

## **The complaint**

Mr H says The Royal Bank of Scotland Plc irresponsibly lent to him.

## **What happened**

Mr H opened a credit card with RBS on 22 June 2002. The opening limit was £1,500 and a number of limit increases took his available credit on the card to £6,400 by February 2005. The debt was included in a debt management plan (DMP) in 2006 and was sold to a third party in April 2017.

Mr H says RBS failed to adequately check he was in a financial position to repay the funds it was lending. He had to enter a DMP in 2006 as by then he owed around £60,000 in unsecured credit. He also had a mortgage of £259,000. He recalls his income was between £21,000 and £25,000 at around this time. He says he was unable to afford his priority bills given the level of his debt. He is still repaying his debts, and will be until 2073, and this has caused immense stress for him. His wife is disabled and unable to work, since 2013 he has been her full-time carer. They have eight children, six of whom are dependents. Their monthly income is £3,863 and outgoings £3,583 – the remaining £280 is split between 35 creditors (his and his wife's). So they continue to be in extreme financial hardship, and this is affecting his mental health.

He wants RBS to consider writing-off the debt and to refund all interest and fees paid on the card, plus statutory interest.

Our investigator first explained why we could consider this complaint, even though the events being complaint about took place over six years ago. He found Mr H's explanation as to why he only became aware he could complain in August 2023 to be plausible and so the complaint fell within the time limits we are bound by.

RBS agreed we could investigate but said it had no records at all going back to 2001 or 2005, so there wasn't any information it could give us about the issue of the credit card, or the checks made at the time of the limit increases.

Our investigator did not uphold Mr H's complaint. He said without information showing what RBS's checks at the time would have shown he could not conclude it had acted unfairly.

Mr H asked for an ombudsman's review. He submitted a detailed explanation as to why he only raised his complaint at the time he did, as well as a statement of benefits from his pension scheme dated 6 April 2001; his estimated income and expenses at the time of this credit card application and the limit increases (based on his recollections) and a list of his debts and creditors when he entered his DMP in early 2006. He said he hoped this would help me when considering whether reasonable and proportionate affordability checks were carried out both at the time of awarding the account and at the time of any subsequent limit increases. He thinks that the excessive amount borrowed within a relatively short time frame, in conjunction with a low income, should have signalled that the borrowing had or would soon become unsustainable.

## **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.

We are independent and impartial and our role is to listen to both sides of a complaint, take evidence from both parties, and then decide on a fair and reasonable outcome. So - it's important that we must see evidence from both the customer and the firm concerned to do this. And that is difficult in this case as we are lacking evidence-based information relating to what happened in 2001.

The Office of Fair Trading (OFT) was the regulator when Mr H borrowed from RBS. The Consumer Credit Act 1974 set out the factors the OFT needed to consider when looking at how businesses lent to its customers, and it stipulated that the lender needed to assess the consumer's creditworthiness using both information supplied by the applicant as well as data obtained from a credit reference agency.

RBS says it would have done this when Mr H applied but due to the time that has passed but no longer has records of these checks. I don't think this is surprising or unreasonable, but it means I cannot know what RBS saw when it completed its checks before lending. So I cannot assess if its checks were proportionate, nor if it made a fair lending decision based on the information it gathered.

Mr H has provided details of his debts in 2006 and what he recalls his income and expenditure to be in 2001. But I cannot fairly rely on a 2006 summary to know what RBS most likely learnt in 2001, and nor can I fairly rely solely on Mr H's recollections of his financial position from over 20 years ago. For me to come to a decision as to whether RBS lent responsibly, I need to see the information it saw at the time for Mr H – or a proxy for what it would have seen had it completed proportionate checks (in the scenario where it hadn't). And this just isn't possible in this case given the time since the event(s).

It follows I can't fairly conclude RBS was wrong to lend to Mr H. So I am not instructing it to take any action.

I am sorry to hear about Mr H's challenging situation. I can see how difficult things have been for him and his wife over the years. I hope he now has the support he needs. I anticipate he will be disappointed by my decision, but I hope he can see why it is the only fair conclusion I can reach based on the available evidence.

## **My final decision**

I am not upholding Mr H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 13 March 2024.

Rebecca Connelley  
**Ombudsman**