things right where it continued to provide credit when it shouldn't have (such as here), we can and will tell it to do something different and/or something more if there's a strong reason to say that's what would be fair and reasonable to do in the circumstances of that individual case.

Mr M says RBS should do something different here. He says RBS shouldn't have allowed the overdraft limit increase in December 2014.

I've thought about what Mr M has said. And what he's said about the affordability of the overdraft increase in December 2014 – rather than November 2019.

RBS needed to make sure that it didn't lend irresponsibly. In practice, what this means is it needed to carry out proportionate checks to be able to understand whether Mr M would be able to repay what he was being lent before providing any credit to him. Our website sets out what we typically think about when deciding whether a lender's checks were proportionate.

Mr M's overdraft is what we refer to as an open-ended credit facility. This means the checks RBS carried out had to provide enough for it to be able to understand whether Mr M would be able to repay his overdraft within a reasonable period of time.

Mr M's application for an overdraft increase from £1,200 to £1,900 was credit scored taking into account information Mr M provided about his income and how he had managed his account with it, as well as information held by other lenders provided through credit reference checks. And based on this information RBS was satisfied his score was high enough to provide him with the overdraft facility he requested.

I accept that Mr M's financial position may well have been worse than the credit check carried out showed or in any information he disclosed to RBS at the time. And it is possible that further checks might have told RBS this. But RBS was reasonably entitled to rely on the credit check it carried out.

There were regular incoming credits into the account at the time and Mr M was able to bring the overdraft down before once again going on to use his overdraft to make debit card transactions and further money transfers. And given the amount of credit being advanced was relatively low (£700), I think RBS's checks went far enough.

But by November 2019 when he applied for a further overdraft increase of £1,100 it was evident he was in financial difficulty – Mr M's statements showed that he was gambling significant sums and was in a cycle of repeated payday borrowing. Which is why I'm in agreement with our adjudicator here that it is from this point RBS should've done more. And this is the reason why I think it is fair RBS refund all charges from this date.

All the interest, fees and charges RBS shouldn't have added have been removed from what he now needs to pay. So what Mr M is left with to repay are the funds which he used and benefitted from and I don't agree that the interest, fees and charges have left him with a debt that he wouldn't otherwise have been left with. Indeed, this is supported by Mr M's statements at the time which show transactions to parties other than existing creditors.

In these circumstances, and bearing in mind Mr M spent them, I think it's perfectly fair and reasonable to expect Mr M to repay these funds. And I don't think that Mr M's unhappiness at having a debt to repay, even after his complaint has been upheld, is in itself a compelling reason for me to depart from our usual approach here.

Bearing in mind all of this, I'm satisfied that what RBS has already agreed to do to put things right for Mr M is fair and reasonable in all the circumstances of this case and I'm not requiring it to do anything more. As this is the case, it's up to Mr M to decide whether he wishes to accept RBS' offer.

My final decision

For the reasons I've explained, I'm satisfied that what The Royal Bank of Scotland Plc has already agreed to do to put things right for Mr M is fair and reasonable in the circumstances of this case. So I'm not requiring it to do anything more.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 13 December 2021.

Caroline Davies
Ombudsman