

## **The complaint**

Mr M complains that The Royal Bank of Scotland Plc (RBS) irresponsibly gave him a £15,000 loan.

## **What happened**

In May 2019 Mr M applied for a loan of £15,000 to be repaid over a term of 72 months. The total cost of the loan was £24,317.28 including interest of £9,317.28 and Mr M's monthly repayments were £337.74.

At the time of applying, Mr M was a hospital inpatient and has said he lacked the capacity needed to take out this loan. He's said the loan was not responsibly lent and that proper checks were not completed before RBS agreed this loan. Mr M has said that he'd like the debt to be written off on medical grounds, as he is currently medically unable to work and cannot afford to continue to make the repayments.

RBS considered Mr M's complaint but didn't agree it had done anything wrong. It said it wasn't aware of Mr M's health circumstances until Mr M's representative wrote to RBS. This letter was dated March 2020 and logged by RBS in early April 2020. So, RBS has argued that it wasn't aware of Mr M's circumstances at the time of application and didn't agree to write off Mr M's debt.

Unhappy with RBS' response, Mr M referred his case to our service. One of our investigators considered the complaint. He didn't think the loan should have been approved given Mr M's vulnerability. He recommended that RBS remove all interest, fees and charges from the loan and treat any payments made as payments towards the capital. He also asked that RBS remove any adverse information from Mr M's credit file in relation to this loan.

RBS didn't agree with the investigator's findings and reiterated that it wasn't aware at the time of lending about Mr M's health circumstances. However, it did agree to the investigator's compensation recommendation given what it now knows about Mr M's circumstances. Mr M didn't agree with how the investigator proposed that RBS put things right for him. Mr M again argued the loan should be written off on medical grounds. He also argued that he couldn't afford to repay the loan and would need to be declared bankrupt if the debt wasn't written off.

As an agreement hasn't been reached, the complaint has been passed to me to consider. I requested further information from both parties. I also checked whether RBS might want to reconsider its position. In response RBS confirmed it felt the loan was responsibly lent and that Mr M had sufficient means to repay it.

In March 2022 I issued a provisional decision setting out the following:

### *The lending decision*

- I didn't think RBS completed proportionate checks to ensure that Mr M could sustainably afford to repay the loan, given the size and term of the loan. And I

thought that from the information RBS did have available, it should've been clear to it that Mr M couldn't have afforded to sustainably repay this loan.

### *Calculating fair compensation*

- I thought fair compensation was to remove interest, fees and charges from the loan and apply any payments made as payments towards the capital. And to remove any adverse information about the loan from Mr M's credit file. I also reminded RBS of its responsibility to treat Mr M positively and sympathetically and to have regard for Mr M's health circumstances now it is aware of these.
- In response to Mr M's request to write off the outstanding balance, I didn't think this was fair in the circumstances. I concluded that as RBS wasn't aware of Mr M's vulnerability at the time of agreeing the loan, it couldn't have been expected to act differently in light of this. I thought that the loan in question had been applied for online and that there was no direct contact with RBS. I also thought that had RBS completed proportionate checks, I still didn't think that would've led RBS to uncover Mr M's wider circumstances. So I didn't think it was fair to write off the outstanding balance.
- Mr M also said that he currently couldn't afford to repay the loan and would need to be declared bankrupt if the loan isn't written off. I looked at RBS's assessment of Mr M's financial circumstances when he requested RBS write off the loan and I didn't agree with the conclusions it reached. However, I also didn't think the income and expenditure assessment Mr M's representatives provided was an accurate reflection of his circumstances. So I asked Mr M for more information about his current circumstances. However, after reviewing the information provided, I didn't agree I'd seen sufficient information to conclude that he wasn't able to make any repayments towards the loan (to the extent that it should be written off.) So I didn't agree the loan should be written off.

I asked both parties to provide me with anything further before I made a final decision.

In response Mr M disagreed with my provisional decision. He said that whilst he applied online, he subsequently spoke to someone at length and as far as he is concerned, he told the representative at RBS that he was in hospital and unwell. He's said he has subsequently been told by RBS that they were aware of his diagnosis, but it would've been discriminatory not to lend because of this. He argued that RBS did not lend responsibly and had it checked his records, it would have seen he was in receipt of sickness benefits and further investigation would have been taken.

Mr M also disagreed with the information RBS said it relied on to make its lending decision, specifically that he didn't have mortgage commitments, only limited rental costs and he didn't have any existing credit costs. He has also asked how he would have been able to make his repayments given he was overdrawn at the time the loan was agreed.

