

## The complaint

Mrs W complains The Royal Bank of Scotland Plc (RBS) irresponsibly lent to her when granting an overdraft. Mrs W also says the charges applied have left her in financial difficulties.

## What happened

I issued a provisional decision setting out what's happened, and what I thought about that. I've copied the relevant elements below, and they form part of this final decision.

*From the information I have Mrs W opened a new RBS current account and was granted an overdraft of £1,250 on it in November 2018. The overdraft was never increased.*

*Mrs W says she wasn't aware about RBS' responsibilities until she read an article in 2023, and explained she was already borrowing heavily on credit cards and other overdrafts with different banks. She also said there was a huge amount of gambling transactions – and they'd have seen she was taking pay day loans. Overall, she didn't think they should have granted her the overdraft, and asked for a refund of interest, fees and charges as well as any negative information on her credit file to be removed.*

*I can see Mrs W also has a loan complaint. That's being addressed separately by our service. This decision solely focused on the overdraft granted by RBS.*

*RBS said the overdraft was a non-advised sale of a lending product, and if it met their lending criteria then they'd grant it – if it didn't, then they wouldn't. They said Mrs W's application did meet their lending criteria. They explained they rely on information from the Credit Reference Agencies (CRA's) and from the Office of National Statistics (ONS). Overall, they felt they'd lent Mrs W her overdraft correctly.*

*An Investigator assessed Mrs W's complaint, but overall felt RBS hadn't done anything wrong. Mrs W disagreed, so the complaint's been passed to me to decide.*

*I issued a provisional decision, explaining I wasn't upholding Mrs W's complaint about the initial lending of the overdraft. I said:*

*"We've explained on our website how we handle complaints about unaffordable and irresponsible lending, and I've used this approach to help me decide Mrs W's case.*

*Having done so, I won't be upholding Mrs W's case, which I know will be a disappointment to her. I'll explain why.*

*RBS were required to make sure they didn't lend irresponsibly – which meant they had to gather details of Mrs W's circumstances to ensure she could sustainably repay this overdraft.*

*This is called carrying out proportionate checks. Our website sets out what proportionate checks are – so I've looked at what information RBS gathered to see if it carried out proportionate checks.*

*We generally say the higher the amount of borrowing, or the lower a borrower's salary, the more a lender needs to do to satisfy themselves they've gathered proportionate information. Equally, if the amount of borrowing is low, and the salary is high, then the less we'd say lenders need to do in order to show it didn't lend irresponsibly.*

*I've seen a copy of Mrs W's application form for the overdraft. She's declared a net monthly income of £3,700 – which is quite high relative to the amount of the overdraft being requested. I've noted Mrs W has said her actual income was lower at £2,400 but based on her current account application form this appears to be what she told RBS. So, I'm satisfied it's reasonable for them to rely on it in the absence of other contradictory information.*

*RBS calculated Mrs W had monthly costs for her mortgage, living costs, existing loans and credit cards of £2,076 in total – leaving just over £1,600 spare. So, even if her income was £2,400 as she's said, I think that'd have still left her around £300 a month spare – so likely would have been ok.*

*I've also reviewed the credit files dated August 2018 and March 2023 Mrs W has provided. There isn't anything I can reasonably say on there RBS haven't already factored in, or that should give reasonable cause for concern.*

*So, I'm satisfied RBS have carried out proportionate checks, and having found no issues, made a reasonable decision to lend to her.*

*I've seen Mrs W's detailed reasons for disagreeing with this when our Investigator reached the same outcome, so I'll address those in turn.*

*She's said she also applied for and was accepted for an overdraft with another member of the RBS group, so this overdraft shouldn't have been granted.*

*The entity Mrs W is referring to here is a separate legal entity from RBS, even if they are part of the same group, so, in this decision, I can only assess whether RBS did anything wrong or not – and I've found they didn't. I wouldn't expect RBS to have had access to any information Mrs W had told this other entity and I've seen no evidence they did.*

*Mrs W says her 2018 credit report shows she had credit card debts of £10,000, and another overdraft, and payday loans so this should have been a clear indicator she was struggling.*

*I've thought again about RBS' checks here, and they did show Mrs W had other debts. None of the information available shows Mrs W was significantly over her limits on any of the accounts – and I can see RBS factored in repayments to these debts. So I don't think this reasonably shows Mrs W was in financial difficulties as she's said – or that it means RBS made an unfair lending decision.*

