

The complaint

Mr S complains The Royal Bank of Scotland Plc (RBS) closed his business account and unfairly called in its overdraft. He also says they failed to refund a payment that left the account in October 2015, charged account fees unfairly, and provided him with poor service in terms of finding a way forward regarding the overdraft, leaving him feeling victimised, bullied, and targeted.

What happened

What follows sets out the same background I relayed in my provisional decision. I repeat it here for the purposes of making my final decision.

Mr S had mandate over a business account with RBS in the name of a general partnership which operated as a care home, and which ceased trading in 2016. The account had an overdraft with a credit limit of £16,000 which was due to expire in June 2023.

Mr S says he told RBS in August 2016 that he wanted to use the account and overdraft for his buy to let business and was told this wouldn't be an issue.

RBS spoke with Mr S in July 2023 to review the overdraft after its fixed term expired. During their conversation he told their advisor his previous business ceased trading in 2016. He said he intended to move his buy to let business over to the account later that year.

The advisor told Mr S they wouldn't be able to continue with the overdraft given his business ceased trading, so the overdraft granted for the purposes of that business would need to be repaid.

Mr S was unhappy with RBS' decision. He proposed a plan whereby he could use the overdraft for his buy to let business, but the overdraft limit would decrease each year to a limit of £8,500, matching the credit limit on his business credit card. He felt the advisor unfairly refused his proposal and tried to encourage him to take out an expensive loan.

Mr S believes RBS' real motivation was to reduce their overdraft exposure, they knew his old business ceased trading long ago and they knew he used the overdraft for his buy to let business and had accepted this. He was particularly unhappy with the service he received from RBS' advisor and so raised a complaint.

As part of that complaint, Mr S also complained about RBS charging a £30 fee on the account after his care home business ceased trading. And, he complained about RBS not refunding a £380 payment that left the business account in October 2015.

RBS sent Mr S their final response letter in September 2023. In summary they said:

- They couldn't continue with the overdraft because Mr S' previous partnership was no longer trading and the information their advisor told him over the phone was correct. They didn't find the advisor acted unprofessionally or that they were trying to get Mr S to take out an expensive loan to repay the balance.

- The team responsible for sending out a cover letter and return envelope in the post with the income and expenditure form failed to do so. They offered him £100 and said if they didn't receive alternative account details from him, they would send him a cheque to the address they have for him.
- They could not find a record of Mr S raising a historic complaint about the payment which debited his account in October 2015 or phone calls pertaining to this prior to his recent contact.
- They hadn't misapplied the service charge for the business account. £30 was charged in line with the terms and conditions of the account relevant to the time. This fee was later reduced after RBS reviewed their policy, but there was no evidence to show Mr S was told the fees would be refunded.

Mr S says RBS closed the account in December 2023 and he brought his complaint to our service that same month.

Our investigator decided not to uphold the complaint. In summary, they found:

- RBS closed the business account fairly and in line with their terms and conditions.
- It was reasonable for RBS to ask Mr S to repay the overdraft on the account given the business to which the overdraft was granted had ceased trading.
- Mr S provided a copy of a letter he says he sent to RBS in August 2016, which indicated he was going to close his care home business. But that letter also said he would notify RBS when that officially happened. There wasn't subsequent evidence to show he did confirm the closure of the business with RBS and had he done so it was likely that RBS would have revoked the overdraft.

Mr S disagreed with the outcome the investigator reached. He highlighted RBS had still failed to pay £380 which he said was stolen from the account in 2015.

Our investigator asked Mr S if they had evidence of raising a complaint with RBS about the disputed payment, but Mr S replied that he had no further evidence other than what he already provided.

Our investigator issued a subsequent view on whether our service had jurisdiction to consider a complaint about the payment in question. They concluded we did not and said:

- £380 debited the business account on 5 October 2015 and Mr S raised a claim with RBS. He provided a copy of a letter he sent to RBS which referenced a claim number. This however wasn't satisfactory to show he raised a complaint to RBS about their failure to refund the payment at that time.
- The Dispute Resolution Rules (DISP) set out that our service can only consider complaints brought to us in time. One of those rules requires that a complainant must bring a complaint within six years of the event complained about or three years from when they ought reasonably to have had cause to complain. Mr S would have had reasonable cause to complain about RBS not refunding the payment when he didn't receive an outcome to his claim. So, this part of his complaint was not one we could

consider.

