

## **Complaint**

Mrs G and Mr S have complained about the overdraft charges The Royal Bank of Scotland Plc (“RBS”) applied to their current account.

Mrs G and Mr S are being represented, by the (“representative”), in their complaint.

The representative has said the charges applied to Mrs G and Mr S’ account were unfair as there was a failure to take account of their patterns of reliance on debt and hardcore borrowing. In the representative’s view, there was no proper consideration of the longer-term impact of the borrowing on them.

## **Background**

Mrs G and Mr S have had a current account with RBS for a number of years. They’ve had an arranged overdraft on it around January 1998. The limit on it has been increased and decreased on it a number of times. At its highest, Mrs G and Mr S limit was £1,200.00 and at its lowest it was £200. Since September 2011 the limit has been £1,000.00.

Mrs G and Mr S complained saying that they were allowed to continue using the overdraft in a way that was unsustainable and which caused them continued financial difficulty.

RBS did not uphold Mrs G and Mr S’ complaint. It did not think that it had done anything wrong or treated Mrs G and Mr S unfairly in the period they used their overdraft. Mrs G and Mr S was dissatisfied at RBS’ response and referred their complaint to our service.

When Mrs G and Mr S’ complaint was referred to our service, RBS told us that we couldn’t consider part of it as it was made too late. One of our investigators subsequently reviewed what Mrs G and Mr S and RBS had told us. She reached the conclusion that we could look at the entire period Mrs G and Mr S had their overdraft for, but she was not of the opinion that Mrs G and Mr S had lost out as a result of the way that RBS had allowed them to use their overdraft. So the investigator didn’t uphold Mrs G and Mr S’ complaint.

The representative, on Mrs G and Mr 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 Mrs G and Mr S’ complaint was made too late because they complained more than six years after some of the charges on the overdraft were applied, as well as more than three years after they ought reasonably to have been aware of their cause to make this complaint.

Our investigator explained why Mrs G and Mr S' complaint was one alleging that the relationship between them and RBS was unfair to them as described in s140A of the Consumer Credit Act 1974 ("CCA"). She 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 Mrs G and Mr S' complaint. Given the reasons for this, I'm satisfied that whether Mrs G and Mr 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 Mrs G and Mr S' complaint should be considered more broadly than just the individual charges or lending decisions. I consider this to be the case as Mrs G and Mr S have not only complained about the circumstances behind the application of the individual charges, but also the fact RBS' failure to act during the periods they allege it ought to have seen they were experiencing difficulty caused ongoing hardship.

I'm therefore satisfied that Mrs G and Mr S' complaint is a complaint that the lending relationship between themselves and RBS was unfair to them. I acknowledge that RBS may still disagree that we are able to look at all of Mrs G and Mr 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 Mrs G and Mr S' case, I am required to take relevant law into account. As, for the reasons I've explained above, I'm satisfied that Mrs G and Mr S' complaint can be reasonably interpreted as being about that their lending relationship with RBS was unfair to them, 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 (Mrs G and Mr S), 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 their 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 Mrs G and Mr S' complaint, I therefore need to think about whether RBS' actions in allowing Mrs G and Mr S to use their overdraft in the way that it did, resulted in the lending relationship between Mrs G and Mr S and RBS being unfair to Mrs G and Mr S, such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove any such unfairness.

Mrs G and Mr S' relationship with RBS is therefore likely to be unfair if RBS allowed Mrs G and Mr S to continue using their overdraft in circumstances where it ought reasonably

to have realised that the facility had become unsustainable or otherwise harmful for them. And if this was the case, RBS didn't then somehow remove the unfairness this created.

*Did RBS unfairly allow Mrs G and Mr S to continue using their overdraft in a way that was unsustainable or otherwise harmful for them?*

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

In other words, I've considered whether there were periods where RBS continued charging Mrs G and Mr S 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 they were in financial difficulty.

Having looked through the account statements I've been provided with, I can't see that RBS ought reasonably to have realised that Mrs G and Mr S were 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 the overdraft facility. I'll explain why I think this is the case in a little more detail.

The representative's arguments appear to suggest that the mere fact Mrs G and Mr S were able to use their overdraft for the period that they did means that they were experiencing financial difficulty and therefore the complaint should be upheld. I'd also add that it has insisted this shouldn't have been allowed to happen because of CONC 5D. But I think that it is far too simplistic to say that it automatically follows that a customer was in financial difficulty simply because they were using a financial product that they were entitled to use.

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.

