

## **The complaint**

Mrs H complains that The Royal Bank of Scotland Plc (RBS) irresponsibly agreed credit for her.

## **What happened**

RBS opened a credit card account for Mrs H in September 1999. It was unable to tell us what the opening credit limit was, but said that the last credit limit increase on the account was in February 2005 when the limit increased by £1,300 to £5,600.

Mrs H didn't repay the credit and the outstanding balance of £5,113 was sold to a third-party debt collector in April 2017.

Mrs H complained to RBS in August 2023 that it was irresponsible to have opened the account for her and that it should have carried out further affordability checks before doing so. She said that the credit was unaffordable for her and that she began working with a national debt charity in 2005 to help her manage all her debts. This included the above balance.

RBS said that it would have carried out an assessment of Mrs H's application that was in line with its lending criteria at the time, and that there was no reason to decline her application or doubt the affordability of repayment in this instance. RBS didn't uphold Mrs H's complaint and she referred it to us.

RBS initially didn't think we could look into the complaint for Mrs H, given the length of time that had passed since it decided to open the account and offer subsequent credit limit increases. We explained why our rules allowed us to look into it and RBS consented to us doing so.

Our investigator looked into Mrs H's complaint but didn't recommend that it be upheld. They found that there wasn't enough information to say that RBS had gotten anything wrong when it opened the account for Mrs H or later when it increased the credit limit.

Mrs H didn't agree with this recommendation and asked for the complaint to come to an ombudsman to decide and it came to me. I sent out a provisional decision on 18 July 2024 explaining why I thought Mrs H's complaint should succeed in part. I shared the information I'd relied with both parties and allowed time for comments or new information.

Mrs H said she had nothing further for me to consider and RBS accepted my provisional decision.

## **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 reviewed the complaint again and, having no comments or new information from either party to consider, I see no reason to depart from my provisional conclusions. I'll set out again my reasons for upholding Mrs H's complaint in part in this final decision on the matter.

The Office of Fair Trading (OFT) was the regulator for consumer credit when Mrs H borrowed from RBS. Its general guidance published in January 2008 said that lenders needed to take reasonable care when offering credit. This included carrying out proportionate checks on a borrower's ability to repay the credit taking into account the particulars of the lending and the degree of risk to the borrower. It also said that it would be irresponsible to lend without taking full account of the borrower's interests.

I appreciate that the account in question was opened in 1999 and the latest credit increase was in 2005, but I think the above guidance is relevant because it clearly sets out the regulator's expectations of lenders.

There was a voluntary code of good practice in place when the account was opened called the Banking Code. Lenders weren't required to follow this, but I understand that RBS subscribed to the Code. I think this is relevant to this complaint because it encapsulates good practice from the time. The Code set out that before granting credit (including increasing a credit card limit), lenders should assess whether they feel the consumer can repay that borrowing. To do this it said lenders should take into account one or more of the following (but not necessarily limited to): the consumer's income and financial commitments, how they handled finances in the past, information from credit reference agencies, information the consumer provided and credit scoring.

So, in making my decision, I've considered whether RBS carried out a reasonable assessment each time it offered Mrs H credit to check she would be able to repay it. I've also considered what RBS found out through its assessments, and whether it treated Mrs H with reasonable care and with regard to her interests when it decided to offer her credit.

Let me begin by saying that both parties have limited information to provide given how long ago everything happened. In cases like these, where information is incomplete or inconsistent, I'll make my decision on the balance of probabilities, in other words on the basis of what I think most likely to have happened.

RBS confirmed that it used the information Mrs H provided in her application form, and information from credit reference agencies and the Office of National Statistics (ONS) to credit score her application. RBS said that the data obtained from credit reference agencies provided an understanding of a customer's existing financial obligations (for example mortgages, loans, credit cards etc) and how they were being managed. It also said that it would have carried out similar checks before increasing the credit limit on the account later on.

RBS provided Mrs H's application form but was unable to provide the ONS or credit reference agency information it relied on. As mentioned above, RBS wasn't able to confirm what credit limit was offered to Mrs H on opening the account or what limits might have been offered over the years. It was able to confirm that the last limit increase was applied in February 2005, which raised the limit from £4,300 to £5,600. RBS provided some account statements, the earliest of which is dated January 2005.

Mrs H said in her application that her gross annual income was £15,264, in other words around £1,200 net a month. She also said that she wished to transfer two existing credit card balances to the account amounting to £1,400 in total. It seems reasonable to assume that

the initial credit limit enabled Mrs H to make these transfers, given that she went on to take out the account.

It doesn't seem to me that RBS carried out an unreasonable assessment here by considering what Mrs H said in her application form and carrying out a credit file check. I've also thought about what it might have found out through such an assessment.

Mrs H provided a copy of her credit file report dated October 2004. RBS may have obtained its information in 1999 from a different credit reference agency of course, but in the absence of anything to the contrary, I'm happy to rely on this as a proxy for the information RBS obtained in this way.