As no informal resolution was agreed between Mr S and RBS in relation to the outcomes our investigator reached, his complaint was passed to me to make a final decision in my capacity as an ombudsman.

Since this time, I asked for further information from both Mr S and RBS via another investigator at our service. Both parties provided their responses and both Mr S and RBS informed me Mr S is now on a repayment plan which commenced in September 2024, paying £500 per month to reduce his overdraft debt.

I issued a provisional decision in which I decided I couldn't consider a complaint about the disputed payment in October 2015, as it fell outside our jurisdiction. And I provisionally decided not to uphold the remaining elements of Mr S' complaint. My findings were:

"Our jurisdiction

Our service cannot consider every complaint brought to us. A complaint must firstly fall within our service's jurisdiction, and what complaints our service can and cannot consider is primarily set out in the Dispute Resolution Rules (DISP) which form part of the Financial Conduct Authority's handbook under DISP 2.

One of the requirements for our service to be able to consider a complaint is that it's brought within specific time frames. The relevant time limit here is DISP 2.8.2 R which states:

"The Ombudsman cannot consider a complaint if the complainant refers it to the Financial Ombudsman Service:

...

(2) more than:

(a) six years after the event complained of; or (if later)

(b) three years from the date on which the complainant became aware (or ought reasonably to have become aware) that he had cause for complaint;

unless the complainant referred the complaint to the respondent or to the Ombudsman within that period and has a written acknowledgement or some other record of the complaint having been received;

unless:

(3) in the view of the Ombudsman, the failure to comply with the time limits in DISP 2.8.2 R or DISP 2.8.7 R was as a result of exceptional circumstances;"

Please note italicised words are those which link to other parts in the handbook or the glossary definition.

Mr S didn't bring his complaint about RBS not refunding the £380 to our service until December 2023, which is more than six years from 5 October 2015 when the payment debited the account. I'm also satisfied he brought it to our service more than three years from when he ought reasonably to have been aware that he had cause to complain, which would have been at least from when RBS didn't refund his payment in 2016.

So, I've gone on to consider whether Mr S referred his complaint to RBS within the six- and

three-year time frame.

Mr S says he raised a complaint about the payment with RBS in time. He sent in a copy of a letter from RBS dated 10 August 2016, which shows RBS raised a claim following him contacting them about the payment. He also sent in a copy of a letter dated 18 August 2016 which he says he sent to RBS. In that letter he wrote:

“Further to my conversation with your colleague (...) earlier today, you have now allocated a new case number: (...) for my claim for £380.

I wrote to you last year and you allocated a case number (...) to resolve this issue with the bank, one of my clients had not received a cheque for £380 and they say someone else has cashed it in. I am looking for you to resolve this and refund these monies back to me.

As discussed with (...) he confirmed the following:

1) They would return these monies asap as the time taken was unacceptable.”

I'm satisfied the correspondence Mr S provided shows he contacted RBS in August 2016 about the payment which he felt had not been paid to the intended recipient based on what his client had told him.

But after carefully considering RBS' letter I find the wording lacking in terms of it being a written acknowledgement of a complaint being received or that it otherwise acts as a reliable record to show RBS received a complaint from Mr S at that time, which is what DISP 2.8.2 R (2) requires.

I find the letter from RBS is framed around them attempting to get the payment back by carrying out a payment trace and that they would subsequently contact him with the results. They apologised for any inconvenience the matter had caused Mr S, but I don't find this satisfactorily establishes he complained about RBS not refunding the payment at that time. I find he was more likely requesting them to act to get the payment back.

Mr S provided no other records from RBS relating to the matter of the payment since the letter in August 2016 until his complaint letter dated 23 July 2023. I find this relevant. Had Mr S complained to RBS about them not refunding the payment, I would expect to see further records and correspondence about the payment within six years from 5 October 2015.

The copy of the letter Mr S says he sent RBS on 18 August 2016 says he was told by an advisor that they would get the payment returned as the time taken was unacceptable. I acknowledge Mr S may have spoken to RBS at that time and the nature of his conversation could have been such that he expressed dissatisfaction about RBS not refunding the payment. But RBS do not have a record of a complaint being received from this time, and without further evidence, I cannot fairly conclude Mr S made a complaint to them.