So I think it's important to look at overall circumstances of a customer's overdraft usage as part of considering their overall financial position. And, in this case, I've considered Mrs G and Mr S' incomings and outgoings as well as any overdrawn balances and thought about whether it was possible for them to have stopped using their overdraft, based on this. I think that if Mrs G and Mr S were locked into paying charges in circumstances where there was no reasonable prospect of them exiting their overdraft then their facility would have been unsustainable for them. So I've carefully considered whether this was the case.

The first thing for me to say is that Mrs G and Mr S' account was in receipt of credits that were sufficient to clear the overdraft. Indeed, the funds going into the account each month exceeded the overdraft limit. So Mrs G and Mr S regularly saw credit balances on this account.

I accept that there were periods where Mrs G and Mr S used their overdraft more often. For the avoidance of doubt, I accept that there is a section of CONC (CONC 5D) which relates to this. I've therefore considered whether Mrs G and Mr S' use of their overdraft (and RBS continuing to allow them to use it) was causing them to incur high cumulative charges, which they had absolutely no way of avoiding and which were harmful to them. And having considered matters, I'm satisfied that this isn't the case.

I say this because while I'm not seeking to make retrospective value judgements over Mrs G and Mr S' expenditure, there are significant amounts of non-committed, non-contractual and discretionary transactions going from Mrs G and Mr S' account. Given the overdraft charges also appear on the statements, I think that Mrs G and Mr S ought to have realised that how much they were paying for using their account in the way that they were.

So I simply don't agree that Mrs G and Mr S were using their overdraft purely for essential spending, or because they had a reliance on credit to get by, as the representative says. As I've already explained, the total amount of the credits Mrs G and Mr S received into their account were enough to completely clear the balance. It would also have been the case if Mrs G and Mr S left the credit they received in this account rather than transferred them out to others.

More importantly, I can't see that they were borrowing from unsustainable sources in order to meet the overdraft charges or that their borrowing was increasing exponentially. I 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 Mrs G and Mr S failing to meet consecutive payments to credit, or Mrs G and Mr S failing to meet their commitments out of their disposable income – were present in Mrs G and Mr S' circumstances. I can't see that Mrs G and Mr S were regularly borrowing from unsustainable sources either.

Given the representative's reference to CONC 5D, I also wish to make it clear that it isn't simply the case that a customer should never be allowed to make discretionary payments from an overdraft. Indeed, its argument appears to be suggesting that a corrective action should be taken against a customer every time they meet the criteria for being sent a letter, irrespective of the circumstances. However, the rules and guidance aren't as blunt a tool as this. The position is far more nuanced.

The representative's interpretation runs contrary to the purpose of the rules and guidance which is to ensure that customers are protected from high cumulative charges where they are likely to cause harm. The rules and guidance aren't to prevent the use of overdraft in all circumstances where a repeat use letter has been sent in the way that the representative's argument suggests.

Even more importantly the representative's argument is at odds with the concept of proportionality – a firm should take action proportionate to the circumstances. This concept of proportionality runs right through CONC 5 as a whole. Given the amount of funds that Mrs G and Mr S' account was in receipt of, I'm not persuaded that RBS ought reasonably to have realised that Mrs G and Mr S' overdraft usage was causing them harm.

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 Mrs G and Mr S immediately repay their overdraft, in circumstances where there was a realistic prospect of Mrs G and Mr S clearing what they owed in a reasonable period of time. I also think that Mrs G and Mr S would more likely than not have considered that RBS imposing a unilateral solution in these circumstances to be disproportionate given such action would have been reported to credit reference agencies and the effect that this would have had on their ability to borrow.

Therefore, I'm not persuaded that the relationship between Mrs G and Mr S and RBS was unfair to Mrs G and Mr S. I've not been persuaded that RBS created unfairness in its relationship with Mrs G and Mr S by allowing them to use their overdraft in the way that they did and based on what I've seen, I don't think that RBS treated Mrs G and Mr S unfairly in any other way either.

Overall and having considered everything, while I can understand Mrs G and Mr S' sentiments and appreciate why they are unhappy, I'm not upholding this complaint. I appreciate this will be very disappointing for Mrs G and Mr S. But I hope they'll understand the reasons for my decision and that they'll at least feel their concerns have been listened to.

### **My final decision**

For the reasons I've explained, I'm not upholding Mrs G and Mr S' complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G and Mr S to accept or reject my decision before 15 December 2025.

Jeshen Narayanan  
**Ombudsman**