

Complaint

Mr B has complained that The Royal Bank of Scotland Plc (“RBS”) irresponsibly provided him with an overdraft which it continued applying charges on even when he was in financial difficulty.

Background and my provisional decision of 11 March 2022

One of our investigators looked at Mr B’s complaint and thought we could look at the decision to provide Mr B with his overdraft because he complained too late and that RBS hadn’t applied any of the more recent charges unfairly. Mr B disagreed and so the complaint was passed to an ombudsman for a final decision.

On 11 March 2022, 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 setting out that RBS would be familiar with all the rules, regulations and good industry practice we consider when looking at whether a bank treated a customer fairly and reasonably when applying overdraft charges. So I didn’t consider it necessary to set all of this out.

I then explained that Mr B’s previous complaints about his overdraft meant that I couldn’t look at what happened on his account prior to December 2016. And so my consideration of Mr B’s case was limited to what happened on his account after he received an answer on his second complaint to RBS in November 2016.

Having carefully considered everything provided, I thought that RBS acted unfairly when it continued charging overdraft interest and associated fees from December 2016. By this point, RBS had already received 2 formal complaints (in 2014 and 2016) regarding the difficulty the charges were causing.

Furthermore, a cursory look at Mr B statements leading up to this period showed that he was primarily gambling the overdraft funds in his account. Mr B also rarely saw a credit balance for any significant period of time and he was also borrowing from a number of payday type and other high-cost lenders too. So the activity on Mr B’s account didn’t suggest he was in any sort of position to repay what he already owed without undue difficulty or borrowing further either.

This meant that I thought that by December 2016 RBS should have stopped providing the overdraft on the same terms and treated Mr B with forbearance rather than adding even more interest, fees and charges on the overdraft. All of this meant that RBS should have realised that Mr B’s overdraft usage indicated there was a problem with the overdraft facility and offered him assistance. As RBS didn’t react to Mr B’s account usage, I was minded to conclude that it failed to act fairly and reasonably.

As Mr B ended up paying additional interest, fees and charges at a time when he was already experiencing difficulty. I was intending to conclude that Mr B lost out because of what RBS did wrong and that it needed to put things right.

Responses to my provisional decision

RBS confirmed receiving my provisional decision and agreed to settle the complaint in line with my proposed direction.

Mr B also confirmed receiving my provisional decision and he disagreed with me only being able to look at events from December 2016 onwards.

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 thank the parties for their comments and I'm pleased to see that RBS has agreed to settle Mr B's complaint in line with the direction proposed in my provisional decision.

I've separately explained why I'm satisfied this service can't look at Mr B's complaint about his overdraft and subsequent limit increases being provided in the first place, or whether RBS acted fairly and reasonably when it added the charges that it did to Mr B's account prior to December 2016.

As this is the case, and as neither party has provided any further arguments regarding the conclusions I reached on what happened from December 2016 onwards, I've not been persuaded to alter my conclusions. So I'm still partially upholding Mr B's complaint.

I appreciate this will be very disappointing for Mr B – as he feels that he's entitled to more in compensation. But I hope he'll understand the reasons for my decision and that he'll at least feel his concerns have been listened to.

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

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

- Reworking Mr B's current overdraft balance so that all interest, fees and charges applied to it from December 2016 onwards are removed.

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 Mr B is encouraged to get in contact with and cooperate with RBS to reach a suitable agreement for this. If it considers it appropriate to record negative information on Mr B's credit file, it should reflect what would have been recorded had it started the process of taking corrective action on the overdraft in December 2016. RBS can also reduce Mr B's overdraft limit by the amount of any refund if it considers it appropriate to do so, as long as doing so wouldn't leave him over his limit.

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. RBS can also reduce Mr B's overdraft limit by the amount of refund if it considers it appropriate to do so.

† 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.

My final decision

For the reasons I've explained, I'm partially 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 26 April 2022.

Jeshen Narayanan
Ombudsman