

## **Complaint**

Miss M has complained about the overdraft charges The Royal Bank of Scotland (“RBS”) applied to her current account. She’s said the charges were applied unfairly as she was allowed to use her overdraft for a prolonged period and even when it was clear that she was struggling.

## **Background**

RBS provided Miss M with an overdraft in December 2004. The limit on the overdraft has been £950 since then.

Miss M’s complaint was looked at by one of our investigators. She wasn’t persuaded that RBS had unfairly allowed Miss M to use her overdraft in a way that was unsustainable or otherwise harmful for her. So the investigator didn’t recommend that Miss M’s complaint be upheld.

RBS disagreed with the investigator and asked for an ombudsman’s decision.

## **My findings**

I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

Having carefully considered everything provided, I’m not upholding Miss M’s complaint. I’ll explain why in a little more detail.

Before I go any further, as this essentially boils down to a complaint that Miss M was unfairly charged by being allowed to continue using her overdraft, I want to be clear in saying that I haven’t considered whether the various amounts RBS charged were fair and reasonable, or proportionate in comparison to the costs of the service provided.

Ultimately how much a bank charges for services is a commercial decision. And it isn’t something for me to get involved with. That said, while I’m not looking at RBS’ charging structure per se, it won’t have acted fairly and reasonably towards Miss M if it applied this interest, fees and charges to Miss M’s account in circumstances where it was aware, or it ought fairly and reasonably to have been aware Miss M was experiencing financial difficulty.

I’ve therefore considered whether there was an instance, or there were instances, where RBS didn’t treat Miss M fairly and reasonably. In other words, I’ve considered whether there were periods where RBS continued charging Miss M even though it ought to have instead stepped in and taken corrective measures on the overdraft as it knew, or it ought to have realised, that she was in financial difficulty.

There is no dispute that Miss M did not get in touch with RBS to for its help in order to repay her overdraft. I’ve also looked through Miss M’s account statements throughout the period concerned. And I can’t see that RBS ought to have unilaterally taken corrective measures in relation to Miss M’s overdraft.

Miss M did use her overdraft regularly. And Miss M may argue that the fact that she did so, in itself, was an indication that RBS ought to have taken action. But I think that it is far too simplistic to say that it automatically follows that someone was in financial difficulty simply because they were using a financial product that they were entitled to use. Furthermore, in order to uphold a complaint, I have to be satisfied that it was clear the customer was struggling, even though they were operating the account within the terms and conditions.

I think it's important to look at overall circumstances of a customer's overdraft usage – particular in light of what this may suggest about their overall position. Therefore, in this case, I've considered Miss M's incomings and outgoings as well as any overdrawn balance and thought about whether it was possible for her to have stopped using her overdraft, based on this.

After all, if Miss M was locked into paying charges because there was no prospect of her exiting her overdraft then her facility would have been unsustainable for her. So I've carefully considered whether this was the case.

The first thing for me to say is that this isn't a case where a customer was given an overdraft limit which meant that they were permanently overdrawn. Indeed, I'm mindful that Miss M was not only in receipt of credits that had the potential to clear what she could owe within a reasonable period of time, for most of the period of time her monthly credits actually exceeded the amount of her overdraft limit.

So this isn't a case where the borrower was permanently in their overdraft. There were periods where Miss M was in credit – although I do accept that Miss M is likely to have met the criteria of someone who displayed a pattern of repeat use of their overdraft. That said, even though this is the case, the question here is whether Miss M's use of her overdraft was causing her to incur high cumulative charges that were harmful to her. And having considered matters, I don't think that this is the case.

To explain, while I'm not seeking to make retrospective value judgements over Miss M's expenditure, nonetheless there are also significant amounts of non-committed, non-contractual and discretionary transactions going from Miss M's account. Indeed, Miss M does appear to have sufficient funds to have used the overdraft less than she did. Equally, I can't see anything to indicate that the charges were causing her harm. For example, I can't see that Miss M was borrowing from unsustainable sources in order to meet these charges or that her borrowing was increasing exponentially.

I accept neither of these things in themselves (or when taken together) mean that Miss M wasn't experiencing difficulty. But, in circumstances where there is no dispute that Miss M didn't get into contact with RBS explaining that she was experiencing difficulty, I don't agree that the account activity in itself demonstrated that she was. She appears to have been able to make her committed expenditure without using her overdraft. However, she was choosing to use her overdraft as a result of her discretionary transactions.

Given the repeat usage letters Miss M is likely to have been sent by RBS, I think that she ought to have realised that how much she was paying for this. I also say all of this while mindful that I've seen no indication that any of the potential signs of financial difficulty contained in the regulator's guidance on financial difficulty (set out in CONC 1.3) – such as Miss M failing to meet consecutive payments to credit, borrowing from payday or other high-cost lenders, or Miss M failing to meet her commitments out of her disposable income – were present in Miss M's circumstances at any time prior to her complaint.

Overall and having considered everything, I don't think that it was unreasonable for RBS to have proceeded adding the charges that it did. This is particularly bearing in mind the consequences of RBS taking corrective action, in the way that it would have done had it acted, would have been disproportionate.

I say this because I don't think that it would have been proportionate for RBS to demand that Miss M immediately repay her overdraft, in circumstances where there was a realistic prospect of Miss M clearing what she owed in a reasonable period of time. Indeed had taken RBS taken this position, it is likely to have reported adverse information and/or defaulted the Miss M's agreement. And it is the impact of this of Miss M which means that such action is likely to have been disproportionate, given everything I've explained.

So overall and having considered everything, I'm not persuaded that RBS did charge Miss M in circumstances where it ought to have realised that it was unfair to do so.

In reaching my conclusions, I've also considered whether the lending relationship between RBS and Miss M might have been unfair to Miss M under s140A of the Consumer Credit Act 1974 ("CCA").

However, for the reasons I've already explained, I'm satisfied that RBS did not lend irresponsibly or act unfairly in allowing Miss M to use her overdraft in the way that she did bearing in mind all of the circumstances. And I haven't seen anything to suggest that s140A CCA would, given the facts of this complaint, lead to a different outcome here.

As this is the case, I'm not upholding Miss M's complaint. I appreciate that this will be very disappointing for Miss M. But I hope she'll understand the reasons for my decision and that she'll at least feel her concerns have been listened to.

### **My final decision**

For the reasons I've explained, I'm not upholding Miss M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 26 March 2025.

Jeshen Narayanan  
**Ombudsman**