

## **The complaint**

Mr D has complained about The Royal Bank of Scotland Plc (RBS) adding interest and charges onto an overdraft debt, defaulting it, and passing it to debt collectors.

## **What happened**

This complaint is about an overdraft on a current account. In 2017, Mr D suffered from a severe health issue for which he needed an operation. He was unable to work, and in the meantime his overdraft debt kept increasing. At that point, RBS were unaware of what was going on, and they issued a default notice in July 2017.

In August 2017, Mr D and his partner spoke to RBS and explained the situation. RBS agreed to put things on hold for now. Mr D says that RBS said they'd refund all the interest and charges that had accumulated. RBS say that they said they'd waive charges going forward, but would continue charging interest. They say that they didn't agree to refund previous interest or charges.

After the account came off hold, RBS didn't hear from Mr D and didn't receive any payments. They defaulted the account. They instructed debt collection agencies.

At the end of 2017 and in early 2018, Mr D's partner disputed the balance, saying RBS had said they'd refund previous interest and charges. RBS said they hadn't said that, and confirmed the balance was correct. In 2019, Mr D returned to work. RBS did not receive payments towards the balance.

In 2020, Mr D complained about RBS not refunding interest and charges, and about them defaulting the account despite his health issues. He was also unhappy they'd passed the debt to different debt collectors over time, and he says the debt collectors told him they had trouble getting responses from RBS.

RBS didn't agree with the complaint. But in September 2020, they did write off the interest and charges as a goodwill gesture, leaving a balance of £168.72. In November 2020, they wrote off the remaining balance too.

Our investigator looked into things independently and didn't uphold the complaint. They found the call notes said that RBS would waive pending charges, but not that they'd refund previous charges. They couldn't find anywhere where RBS had promised to refund all the interest and charges. But they explained that even if RBS had refunded the interest and charges back in 2017, there still would have been a balance owing. They found that RBS had only been told about Mr D's circumstances after the default notice had gone out, and then Mr D hadn't made any payments over the years that had followed, even once he was back at work. So they thought the account would most likely have defaulted regardless.

Mr D didn't agree. His partner was sure that RBS had said they'd refund the interest and charges. She also said that Mr D had made two repayments after the debt had been written off, and one had been returned but not the other.

The complaint was passed to me to decide.

I sent Mr D and RBS a provisional decision on 10 November 2021, to explain why I didn't think the complaint should be upheld. In that decision, I said:

*First, I do note that RBS felt that some of Mr D's original complaint points were within our jurisdiction, and some were out, because they'd been brought to us more than six months after a final response letter. But we don't tend to slice up complaints in this way – usually, either the whole complaint is in jurisdiction, or it's out.*

*Here, I can see that RBS issued a final response in September 2020. But they then issued another final response letter in April 2021. This later final response came after a new investigation into the complaint. In it, RBS made substantially new arguments, and dealt with the complaint more comprehensively. The April 2021 letter gave Mr D new referral rights, saying he had six months from that letter to come to our service. So I think that the April 2021 final response implicitly withdrew the September 2020 final response. And Mr D came back to us in May 2021, within six months of the April 2021 letter. So I think his case was referred to us in time.*

*I've thought carefully about what's happened here. Because of the time that's passed, the recordings of the calls involved don't still exist – which is normal. Under data protection rules, RBS were required to dispose of such data rather than hold onto it for too long. And by the time Mr D first contacted us about this complaint, I'm afraid it would have already been too late to get the call recordings. I have gone through the written record of RBS's contact with Mr D and his partner.*

*While I do appreciate Mr D and his partner's strength of feeling about what was said, I can't see any record of RBS telling them they'd refund all the interest or charges back in 2017. As far as I can see, at that point RBS only said they'd waive new charges going forward.*

*Of course, I do accept it's possible that RBS told Mr D's partner they'd refund the interest and charges. And given that Mr D was suffering from severe health issues at the time, there's also an argument that RBS should have shown him more forbearance anyway.*