I've decided Mr S' complaint about RBS not refunding the £380 payment falls outside our service's jurisdiction on the basis there is insufficient evidence to show a complaint was raised to RBS or our service within six years of the payment or within three years of when he ought to have reasonably become aware of a cause for complaint.

I've not found there are any exceptional circumstances put forward by Mr S that establish he couldn't have raised his complaint with RBS or our service within the six- and three-year

period.

RBS' decision to close the business account and call in the overdraft

Mr S feels strongly that RBS should not have called in the overdraft, and they at least should have agreed to what he proposed in terms of reducing the overdraft yearly until it reached the credit limit on his credit card. But I find RBS acted reasonably.

Mr S says RBS managers were fully aware that his care home business ceased trading in 2016 and they confirmed it was okay for him to use the account for his buy to let business after this time. He also says he took the annual overdraft limit confirmations as an acknowledgement and approval of his overdraft usage.

It's possible what Mr S says is correct. But I haven't seen persuasive evidence to show that RBS agreed to let him use an overdraft approved for a previous business for a different business altogether.

I find it more persuasive that had RBS been told the overdraft was being used for a different business that they would have taken similar action to what they did in 2023. I say this because agreeing to lend a business money is an important decision to make, which carries with it responsibilities to ensure the business meets lending criteria and their risk appetite, and that the lending is affordable. Considering this I find it less plausible that RBS would informally agree to provide the same overdraft for an entirely different business proposition.

I've considered the letter dated 18 August 2016 Mr S says he sent RBS. Part of that letter says:

"As explained to (...), my (...) business will be closing in the next few months as soon as all the residents are rehomed. He has confirmed there should be no problem with keeping the current and overdraft limit, as I still use my property business with this account. I will update you once the care home is officially closed"

I don't find this letter establishes RBS agreed to provide the overdraft to Mr S' buy to let business. It's possible the letter accurately describes a conversation Mr S had with an RBS employee. But it doesn't establish that RBS did go on to agree to an overdraft for a new business proposition. I've seen no correspondence to show Mr S informed RBS his care home business had officially closed or that there is a record of RBS being told this prior to the call Mr S had with them in July 2023.

I've carefully listened to the call Mr S had with the RBS advisor in July 2023. During the call the following was discussed:

- Mr S said he hadn't received an envelope to send back financial information. The advisor apologised and updated Mr S' email address over the phone, so Mr S could send the information by email.
- Mr S said his care home business closed in 2016. He said he told RBS he wanted to keep it open as he eventually planned to move his buy to let business to the account in August 2023.
- He wanted to keep his credit limit at £16,000 for the remainder of 2023, reduce the limit to £12,500 for 2024, and then further reduce the limit to £8,500 and retain this limit to match the limit on his business credit card.

- The advisor said RBS wouldn't be able to consider an overdraft renewal for a business that was no longer trading, even when there is a different source of business proposed. The reason for this was there would be different lending options for a different business. While the advisor appreciated the offer, they wouldn't be able to consider a staggered reduction whereby the overdraft continued to be used, but there were potential other options available to repay the overdraft such as refinancing through a loan.
- Mr S asked the advisor what they wanted to keep the overdraft limit at and said there was a cost-of-living crisis and mortgage rates had gone up, and he was looking for the bank to support him.
- The advisor said they wanted to support Mr S, but any lending would have to be considered for an active and running business and his care home business was no longer trading.
- Mr S said that RBS knew his business wasn't trading in 2016. The advisor said he didn't know what conversations happened back then, but the overdraft had come for a review now. They repeated that his care home business no longer had an income or was trading, so they couldn't consider continuing the overdraft.

They said RBS could potentially consider business banking for a buy to let business. But a buy to let business was a different type of business and in a different sector, so it wouldn't be the case of simply bringing a new business to the account.