When Mr M initially asked RBS to write off the loan RBS declined stating that Mr M had a positive balance in his account. I concluded in my provisional decision that this was the remaining balance of the loan which Mr M has now confirmed. In my provisional decision I reviewed an income and expenditure assessment Mr M completed with a charity. Mr M has said he doesn't understand my comments that the level of expenditure in this assessment isn't consistent with his bank statements and that his income appears to be higher than what's been stated on the assessment. Mr M has also said that high and frivolous spending are a symptom of his condition and this should be met with compassion and understanding.

Mr M's response was put to RBS. RBS confirmed the loan was applied for over the telephone. It has said a call recording is no longer available, however notes taken of the call say Mr M told RBS he was in hospital at the time so would need documents emailed to him, but he didn't say why he was in hospital. RBS maintained that it wasn't aware of Mr M's wider circumstances until they were informed in March/April 2020 by a charity representing Mr M.

### **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 done so, I'm reaching the same outcome as my provisional decision, I appreciate this will be disappointing for Mr M. I'll explain why below.

#### *RBS' lending decision*

As explained in my provisional decision, RBS was required to lend responsibly. To do so, RBS needed to check that Mr M could afford to repay his loan in a sustainable way, over the full term of the lending. There was no set list of checks RBS needed to do, but the checks should have been proportionate to the circumstances of the loan which might include considerations about the amount borrowed, the monthly repayments, his income and so on.

Before agreeing to lend, RBS completed a credit search and verified Mr M's income. It says it also took some limited details of expenditure and estimated Mr M's other costs. Based on this it calculated that Mr M would have had around £804 monthly disposable income. As I explained in my provisional decision, I don't think RBS completed proportionate checks before agreeing to lend. Given the amount being lent and the term of the loan, I think RBS needed to do more to determine if Mr M could sustainably afford to repay the loan. In particular, I think RBS needed to gain an actual picture of Mr M's outgoings. I don't think it was proportionate to estimate his monthly disposable income when considering Mr M's income and the size and duration of the loan in question.

I also explained that based on the information RBS had available it should've been clear to it that Mr M couldn't have afforded to repay the loan. I looked at Mr M's income for the month prior to lending and I can see he received around £1,350 net income for this month. (However, I do note that some of his benefits are paid four weekly and some are paid fortnightly so his monthly income on average would work out slightly higher than this.) The loan repayment alone would have made up a substantial proportion of this income and Mr M would've needed to consistently pay this amount for 72 months. In addition, as Mr M has commented and as I set out in my provisional decision, Mr M was around £1,000 overdrawn at the time of the loan. So I think if RBS had responded appropriately to the information it had available at the time, it would've seen Mr M couldn't have afforded to sustainably repay this loan over the full term.

I've noted Mr M's comments that the expenditure figures recorded by RBS aren't accurate. He's said he had no existing credit repayments or mortgage commitments (which RBS has recorded figures for.) It might be that these are poorly labelled in Mr M's case and for example mortgage costs might more aptly be described as housing costs. Particularly as he said he pays a nominal amount in rent as the rest is paid for by housing benefit (and it's a nominal amount of £56 which RBS has recorded.) However, in any event, I don't think I need to consider this further as I agree the checks RBS completed before agreeing to lend weren't proportionate. And that based on the information it did hold, it should've been clear to RBS that Mr M couldn't have afforded to sustainably repay the loan.

### *Calculating fair compensation*

As set out in my provisional decision, our typical approach to compensation in cases where we don't think a loan was lent responsibly is for the consumer to repay the principal loan amount. Therefore, the lender should remove all interest, fees and charges from the loan and treat any payments already made as being made towards the principal amount. And the lender would need to remove any adverse information about the loan from the consumer's credit file. RBS has already agreed to take these steps.

Mr M has argued strongly that the loan should be written off on medical grounds. He's argued he wasn't well when the loan was applied for and so it shouldn't have been lent. I don't doubt the strength of feeling Mr M has in this regard and I also appreciate that Mr M has shared some very personal information with this service as part of his complaint which may not have been an easy thing to do.

As I've explained above, both parties now agree that RBS was aware Mr M was in hospital at the time he applied for the loan. Both parties also agree that at least part of the application was conducted over the telephone. Mr M has stated he started the application online and then completed it over the telephone and he says when he spoke to RBS it was a lengthy conversation. RBS has said the full application was completed over the telephone, but it no longer has a copy of the call recording. In any event, it's clear there was a discussion between Mr M and RBS when Mr M applied for the loan.