*But even if I accept that RBS should have refunded some or all of the interest and charges in 2017, it does not look like that would have stopped the account from defaulting. Even once the interest and charges were removed, there was still an outstanding balance of £168.72. And I can't see that Mr D made any payments towards the debt for years. In the end, RBS wrote it off without having received any payments since 2017.*

*I understand that, at first, the interest and charges were in dispute. But even while the amount was in dispute, Mr D was still ideally supposed to pay what he could afford to in the meantime, not least given that a significant part of the balance was made up of his spending, rather than of interest and charges. Further, even after RBS confirmed the balance was correct, and even after they later wrote off the interest and charges, they still didn't receive any payments before they ultimately wrote off the whole account.*

*Of course, I do also appreciate that for some time Mr D was unable to work. But even as the years went on and Mr D returned to work, RBS still didn't receive payments.*

*So had RBS held off from defaulting Mr D's account at first, it looks like it would have just ended up defaulting later on due to the lack of payments. And had that happened, the default would then have remained on Mr D's credit file for longer than it will do now. As things stand, the default will fall off of Mr D's credit file faster than if RBS had only added it later on.*

*Further, even if I accept that RBS should have been more sympathetic to Mr D's situation, the fact remains that they have now not only written off all the interest and charges, but the entire balance. So Mr D never ended up having to repay the debt, and there's nothing more I can tell RBS to write off. Indeed, when Mr D came to our service, the main thing he said he wanted was for debt collectors to stop contacting him about this account. But now it's been written off, he won't receive any more contact about it. So again, there's not really anything more for me to tell RBS to do there.*

*I do understand that Mr D found it frustrating dealing with different debt collectors. But this was a genuine debt, and RBS were entitled to use debt collectors. They were also allowed to change which debt collectors they used when the previous ones were unable to arrange any payments with Mr D. And I can see that RBS did reply to the debt collectors' queries.*

*Lastly, Mr D's partner mentioned that there were some payments made after the debt had already been written off, and from what I understand one was returned but not the other. This is not an issue that was part of Mr D's original complaint to RBS or our service – it's a substantially new issue, so I'm afraid he would need to complain separately about that. I'd suggest that Mr D gets back in touch with RBS in the first place about any payment that needs returning. Then if he needs our help with that, he can always get back in touch with our service for a separate case.*

*But as things stand, I don't currently plan to tell RBS to do anything further in this case.*

I said I'd consider anything else anyone wanted to give me – so long as I received it before 8 December 2021. RBS didn't add anything further. Mr D and his partner made some further comments, which I'll talk about below.

### **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.

Mr D's partner clarified that it was Mr D, rather than her, who spoke to RBS in 2017, though she was present for the conversation. I do appreciate the clarification, though I'm afraid it does not have any bearing on the outcome of the case.

She reiterated that things had been delayed because RBS didn't reply to debt collectors. But as I said before, I can see that RBS did reply to the debt collectors' queries. And those queries did tend to be repeats of things that RBS had already answered before.

Mr D's partner felt that RBS were getting away with things here, and I acknowledge her point of view. But per my provisional decision, there's nothing more I can fairly tell RBS to do here – they've already written off the whole debt, worth hundreds of pounds. And we're here to resolve complaints, rather than to punish or fine businesses.

Lastly, Mr D and his partner reiterated that they'd made some payments after the debt had been written off which they'd like to be refunded. But as I explained before, this was only raised quite some time after the case came to our service – it was not part of their original complaint. It is a new issue, so Mr D would need to complain separately about that. He should get back in touch with RBS in the first place about any payment that needs returning. Then if he needs our help with that, he can always get back in touch with our service as a separate case.

So having reconsidered the case, I've come to the same conclusion as before.

### **My final decision**

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 5 January 2022.

Adam Charles  
**Ombudsman**