*Mrs W has also said before the account was opened five hard searches were made on her credit file – showing she was desperately searching for credit. Mrs W's application to RBS was made in November 2018. The five previous searches were August and December 2017, and February, May and June 2018. It's unclear whether RBS' check really needed to get this granular given the declared income and amount of the overdraft. But, even if it had I don't agree with Mrs W's interpretation that these searches spaced out over a year before show someone desperately searching for credit. So, had RBS known and still granted her the lending, I'd have likely said this was fair.”*

*I also didn't plan on upholding Mrs W's concerns about RBS not supporting her when she was in financial difficulties.*

*RBS replied to my provisional decision and said they had nothing further to add.*

*Mrs W said:*

- *The majority of the overdraft was being used*
- *She was never able to make consistent payments to try and clear the overdraft*
- *I've said she didn't ask for help from RBS, but she did ask for further increases and these were turned down – this should have prompted RBS to take action and help her – not continue to charge her interest*
- *She applied for a loan in October 2021 which was granted and RBS now accept they shouldn't have given her this loan*
- *She was using 90% of the overdraft each month and this should have been a cause for concern*

*As a consequence of Mrs W's further submissions, I've reconsidered her complaint, and issue this second provisional decision.*

### ***What I've provisionally 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.*

*I remain of the opinion Mrs W wasn't irresponsibly lent to, for the reasons I set out above. I have though reconsidered my approach regarding her financial difficulties complaint.*

*Mrs W says after the account was opened she made three gambling transactions totalling £450 in one day which brought her further into her overdraft. She says this was a sign of financial difficulty.*

*In relation to the gambling transactions, these were a small amount for a relatively small sum compared to her salary. I don't think RBS have done anything wrong by not immediately deciding three gambling transactions meant Mrs W was in financial difficulties. I've noted she's referred to the other account within the RBS group, but RBS wouldn't likely have had access to the statements on that account, so couldn't take into account any information from it.*

*Mrs W has also said the gambling transactions pushed her into the overdraft, and she's never been out of it, going over the agreed overdraft nearly every month.*

*I have all of Mrs W's statements from December 2018 when the account opened, to when she brought her account to us in April 2023.*

*I can see from the day the account was opened Mrs W went overdrawn by £1,136 and within a week she was at the limit of £1,250.*

*In the year since the account was opened, Mrs W is almost always within £100 of the overdraft limit, or at it. So, she's effectively living in her overdraft.*

*Overdrafts are intended to be a short-term arrangement, and financial businesses such as RBS have a responsibility to review and take action to help people reduce their reliance on their overdrafts.*

*With that in mind, I'd expect to have seen RBS take some proactive action – such as calling Mrs W to discuss options to reduce her reliance on her overdraft.*

*But, I've not seen any evidence of this and RBS say they haven't seen any evidence of financial difficulties. On reflection, I disagree with them and agree with Mrs W – I think RBS should have stepped in.*

## **Responses to my provisional decision**

Mrs W said she had no further points to make.

RBS said Mrs W's account had been brought into credit on many occasions, and they didn't think she was experiencing financial difficulties. And their systems recognised Mrs W was using her overdraft a lot – but they sent her a lot of communications which she didn't reply to, so that shows she was happy with how her account was operating.

## **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.

I've noted RBS' comments but I remain of the opinion Mrs W's account was clearly showing signs of financial difficulties.

As I mentioned in my provisional decision above, the account was opened, within a week it was virtually at the overdraft limit – and the first opportunity for RBS to intervene was around a year later – and that's when I think they should have intervened.

I've noted RBS' comments about their written communication, but I also remain of the opinion they needed to do more to discuss Mrs W's overdraft with her – such as calling her. RBS have said they don't offer personal account monitoring.

Ultimately it's up to RBS how to structure their business, but I have to be satisfied Mrs W was treated fairly – and for the reasons I've explained in my provisional decision I'm not.

## **Putting things right**

Generally overdrafts are renewable every year, so I think it would have been reasonable for RBS to have carried out a review of the account a year after the overdraft had been granted – 3 December 2019. Had they done so, they'd have seen Mrs W essentially living in her overdraft as I've mentioned above.

Because of that, I think it'd be appropriate for RBS to:

- If the account is open – rework the account to remove any interest and charges applied since 3 December 2019 (one year after the overdraft facility was given).
- If the account is closed – refund all interest and charges applied, and pay 8% interest\* from the date of each payment to the date of settlement

\*HM Revenue and Customs requires RBS to deduct tax from the interest payment referred to above. RBS must give Mrs W a certificate showing how much tax they've deducted if she asks them for one.

### **My final decision**

I partially uphold this complaint and require The Royal Bank of Scotland Plc to carry out the actions in the 'Putting things right' section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 31 January 2024.

Jon Pearce  
**Ombudsman**