The report shows that by September 1999 Mrs H held ten revolving credit accounts, five of which had been opened that year. The combined credit limit on these accounts was at least £19,000 in October 2004 but it's not possible to ascertain what the combined credit limit or the combined balance might have been in September 1999, nor is it possible to see how Mrs H was managing her accounts then.

Considering the information about Mrs H's income from the application form, what I can reasonably deduct about her financial commitments at the time and the amount of credit RBS likely offered, I can't say that RBS made an unreasonable or unfair lending decision when it opened the account for Mrs H.

Mrs H provided a written account of her recollection of her financial circumstances at the time. This shows that she didn't have enough income to cover her expenses and her existing commitments, and that further credit would have been clearly unaffordable. However, bearing in mind the length of time that has now passed, I don't think it would be reasonable of me to rely on Mrs H's recollections from the time as a proxy for what RBS might have found out, even if I concluded that it should have gathered more information about her circumstances before lending to her.

Altogether, I've concluded that RBS's assessment was reasonable and that it didn't lend irresponsibly on this occasion.

RBS said it carried out similar checks when it increased the account limit in 2005 as it did on the account opening. I think it's likely RBS would have seen that Mrs H had taken out many new loans and credit cards each year between September 1999 and February 2005 and now owed at least £58,000, mostly on credit cards. In addition, the January 2005 account statement shows that by that point Mrs H had taken out almost £1,000 in cash withdrawals.

It's clear to me that Mrs H's credit report and her account statements tell a story of her increasing reliance on credit, and I think it's likely that RBS's checks would have revealed the same. I can't find that RBS treated Mrs H with reasonable care or with regard to her interests when it decided to increase the credit limit on this account in 2005. Although Mrs H was managing to meet most of her commitments, she clearly wasn't doing so without having to borrow from elsewhere.

In summary, I've concluded that Mrs H's complaint should be upheld in part. I haven't found that RBS was irresponsible to have opened the account for Mrs H but that it should not have increased the limit on the account in 2005. RBS should take steps to put this right for Mrs H.

### **Putting things right**

We usually say in cases such as these, that it's fair a customer repays the money they've borrowed because they've had the use of it, but that they should not incur any interest or

charges on money that was irresponsibly given. Sometimes, we decide that reaching a fair and reasonable resolution in the particular circumstances of a case requires more than the usual response. I've concluded that RBS should now waive the remaining balance on Mrs H's account for several reasons.

To begin with, it doesn't seem likely to me that Mrs H's account was opened with a credit limit of £4,300 which didn't increase until February 2005. It seems more likely that there were other credit limit increases over the years. I can see from Mrs H's credit file report that her debts weren't built up in the year prior to the known increase in 2005 and I think it's likely that her reliance on credit would, or should, have been obvious to RBS earlier in their relationship history. So I am not satisfied that a refund of interest and charges applied to balances above £4,300 from February 2005 would fairly reflect what needs to be put right in this case.

The account statements show that by May 2005 the cash balance was almost £1,600 and by June 2006 it was almost £2,900. Mrs H told us that she entered into a debt management plan with a national charity in January 2006 which included this account's balance of £5,113, along with over £150,000 of other debt, some of which she shared with her partner. Mrs H provided a screenshot which lists the debtors included in their joint plan. I don't know what the current balance on this account is or the current total debt Mrs H is liable for. She's told us that the charity estimated that she would become debt-free in 2073.

Mrs H also shared with us that she was diagnosed with a serious life-limiting health condition over ten years ago. She said she was medically retired from her employment and is reliant on disability benefits to assist with her living costs. The award letter I've seen, dated 2019, confirms that Mrs H's payments will continue until 2030. Mrs H also shared with us that her condition is deteriorating and she is experiencing a tremendous amount of stress due to the extreme levels of debt, not least because she has several dependents.

CONC 7.3.5G states that an example of forbearance when a customer is in arrears might be accepting token payments for a *reasonable period of time* from a customer who would not be otherwise able to meet their priority debts or other essential living expenses. The regulations don't specify what a reasonable period of time is but the length of time it is going to take Mrs H to clear all of her debts, including this one, is clearly not reasonable. I haven't seen anything which suggests this debt is to be paid before others, or that Mrs H will ever have the means to repay her debts more quickly than is currently happening.

Bearing the above in mind and taking everything into account, in the context of this case, I've concluded that the fair and reasonable thing to do to resolve Mrs H's complaint is for RBS to write-off the full balance of the outstanding debt. This may mean it needs to buy back the debt or work with the current owner to put things right.

I have also considered whether or not RBS should make any amendment to the information it reported to the credit reference agencies about this account. It may be that any adverse information it reported is no longer shown on Mrs H's credit report. In any case, I don't feel that altering this account's history would change the overall picture of Mrs H's credit file given what I understand of her financial situation. I've concluded that RBS doesn't need to take any action regarding her credit file.

### **My final decision**

For the reasons I've explained above, I'm partly upholding Mrs H's complaint against The Royal Bank of Scotland Plc and it now needs to put things right as I've set out.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or

reject my decision before 17 September 2024.

Michelle Boundy  
**Ombudsman**