

## **Complaint**

Mr B has complained about the overdraft charges The Royal Bank of Scotland Plc (“RBS”) applied to his account.

Mr B is being represented, by the (“representative”), in his complaint.

## **Background**

Mr B successfully applied for an overdraft with a limit of £100 in November 2016. A few days later this, this limit was increased to £250 and it has remained at that amount since then.

In February 2025, Mr B complained saying that he was irresponsibly provided with an overdraft which he was then allowed to continue using in a way that was unsustainable and which caused him continued financial difficulty.

RBS did not uphold Mr B’s complaint. It did not think that it had done anything wrong or treated Mr B unfairly in the period he had his overdraft. Mr B was dissatisfied at RBS’ response and referred his complaint to our service. When Mr B’s complaint was referred to our service, RBS told us that we couldn’t consider parts of it as it was made too late.

One of our investigators reviewed what Mr B and RBS had told us. She reached the conclusion that we could look at the entire period Mr B had his overdraft for but she wasn’t persuaded that RBS had acted unfairly by allowing Mr B to use his overdraft in a way that was unsustainable or otherwise harmful. So the investigator didn’t recommend that Mr B’s complaint be upheld.

The representative, on Mr B’s behalf, 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.

### *Basis for my consideration of this complaint*

There are time limits for referring a complaint to the Financial Ombudsman Service. RBS has argued that part of Mr B’s complaint was made too late because he complained more than six years after the decisions to provide him with an overdraft and some of the charges on it were applied, as well as more than three years after he ought reasonably to have been aware of his cause to make this complaint.

Our investigator explained Mr B’s complaint was one alleging that the relationship between him and RBS was unfair to him as described in s140A of the Consumer Credit Act 1974 (“CCA”). He also explained why this complaint about an allegedly unfair lending relationship had been made in time.

Having carefully considered everything, I've decided not to uphold Mr B's complaint. Given the reasons for this, I'm satisfied that whether Mr B's complaint about some of the specific charges applied was made in time or not has no impact on that outcome.

I'm also in agreement with the investigator that Mr B's complaint should be considered more broadly than just the individual charges or lending decisions. I consider this to be the case as Mr B has not only complained about the circumstances behind the application of the individual charges, but also the fact RBS' failure to act during the periods he alleges it ought to have seen he was experiencing difficulty caused ongoing hardship.

I'm therefore satisfied that Mr B's complaint can be interpreted as one alleging that the lending relationship between himself and RBS was unfair to him. I acknowledge the possibility that RBS may still disagree that we are able to look at the whole of Mr B's complaint, but given the outcome I have reached, I do not consider it necessary to make any further comment or reach any findings on these matters.

In deciding what is fair and reasonable in all the circumstances of Mr B's case, I am required to take relevant law into account. As, for the reasons I've explained above, I'm satisfied that Mr B's complaint can be reasonably interpreted as being about that his lending relationship with RBS was unfair to him, relevant law in this case includes s140A, s140B and s140C of the CCA.

S140A says that a court may make an order under s140B if it determines that the relationship between the creditor (RBS) and the debtor (Mr B), arising out of a credit agreement is unfair to the debtor because of one or more of the following, having regard to all matters it thinks relevant:

- any of the terms of the agreement;
- the way in which the creditor has exercised or enforced any of his rights under the agreement;
- any other thing done or not done by or on behalf of the creditor.

Case law shows that a court assesses whether a relationship is unfair at the date of the hearing, or if the credit relationship ended before then, at the date it ended. That assessment has to be performed having regard to the whole history of the relationship. S140B sets out the types of orders a court can make where a credit relationship is found to be unfair – these are wide powers, including reducing the amount owed or requiring a refund, or to do or not do any particular thing.

Given Mr B's complaint, I therefore need to think about whether RBS' allowing Mr B to use his overdraft in the way that it did, resulted in the lending relationship between Mr B and RBS being unfair to Mr B, such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove any such unfairness.

Mr B's relationship with RBS is therefore likely to be unfair if RBS provided Mr B with an overdraft irresponsibly, or allowed him to continue using it in circumstances where it ought reasonably to have realised that the facility had become unsustainable or otherwise harmful for him. And if this was the case, RBS didn't then remove the unfairness this created somehow.

*RBS' decisions to provide Mr B with an overdraft which had limits of £100 and £250*

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 B'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 B would be able to repay what she 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 B'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 B's main account and his existing credit commitments which it obtained from credit reference agencies.

Mr B'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 she 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. Equally, it's fair to say that overdraft limits of £100 and £250 will have required extremely low credits in order to clear the full amount that could have been owed within a reasonable period of time.

The information that RBS has provided suggests that Mr B declared earning around £1,000.00 a month. Taking into account Mr B's salary as well as the amount that needed to be repaid should Mr B owe the respective full amounts of £150 and £250, I think that RBS was entitled to conclude that Mr B had sufficient funds to cover sustainable credits to his overdraft as well as also cover whatever regular monthly living costs he may have had.