I've thought carefully about the impact the telephone conversation has on my findings in this case. However, to write off the loan due to Mr M's wider health circumstances, I'd still need to conclude it's more likely than not RBS was aware of these circumstances when it agreed the loan. Of course, it's more possible that RBS could've discovered Mr M's wider circumstances during a telephone conversation than it could have through an online application. I've also considered that RBS now agrees it knew Mr M was in hospital at the time. And I think it's likely RBS would've known Mr M was unwell – Mr M says he told RBS this and it's a logical conclusion to reach when someone says they're in hospital. However, being aware Mr M was unwell and understanding his wider health circumstances aren't the same. And, taking everything into consideration, I'm still not persuaded that Mr M did share his wider health circumstances with RBS during the application. I think it's most likely, that as RBS's records suggest, it wasn't aware until Mr M's representatives wrote to RBS in March 2020.

Mr M has said he was subsequently told by RBS it would've been discriminatory not to lend to him because of his conditions. Whilst I can understand why Mr M is concerned about this, I think there are circumstances where this would be right. However, if RBS was aware of a condition which may have an impact on a lending decision, I'd still expect it to take additional steps to satisfy itself that it was lending responsibly. But as I've explained above, I don't think RBS was aware of Mr M's wider circumstances at the time of lending.

I also don't think that proportionate checks would've likely uncovered Mr M's wider health circumstances. I appreciate Mr M has said further investigation should've been taken when RBS saw Mr M was in receipt of sickness benefits, but I don't agree it would've been proportionate for RBS to have explored this further. I also don't know how RBS would've been able to investigate Mr M's income further, as it wouldn't have been able to access Mr M's private health or benefit records. And there's nothing I can see in his current account usage (including his overdraft usage) which I think could've alerted RBS to Mr M's wider health circumstances.

So whilst I appreciate everything that Mr M has said, I can't ask RBS to write off this loan due to Mr M's health circumstances.

Mr M has also said that he can't afford to repay the remaining loan now and would need to be declared bankrupt if the loan isn't written off. In circumstances where a loan was irresponsibly lent and the consumer couldn't afford to repay the remaining principal balance, this can result in a business being asked to write off the outstanding debt.

When Mr M first contacted RBS and asked for the loan to be written off, RBS refused as it argued Mr M had a balance of around £4,000 in his current account. So it argued that he had the means to repay this loan. However, as I explained in my provisional decision, I've looked back over Mr M's current account statements and I can see the loan balance was paid into his current account. Mr M then subsequently made multiple cash withdrawals over the intervening period (from when the loan was granted to when he asked for the debt to be written off) which slowly reduced the balance over time. However, there isn't anything to suggest the principal loan was spent on a specific purpose which is consistent with Mr M's testimony. Therefore, I think when Mr M asked for the loan to be written off, the balance in his current account was inflated with the remaining loan funds. And I don't think that repaying a loan out of the principal amount is a sustainable way to repay a debt. So I think RBS should have taken additional steps before concluding Mr M could afford to repay the loan.

As explained in my provisional decision, I also considered an income and expenditure assessment that Mr M's representatives provided to RBS dated March 2020 (when it asked for the loan to be written off). This assessment suggests that Mr M earned approximately £1,139 per month and has no surplus income as he was spending just over this amount each month. I appreciate Mr M has said this is an accurate reflection of his circumstances at the time, but this isn't consistent with what I can see on his current account statements. Mr M's income on his current account statement in February 2020 was almost £200 higher than what was declared on the assessment and this is based on benefits he receives two and four weekly (so his actual monthly income would have been slightly higher than this). I also can't see the same level of expenditure as he's declared in the assessment. So I'm not persuaded this assessment was an accurate picture of his income and expenditure.

I therefore asked Mr M for more information about his current financial circumstances. Mr M provided a recent copy of his bank statements and his credit search results. As I explained in my provisional decision, whilst these demonstrate Mr M is on a fixed and relatively low income, I can't see that he has much existing debt to repay or that his outgoings exceed his incomings. I've therefore not seen sufficient evidence to suggest that Mr M has no means of making any repayments towards the loan and as such I can't tell RBS to write off the loan.

### **Putting things right**

So taking into consideration everything I've said above, to put things right in this case RBS should:

- remove all interest, fees and charges from the loan account,
- treat any payments already made as payments towards the capital amount and
- reduce the balance accordingly; and
- remove any adverse information from Mr M's credit file.

RBS should then contact Mr M to arrange a suitable repayment plan. I would remind RBS to treat Mr M positively and sympathetically and have regard to Mr M's wider health circumstances in its dealings with him.

### **My final decision**

For the reasons I've explained, I uphold Mr M's complaint against The Royal Bank of Scotland Plc and direct it to put things right in the way I've described above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 8 June 2022.

A handwritten signature in blue ink, appearing to read 'CL Lisle', with a long horizontal flourish extending to the right.

Claire Lisle  
**Ombudsman**