

## **Complaint**

Miss P is unhappy with what The Royal Bank of Scotland Plc ("RBS") has done to put things right in relation to her complaint about her overdraft charges.

## **Background**

Miss P also complained about the sale of a packaged bank account. But we've looked at that complaint separately. And this decision is only looking at Miss P's concerns about her overdraft.

When the complaint was referred to us RBS agreed to refund all the interest, fees and charges it added to Miss P's account from the end of December onwards. One of our adjudicators looked into Miss P's concerns and thought that what RBS had agreed to do to put things right was fair and reasonable in the circumstances of the case. Miss P disagreed and so the complaint was passed to an ombudsman for a final decision.

## **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'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 Miss P is fair and reasonable in all the circumstances of her complaint. I'll explain why I think this is the case.

RBS has agreed that it ought to have realised that Miss P's account was in difficulty and that it shouldn't have added any interest, fees and charges to Miss P's account from late December 2019 onwards. And it has agreed to refund all the interest, fees and charges added to Miss P's account from then in order to put things right.

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 given the credit they shouldn't have. However, that's not possible in cases where funds that shouldn't have been advanced were advanced because typically those funds will have already been spent.

So we have to look at a way of asking a business to put things right in a fair and reasonable way. And where a business provided, 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. And if those interest and charges were paid also add 8% simple interest per year. That's what RBS has agreed to do here, so it has agreed to do what I'd normally expect a firm to do in these circumstances.

In this case, Miss P has been left with an outstanding balance even though the credits she's made to her account have been factored in and she's been 'refunded' all of the interest, fees and charges applied from late December 2019. So while Miss P has been left with an outstanding balance to repay and she 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 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.

Miss P believes that RBS should do more. As I understand it, she thinks that RBS ought to have taken action earlier and it should have made more of an effort to contact her. I've carefully thought about what Miss P has said. But Miss P had been using her account for most of 2019. And she was crediting her account with transfers from her savings account too. So there was no indication that Miss P had abandoned the account. And while Miss P was using her overdraft – mostly as a result of purchases – and was crediting the account with funds after doing so, I think that it would have been unfair for RBS to have taken corrective action in relation to Miss P's overdraft in 2019.

I now turn to Miss P's comments regarding communications from RBS. It isn't in dispute that RBS attempted to send Miss P a number of notifications about her account throughout 2019 and 2020. However, these communications were sent to an address Miss P had left sometime previously as she'd moved abroad. Miss P says she notified RBS she moved. And given the content of her packaged account complaint in 2018, I think she did tell RBS she wasn't in the UK.

However, while Miss P might have told RBS she wasn't in the UK she never notified RBS of her change of address. So RBS couldn't have updated Miss P's correspondence details or sent letters elsewhere. As RBS sent all notifications to the address it held for Miss P (and Miss P never told her to stop sending correspondence there) I'm satisfied it took reasonable steps to notify her that her account was in difficulty and incurring charges. Furthermore, Miss P would have seen that she was being charged while she was logging in to make online transfers.

I also know that Miss P is unhappy these communications were sent to her by post. But while certain documents such as statement alerts can be sent by email, it is good practice for firms to send formal correspondence by post. And by mid-2020, it was clear Miss P's account situation hadn't improved and I don't think it would have been fair, reasonable or proportionate for RBS to continue ignoring Miss P's obvious and apparent difficulty, or the fact that the overdraft had become demonstrably unsustainable for her, indefinitely. So by this stage, I would have expected RBS to have taken corrective action in the way that it did.

After all while withdrawing a facility and recording a default or other adverse information, might be viewed negatively by other lenders, it does offer the borrower certain protections in relation to the overdraft debt. RBS acknowledges it should have stopped adding interest before the overdraft was removed and has now adjusted the outstanding balance to reflect this.

Bearing in mind the above, I'm satisfied that it was fair and reasonable for RBS to begin the process of taking corrective action in relation to Miss P's overdraft when it did. As this is the case and Miss P didn't or wasn't able to take steps to repay what was owed, I'm satisfied that RBS was entitled to withdraw Miss P's overdraft when it did.

Overall and having considered everything, while I do appreciate Miss P's strength of feeling on this matter, I don't think that what RBS has already done to put things right for her is fair and reasonable and it hasn't treated her unfairly in relation to her overdraft. And so I don't think that RBS needs to do anything further. I realise that this will be very disappointing for Miss P. But I hope that she'll understand the reasons for my decision and at least feel that her concerns have been listened to.

### **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 Miss P is fair and reasonable in the circumstances of her complaint. So I'm not requiring it to do anything more.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss P to accept or reject my decision before 14 March 2022.

Jeshen Narayanan  
**Ombudsman**