

Complaint

Mr K has essentially complained that The Royal Bank of Scotland Plc ("RBS") unfairly provided him with an overdraft that was unaffordable.

He also says that it continued applying charges to his overdraft even after it should have realised that he couldn't sustainably repay it. Mr K argues that by this stage he had been constantly in his overdraft and it was clear that he didn't have the means to come out of it.

Background

Mr K was initially provided with an overdraft that had a limit of £250 in December 2005. From October 2019 onwards, Mr K's overdraft limit was increased in stages and it went from £250 up to £3,000.00 in March 2023.

One of our investigators looked at this complaint and thought RBS shouldn't have increased Mr K's overdraft limit to £1,500.00 in April 2021. He also thought that RBS shouldn't have allowed Mr K to continue using his overdraft at all from July 2022 onwards. So he thought that RBS needed to refund all of the interest, fees and charges that it charged on balances above £1,000.00 from April 2021 and then all of the interest fees and charges it added any overdrawn balance from July 2022 onwards.

RBS didn't agree with the investigator's assessment of the complaint. And it asked for an ombudsman's review.

My provisional decision of 10 March 2025

I issued a provisional decision – on 10 March 2025 - setting out why I was intending to partially uphold Mr K's complaint.

In summary, I was satisfied that that RBS didn't initially act unfairly when providing Mr K with his overdraft or increasing his limit in April 2021.

However, I was also satisfied that from July 2022 onwards RBS allowed Mr K to continue using his overdraft in circumstances where it knew, or it ought reasonably to have known, that it was unsustainable or otherwise harmful for him.

RBS' response to my provisional decision

RBS didn't respond to my provisional decision or ask for any additional time in order to do so.

Mr K's response to my provisional decision.

Mr K responded to confirm that he accepted my provisional decision and he had nothing further to add ahead of my final 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, including what has happened since my provisional decision, I'm still partially upholding Mr K's complaint. I'll explain why in a little more detail.

RBS' decisions to increase Mr K's overdraft limit to £500, £1,000.00 and then £1,500.00

We've set out our general approach to complaints about unaffordable/irresponsible lending - including the key rules, guidance and good industry practice - on our website. And I've referred to this when considering Mr K's complaint.

RBS needed to make sure that it didn't lend irresponsibly. In practice, what this means is RBS needed to carry out proportionate checks to be able to understand whether Mr K would be able to repay what he was being lent before providing any credit to him.

Our website sets out what we typically think about when deciding whether a lender's checks were proportionate. Generally, we think it's reasonable for a lender's checks to be less thorough – in terms of how much information it gathers and what it does to verify it – in the early stages of a lending relationship.

But we might think it needed to do more if, for example, a borrower's income was low or the amount lent was high. And the longer the lending relationship goes on, the greater the risk of it becoming unsustainable and the borrower experiencing financial difficulty. So we'd expect a lender to be able to show that it didn't continue to lend to a customer irresponsibly.

RBS says that it will have obtained some information on Mr K's income and his expenditure before deciding to lend to him. It says that this will have been cross-referenced against information it obtained on the funds going into Mr K's main account and his existing credit commitments which it obtained from credit reference agencies.

Mr K's overdraft was an open-ended (running account) agreement (in other words, while RBS was required to periodically review the facility, there was no fixed end date) where there was an expectation that he'd repay what he borrowed plus the interest due within a reasonable period of time.

CONC didn't (and still doesn't) set out what a reasonable period of time was. So I think it's important to note that a reasonable period of time will always be dependent on the circumstances of the individual case.

It's fair to say that overdraft limits of £500, £1,000.00 and then £1,500.00 will not have required huge credits in order to clear the full amount that could have been owed within a reasonable period of time. Furthermore, the information that RBS has provided suggests that Mr K was receiving more £1,500.00 a month.

I'm also mindful that Mr K does not appear to have had excessive debt and he appears to have been managing what he did have reasonably. I'm satisfied that there wasn't anything to indicate that Mr K was having financial difficulties or struggling with repayments to credit in at the time of these limit increases.

