

The complaint

Mr and Mrs J have complained that The Royal Bank of Scotland Plc ("RBS") led them to believe that they couldn't downgrade their packaged account to a fee-free account, unless they reduced their overdraft.

As they were heavily dependent on using their overdraft for many years, they say they have been unnecessarily paying the monthly account fee for many years - even though they say they had no need for the packaged account benefits.

What happened

After Mr and Mrs J raised their complaint, RBS said that this service couldn't consider the complaint due to the time limits that apply when using this service.

One of our investigators assessed the complaint and they concluded that this service is able to consider this complaint. RBS accepted the investigator's assessment.

The investigator then went on to consider the merits of the complaint, and they didn't uphold the complaint. Mr and Mrs J didn't accept the investigator's assessment, so the matter was referred for an ombudsman's decision.

As Mr and Mrs J have previously complained about the *sale* of their packaged account, this decision will only address the matter of their account not being downgraded *since* RBS issued a final response letter addressing their mis-selling complaint in September 2015.

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 think it may help to explain that where matters are in dispute and evidence is incomplete, as is the case here, I need to decide what I think most likely happened, based on all of the evidence that is available. And having reviewed everything, I've not seen enough to say that this complaint should be upheld. I will explain why that is.

I can see that Mr and Mrs J complained to RBS in 2015 that their fee-paying packaged account had been mis-sold. RBS responded to that complaint on 24 September 2015 and didn't uphold Mr and Mrs J's complaint. In that letter, RBS explained why it didn't think the account had been mis-sold. And importantly, RBS also explained that if Mr and Mrs J didn't want the fee-paying account, they didn't have to have it and could have a fee-free account instead. The letter went on to say that Mr and Mrs J's account remained a packaged account. But if Mr and Mrs J wanted to see if an alternative account better suited their needs, the different accounts – including ones without a monthly fee – were available to view online, or they could be discussed in branch or over the phone.

Based on the contents of that letter, despite what may or may not have been said about their packaged account beforehand, I'm satisfied that, by September 2015, Mr and Mrs J were made aware they didn't have to have a fee-paying account and that fee-free alternatives were available to them.

Mr and Mrs J say that since their previous mis-selling complaint, they have spoken to RBS around 8 years ago, then again during Covid times and then more recently, about wanting to downgrade their account. They say they were told each time that they could not do so, that is unless they cleared (or reduced) their overdraft. We asked RBS to check its records, but it doesn't have any evidence to show that Mr and Mrs J had asked to downgrade their account, or that they had asked to downgrade to a fee-free account and it was refused.

Having weighed up the competing evidence, overall, I don't think there is enough evidence here for me to uphold this complaint.

I say this because firstly, beyond Mr and Mrs J's recollections, I've not seen any other evidence that indicates what they say might've happened. Also, if it was the case that Mr and Mrs J were told, around 8 years ago, they couldn't downgrade unless they cleared their overdraft, I question why Mr and Mrs J didn't complain to RBS about it at the time. After all they'd raised complaints with RBS before. And when they'd complained to RBS before about being sold the packaged account in the first place, they were told quite clearly (and they had it in writing) that they didn't have to have a fee-paying account and that they could choose to have a fee-free account.

Since 2015, I can see that there have been a number of times where Mr and Mrs J paid a lump sum into the account which brought the account into a credit balance. So the account was not always overdrawn. Therefore, if it was the case that Mr and Mrs J were incorrectly told that they had to clear their overdraft before they could downgrade their account (although I've not seen that they were), then I would've expected them to try and downgrade their account on one of the occasions when it was in a credit balance - if it was the case that they didn't want to keep paying for it. But it's evident that they didn't do that. Furthermore, I can see that Mrs J has had a fee-free current account that had an arranged overdraft on it. As such, this indicates that she was aware it was possible to have an overdraft on a fee-free account.

Mr and Mrs J say they asked again to downgrade their account during Covid as well. However, looking at the evidence on Mr and Mrs J's other complaint with RBS (concerning their overdraft), I can see that RBS tried to contact Mr and Mrs J in May 2020 (and many times since then). But RBS didn't receive a response in May 2020. And it is the case that the redress on Mr and Mrs J's other complaint was capped at May 2020, because Mr and Mrs J failed to engage with RBS about their borrowing situation.

Indeed, on the other complaint, Mr J said that there were other phone calls with RBS in 2020, but he says RBS kept trying to put him through to its financial difficulties team. So the evidence, including Mr J's testimony, suggests that rather than RBS unfairly denying requests to downgrade the packaged account, it was more the case that, Mr and Mrs J missed opportunities to downgrade the account. And this was because they did not engage with RBS's financial difficulties team and chose to stop using the account instead.

As such, when deciding what I think is most likely to have happened, I can't reasonably conclude that Mr and Mrs J had asked to downgrade their account and they were stopped from doing so. Nor can I reasonably conclude that Mr and Mrs J had incorrectly been told by RBS that they couldn't downgrade, unless they repaid their overdraft.

As a final point, Mr and Mrs J have said that RBS should've proactively checked whether the account was still suitable for their needs. However, putting aside the issue around Mr and Mrs J's apparent failure to engage with RBS's financial difficulties team in more recent years, RBS was not obliged to do that. RBS was however obliged to send regular communications about the packaged account, including when changes were made to the terms and conditions and reminders of the eligibility criteria. This was so that Mr and Mrs J could decide for themselves if it was still right for their circumstances.

It looks like, from an audit trail that RBS has provided, that RBS was regularly writing to Mr and Mrs J about the packaged account. So, from what I have seen, it seems that RBS was doing what it was required to do to remind Mr and Mrs J of the account benefits and giving them opportunities to check that the account was still right for their circumstances.

As such, whilst I recognise that Mr and Mrs J feel very strongly by this matter, it is the case that I've not seen enough evidence to indicate that RBS acted unfairly or unreasonably regarding the downgrading of their packaged account. Because of this I don't think it would be appropriate in the circumstances to say that RBS should refund them the packaged account fees they've paid since September 2015.

My final decision

Because of the reasons given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J and Mrs J to accept or reject my decision before 16 December 2024.

Thomas White
Ombudsman