

Complaint

Mr D has complained that The Royal Bank of Scotland Plc ("RBS") unfairly continued applying charges to his overdraft even when it was clear that he was in financial difficulty and failing to see a credit balance for an extended period.

Background

One of our investigators looked at this complaint and thought RBS should have realised that Mr D's overdraft had become unsustainable for him by September 2021 and so it shouldn't have added the charges it did from this point onwards.

RBS, predominantly because of matters which are no longer in dispute, didn't agree with the investigator's assessment. As RBS didn't agree with the investigator's assessment the complaint was passed to an ombudsman for a final decision, as per the next stage of our dispute resolution process.

Furthermore, as Mr D has effectively agreed with the investigator's findings on matters, this decision is only looking at whether RBS acted fairly and reasonably towards Mr D from September 2021 onwards. So while RBS remains dissatisfied regarding conclusions reached prior to this period, as I'm not looking at the period prior to September 2021, I can confirm that those factors do not affect my decision in this instance.

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, I'm upholding Mr D's complaint. I'll explain why in a little more detail.

RBS will be familiar with all the rules, regulations and industry codes of practice we consider when looking at whether a bank treated a customer fairly and reasonably when applying overdraft charges. So I don't consider it necessary to set all of this out in this decision.

Having carefully considered everything provided, I'm satisfied that RBS acted unfairly when it continued charging overdraft interest and associated fees from September 2021 onwards. While Mr D might not have got in touch to confirm this, nonetheless by this point, it was evident Mr D's overdraft had become demonstrably unsustainable for him.

Mr D's statements leading up to this period show that he'd been hardcore borrowing for an extended period. There were even occasions where he had exceeded his limit. I can also see transactions going out of Mr D's account which ought to have called into question Mr D's ability to sustainably repay this overdraft too. In my view, the activity and transactions taking place on Mr D's account indicated that there was little prospect of him being able to repay what he owed without undue difficulty or borrowing further.

I've seen that RBS is relying on having sent Mr D a number of letters telling him that he was using an overdraft in the way that he was expensive and that he should get in contact if he was experiencing difficulty. As I understand it, it then sent further letters and communications from 2020 onwards as a result of the regulator's repeat overdraft use rules. RBS says that Mr D should have reached out if he was struggling.

I've thought about what RBS has said. I think that the fact that RBS felt the need to send Mr D so many letters within such a period means that it recognised there was a problem with the way that Mr D was using his overdraft. Indeed, if I take RBS' argument to its logical conclusion here, I see it as being that it acted fairly and reasonably towards Mr D because it sent him letters as it had identified that his overdraft usage had become a problem. But because Mr D didn't respond to the letters it was reasonable to continue allowing him to use his overdraft in the same way, notwithstanding that it had identified his use of his overdraft as being problematic.

In my view, this ignores the fact that there comes a point where a lender cannot continue simply relying on a borrower not wanting to discuss the situation. After all there are many reasons why a consumer might not want to get into discussions about their finances even though they're in a situation where they're struggling, or they may even go further and say they can and will make payment when the reality is they can't.

While Mr D didn't contact RBS, most likely because he didn't realise the impact failing to deal with the matter at hand was having, I don't think it was reasonable for RBS to conclude that his problematic overdraft usage would correct itself. As RBS didn't react to Mr D's account usage and have regard to his account activity, I'm satisfied that it failed to act fairly and reasonably towards him.

Mr D ended up paying interest, fees and charges at a time when his overdraft was already unsustainable. So I'm satisfied that Mr D lost out because of what RBS did wrong and it should now put things right.

In reaching my conclusions, I've also considered whether the lending relationship between RBS and Mr D might have been unfair to Mr D under section 140A of the Consumer Credit Act 1974.

However, I'm satisfied that what I direct RBS to do, in the following section of this final decision, results in fair compensation for Mr D given the overall circumstances of his complaint. For the reasons I've explained, I'm also satisfied that, based on what I've seen, no additional award is appropriate in this case.

Fair compensation – what RBS needs to do to put things right for Mr D

Having thought about everything, I'm satisfied that it would be fair and reasonable in all the circumstances of Mr D's complaint for RBS to put things right by:

- Reworking Mr D's current overdraft balance so that all interest, fees and charges applied to it from September 2021 onwards are removed.

AND

- If an outstanding balance remains on the overdraft once these adjustments have been made RBS should contact Mr D to arrange a suitable repayment plan, Mr D is encouraged to get in contact with and cooperate with RBS to reach a suitable agreement for this. If it considers it appropriate to record negative information on Mr D's credit file, it should reflect what would have been recorded had it started

the process of taking corrective action on the overdraft in September 2021. RBS can also reduce Mr D's overdraft limit by the amount of any refund if it considers it appropriate to do so, as long as doing so wouldn't leave him over his limit.

OR

- If the effect of removing all interest, fees and charges results in there no longer being an outstanding balance, then any extra should be treated as overpayments and returned to Mr D along with 8% simple interest† on the overpayments from the date they were made (if they were) until the date of settlement. If no outstanding balance remains after all adjustments have been made, then RBS should remove any adverse information from Mr D's credit file. RBS can also reduce Mr D's overdraft limit by the amount of refund if it considers it appropriate to do so.

† HM Revenue & Customs requires RBS to take off tax from this interest. RBS must give Mr D a certificate showing how much tax it has taken off if he asks for one.

My final decision

For the reasons I've explained, I'm upholding Mr D's complaint. The Royal Bank of Scotland Plc should put things right in the way I've directed it to do so above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 7 April 2025.

Jeshen Narayanan
Ombudsman