Taking into account the funds Mr K was receiving into his account as well as the amount that needed to be repaid should Mr K owe the full amount on the overdraft, I think that RBS was

entitled to conclude that Mr K had sufficient funds to cover sustainable credits to his overdraft as well as also cover whatever regular monthly living costs he may have had.

As this is the case and bearing in mind the relatively low credits required to clear balances of £500, £1,000.00 and £1,500.00 within reasonable period of time, I'm not intending to uphold the complaint on the basis that Mr K should not have been provided with the overdraft limit increases in October, 2019, November 2020 and April 2021.

The position from July 2022 onwards

Even though I don't think that RBS acted unfairly or unreasonably when increasing his limit to £500 in October 2019, £1,000.00 in November 2020 and then £1,500.00 in April 2021, RBS still had an ongoing duty to review Mr K's overdraft and consider whether it was fair and reasonable to continue allowing him to use the facility in light of the way he was using it.

I've considered whether RBS acted fairly and reasonably in this regard.

RBS will be familiar with all the rules, regulations and good industry 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 considered everything provided, I'm satisfied that RBS acted unfairly when it continued adding interest and associated fees and charges to Mr K's overdraft from July 2022 onwards. By this point, it was evident that Mr K's overdraft had become unsustainable for him and RBS ought reasonably to have realised that continuing to provide it was likely to cause Mr K significant adverse consequences.

Looking at Mr K's statements leading up to this period it is clear that Mr K was struggling to maintain a credit balance for any sort of meaningful period of time. RBS also ought to have realised that it had provided Mr K with a loan a year earlier. Given Mr K's overdraft limit was reduced around this stage too, it ought to have been apparent that Mr K was trying to reduce what he owed and increasing his overdraft limit further wasn't helping that.

Bearing in mind that this was the case, I'm satisfied that RBS should have realised that Mr K wasn't using his overdraft as intended and as the account conduct had suggested it had become unsustainable, RBS shouldn't have continued offering it on the same terms.

I've considered what RBS has said about having sent Mr K 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. RBS says that Mr K should have reached out if he was struggling and it was limited in what it could do because he didn't get in contact.

I think that it's worth me starting by saying that the fact that RBS felt the need to send Mr K so many letters means that it recognised there was a problem with the way that Mr K 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 K because it sent him letters as it had identified that his overdraft usage had become a problem. But because Mr K 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 in circumstances where they simply cannot do so.

Furthermore, this also appears to ignore the fact that Mr K had got in touch and had tried to take action by reducing his overdraft limit after taking his loan.

While Mr K didn't contact RBS again after this, I don't think it was reasonable for RBS to conclude that his problematic overdraft usage would correct itself. In these circumstances, I'm minded to conclude that RBS should have stopped providing the overdraft on the same terms and treated Mr K with forbearance by July 2022.

As RBS did not react to Mr K's problematic overdraft usage and instead continued charging him in the same way, while allowing him to continue using the facility in an unsustainable way, I'm satisfied that RBS failed to act fairly and reasonably towards Mr K.

Mr K ended up paying additional interest, fees and charges on his overdraft at a time when his usage indicates it had become unsustainable for him. So I find that Mr K lost out because of what RBS did wrong and that it should now put things right.

In reaching my conclusions, I've also considered whether the lending relationship between RBS and Mr K might have been unfair to Mr K 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 decision, results in fair compensation for Mr K 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 should do to put things right for Mr K

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

- Reworking Mr K's current overdraft balance so that all interest, fees and charges applied to it from July 2022 onwards are removed.

AND

- If an outstanding balance remains on the overdraft once these adjustments have been made RBS should contact Mr K to arrange a suitable repayment plan, Mr K 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 K's credit file, it should reflect what would have been recorded if it had started the process of taking corrective action on the overdraft in July 2022. RBS can also reduce Mr K's overdraft limit by the amount of 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 K 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 K's credit file. RBS can also reduce Mr K'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 K a certificate showing how much tax it has taken off if he asks for one.

My final decision

For the reasons I've explained above and in my provisional decision of 10 March 2025, I'm partially upholding Mr K'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 K to accept or reject my decision before 22 April 2025.

Jeshen Narayanan
Ombudsman