- Mr S said he felt RBS weren't being flexible and that RBS should allow use of the overdraft for his buy to let business. The advisor said when the new business was brought to RBS, it's possible that could be a consideration but as things stood in terms of the overdraft it wasn't possible.
- Mr S said it would take him around 4-6 weeks to sort out moving the buy to let business. He then said how would he obtain £16,000 to repay the overdraft, and a loan would have extremely high interest rates. He said he would make a complaint to the ombudsman as RBS weren't being flexible. He then referenced the government's financial intervention to assist RBS in 2008 using taxpayers' money. He asked why RBS was intent on getting back their money back. The advisor again said that it was because the overdraft was for a business which was no longer trading so it couldn't continue.
- Mr S said it wasn't fair to get him to take out a loan at high rates, putting him into further debt and he didn't want further lending. The advisor said the option of a loan would be to replace one debt for another and they weren't able to provide an exact loan quote at that time because they didn't have the financial information they needed (referring to the affordability assessment).
- Mr S said RBS were acting as bullies and they could let him use the account for his buy to let business and potentially reduce the limit in the way he proposed. He had paid the interest and maintained the account since his buy to let business ceased trading. The call ended with Mr S saying he would send in the financial information RBS had asked for.

I don't find the nature of the conversation Mr S had with the RBS advisor supports the position that RBS had previously agreed to provide the overdraft facility to Mr S' buy to let

business. I would have expected Mr S to have said that RBS had agreed to provide the overdraft to his buy to let business on the call if that was his understanding given the importance of that information to the conversation he was having. Instead, the conversation surrounded the prospect of Mr S moving his buy to let business to RBS with Mr S hoping to continue with the overdraft on that basis, as opposed to it already being agreed that he could.

I asked Mr S for clarification on what he was using the account for after his care home business ceased trading, given he indicated to RBS on the call that he had yet to move his buy to let business to RBS. He replied to say he used the account for some expenditure associated with his buy to let business, such as buying goods and materials. This may well have been the case, but I don't find this satisfactorily establishes that RBS agreed he could use the overdraft for his buy to let business.

I don't doubt Mrs S' strength of feeling that RBS treated him unfairly by not agreeing to what he wanted, but I'm satisfied RBS not continuing with the facility was reasonable and understandable given the information and evidence I've considered. I don't find the evidence shows RBS agreed to provide the overdraft to his buy to let business previously or that RBS needed to allow him to use the facility for the buy to let business.

RBS issued a formal demand for the full balance of the overdraft in December 2024 as they said Mr S hadn't provided the information they needed to assess affordability in terms of either agreeing a possible repayment plan or refinancing the overdraft balance. Based on the information I've seen; I don't find this was unreasonable. And, given the business account had been opened for his care home business, which was no longer trading, I also find the decision to close the account and not permit further activity was fair given it was for a business they had not approved lending for.

Mr S says he found the recall of his overdraft distressing, and I am sorry to hear about how he says he was impacted. But an overdraft is a revocable facility by its nature, and the fixed term had expired. RBS discovered the business for which the overdraft had been agreed was no longer trading, so they couldn't continue with that facility. And, I don't find them recalling the facility unreasonable or that offering to explore repayment options to pay off the balance showed a lack of forbearance or due consideration. I don't think it was incumbent on them to continue to provide lending in these circumstances.

I also don't find the advisor Mr S spoke to acted unprofessionally. Instead, I find they communicated with him appropriately, albeit I don't deny the conversation was challenging for Mr S given that he was being told the overdraft could no longer continue as he wanted.

Charges on the account

Mr S said in his complaint to RBS that he thinks they should have refunded account fees charged on the account after he said he told them his care home business had ceased trading. He says he was charged £30 per month for some time after this, after which the fees reduced to £5 per month. He says that RBS had agreed to refund the fees.

RBS said that the service fee for the business account was £30 in accordance with the account terms. They said this fee reduced following a change in their policy and that they had no record of an agreement to refund fees to Mr S. I haven't seen evidence presented by Mr S which establishes RBS agreed to refund charges on the account, and given he had use of the account and overdraft I don't find there is a reasonable basis to conclude RBS should have refunded him fees from the time his care home business ceased trading."

RBS replied to my provisional decision and said they have nothing further to add. Mr S didn't

respond to the decision within the deadline. As a result, I have gone on to make my final 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.

I've decided not to uphold Mr S' complaint about NatWest not agreeing to let him use the overdraft for his buy to let business, their decision to call the debt in and close the account, and their decision not refund fees charged on the account after his care home business ceased trading. I've also decided that his complaint about NatWest failing to refund a £380 payment which debited the account in October 2015 falls outside our service's jurisdiction.

The reasons for my decision remain the same as those I gave in my provisional decision, which are copied above and now form my findings for this final decision.

My final decision

I've decided not to uphold Mr S' complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 20 March 2025.

Liam King
Ombudsman