*Did RBS unfairly allow Mr B to continue using his overdraft in a way that was unsustainable or otherwise harmful for him?*

Before I go any further, as this aspect of Mr B's complaint essentially boils down to a complaint that he was unfairly charged as a result of being allowed to continue using his 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 its 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 Mr B if it applied this interest, fees and charges to Mr B's account in circumstances where it was aware, or it ought fairly and reasonably to have been aware Mr B was experiencing financial difficulty. So I've considered whether there was an instance, or there were instances, where RBS didn't treat Mr B fairly and reasonably.

In other words, I've considered whether there were periods where RBS continued charging Mr B 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 he was in financial difficulty.

Having looked through Mr B's account statements throughout the period concerned, I can't see that RBS ought reasonably to have realised that Mr B was experiencing financial difficulty to the extent that it would have been fair and reasonable for it to have unilaterally taken corrective measures in relation to Mr B's overdraft. I'll explain why I think this is the case in a little more detail.

I accept that Mr B used his overdraft regularly. I accept that the rules, guidance and industry codes of practice all suggest that prolonged and repeated overdraft usage can sometimes be an indication of financial difficulty. However, this is not the same as saying that prolonged and repeated overdraft usage by a customer will always mean that they are, as a matter of fact, in financial difficulty.

The representative's letter of complaint states that its review of Mr B's credit file leads it to believe that RBS failed to identify Mr B as a repeat overdraft user. It's unclear to me how it has reached this conclusion bearing in mind that a lender isn't expected to report that it has identified a customer as a repeat overdraft user. Nonetheless, the key issue here isn't simply whether Mr B was a repeat overdraft user. What is important to determine is whether Mr B was incurring high overdraft charges which he clearly couldn't afford to repay.

I say this because if Mr B was locked into paying charges in circumstances where there was no reasonable prospect of him exiting his overdraft, then his facility would have been unsustainable for him. With this in mind, I think it's important to look at overall circumstances of a customer's overdraft usage as part of considering their overall financial position, rather than simply looking at whether they met the definition of a repeat overdraft user.

So I've considered Mr B's incomings and outgoings as well as any overdrawn balances and thought about whether it was possible for him to have stopped using his overdraft, based on this. The first thing for me to say is that Mr B's overdraft limit was extremely low and his account was in receipt of credits that were well in excess of what was required to clear the overdraft within a reasonable period of time.

I'm therefore satisfied that Mr B's case isn't one where the borrower was marooned in their overdraft in circumstances where it was clear that there was no reasonable prospect that they could exit it.

Furthermore, while I'm not seeking to make retrospective value judgements over Mr B expenditure, there are significant amounts of non-committed, non-contractual and discretionary transactions going from Mr B's account. Equally, I can't see that he was borrowing from unsustainable sources in order to meet his overdraft charges or that his borrowing was increasing exponentially in order to do so either. As I've explained, the prospect of this happening was pretty remote given how low the limit was.

I accept neither of these things in themselves (or when taken together) mean that Mr B wasn't experiencing difficulty. But I don't agree that Mr B was reliant on this overdraft. He was quite comfortably able to make any essential commitments without using his overdraft. However, he was choosing to use his overdraft to make discretionary transactions and in periods where he had increased funds his discretionary expenditure increased.

Given the repeat usage letters Mr B is likely to have been sent by RBS, I think that he ought to have realised that how much he was paying for this. So I simply don't agree that Mr B was using his overdraft purely for essential spending, or because he had a reliance on credit to

get by. It seems to me that this was a second account that Mr B had which he was using purely for discretionary spending. The low amount of the limit leads me to conclude that allowing Mr B to using this facility in the way he was, was unlikely to prove harmful.

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 in way that the representative is suggesting it should have, would have been disproportionate.

I say this because I don't think that it would have been proportionate for RBS to demand that Mr B immediately repay his overdraft, in circumstances where there was a realistic prospect of Mr B clearing what he owed in a reasonable period of time. Indeed, I think that if RBS had suggested that it would take such action, Mr B would have argued that it would been unfair, bearing in mind the consequences of such action, in circumstances where he could quite clearly afford to use it in the way he was.

Therefore, I don't find that the relationship between Mr B and RBS was unfair to Mr B. I've not been persuaded that RBS created unfairness in its relationship with Mr B by allowing him to use his overdraft in the way that he did. Based on what I've seen, I don't find RBS treated Mr B unfairly in any other way either.

So overall and having considered everything, while I can understand Mr B's sentiments and appreciate why he is unhappy, I'm nonetheless not upholding this complaint. I appreciate this will be very disappointing for Mr B. But I hope he'll understand the reasons for my decision and that he'll at least feel his concerns have been listened to.

### **My final decision**

For the reasons I've explained, I'm not upholding Mr B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 8 December 2025.

Jeshen Narayanan  
**Ombudsman**