

Complaint

Miss M has complained about the overdraft charges The Royal Bank of Scotland Plc (“RBS”) applied to her current account. She’s said that she was effectively locked into paying the overdraft charges which she couldn’t afford and this caused her ongoing difficulty.

Background

RBS has said that Miss M has had an overdraft on her current account since January 1997. At this point, her overdraft limit was £250. The overdraft limit was increased over the years until it reached £4,550.00 in January 2015. I understand that the limit has remained at this amount since then.

In February 2025, Miss M complained saying that she was unfairly allowed to continue using the overdraft even when she was effectively locked into paying the charges which she couldn’t afford and this caused her ongoing difficulty.

RBS did not uphold Miss M’s complaint. This was because it considered that it didn’t need to consider parts of Miss M’s complaint as it was made too late and for the parts that it did consider it didn’t think that it had done anything wrong or unfairly. Miss M was dissatisfied at RBS’ response and referred her complaint to our service.

One of our investigators reviewed what Miss M and RBS had told us. She reached the conclusion that he wasn’t persuaded that RBS had acted unfairly by allowing Miss M to use her overdraft in a way that was unsustainable or otherwise harmful. So the investigator didn’t recommend that Miss M’s complaint be upheld.

Miss M 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 Miss M’s complaint was made too late because she complained more than six years after some of the charges on the overdraft were applied, as well as more than three years after she ought reasonably to have been aware of her cause to make this complaint.

Our investigator explained why it was reasonable to interpret Miss M’s complaint as one alleging that the lending relationship between her and RBS was unfair to her 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 Miss M's complaint. Given the reasons for this, I'm satisfied that whether Miss M'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 Miss M's complaint should be considered more broadly than just the individual charges or lending decisions. I consider this to be the case as Miss M 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 she alleges it ought to have seen she was experiencing difficulty caused her ongoing hardship.

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

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

I've considered Miss M's complaint in this context.

Did RBS unfairly allow Miss M to continue using her overdraft in circumstances where it ought to have removed the facility from her?

Before I go any further, as this essentially boils down to a complaint that Miss M was unfairly charged as a result of 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 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 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. So I've 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. Having looked through Miss M's account statements through the vast majority of the period concerned, I can't see that RBS ought reasonably to have unilaterally taken corrective measures in relation to Miss M's overdraft. I accept that Miss M used her overdraft and there is no dispute over that.

However, Miss M's arguments appear to suggest that this in itself means that she was experiencing financial difficulty and therefore the complaint should be upheld. 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 had an agreement to use and which 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. Indeed, if that were automatically the case, there would be an outright prohibition on revolving credit accounts being open ended, rather than there being a requirement for a lender to review how the facility is being used.

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 Miss M's incomings and outgoings as well as any overdrawn balances and thought about whether it was possible for her to have stopped using her overdraft, based on this.

In the first instance, I can't see Miss M notified RBS that she was struggling and that paying these charges was proving difficult for her, at any stage prior to making this complaint. If she had done so, RBS would have known that the charges were causing harm and I would have expected it to act. However, even though I can't see that Miss M directly told RBS that she couldn't afford to pay these charges, I've considered whether her account activity ought to have alerted it to this being the case.

As Miss M didn't tell RBS that she was struggling to pay these charges, it would need to have been objectively clear to RBS, rather than a matter open to interpretation, that the overdraft charges were clearly making things worse and they were harmful as a result.

I've therefore considered whether RBS acted fairly and reasonably towards Miss M, in this light. 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.

In considering this matter, I'm mindful that in order to help with determining whether it is objectively the case that a customer was experiencing financial hardship, the regulator has set out guidance on what it considers to be potential indicators of financial difficulty. The '*Guidance on financial difficulties*' states that things such as a customer failing to meet consecutive payments to credit, being unable to meet their commitments out of their disposable income, having adverse credit or other insolvency information recorded against them, or being in a debt arrangement should be considered as potential signs of a customer being in financial difficulty.

However, having looked at Miss M's account statements, I've seen no indication that the potential signs of financial difficulty contained in the guidance, were obviously and persistently present in her circumstances such that it ought reasonably to have taken action. I appreciate that more recently some of Miss M's account credits have been from pension payment. But I don't think that this in itself means she shouldn't have been lent to. Indeed, RBS taking such an approach would be discriminatory and it is difficult to see how acting in this way would be fair and reasonable.

Equally I also can't see anything in Miss M's statements which suggest that RBS should have known that she was borrowing from payday or other high-cost lenders, which although not contained in the regulator's guidance, is generally accepted to be an indication that a borrower could be struggling too.

I've also looked at Miss M's incomings and outgoings as well as her overdrawn balances and determined whether it was possible for her to have stopped using her overdraft, based on this. I think that if Miss M was locked into paying charges in circumstances where there was no reasonable prospect of her exiting her overdraft then her facility would have been unsustainable for her, even where the indicators of financial difficulties I've set out above weren't clearly present in her circumstances, when looking at the account transactions.

In reviewing this matter, I've noted that throughout the period of time I'm looking at, Miss M's accounts were in receipt of credits that were sufficient to clear the overdraft within a reasonable period of time. Indeed, there were times where Miss M received a significant influx of funds into her account and there were also often periods where Miss M had a credit balance.

I'm therefore satisfied that Miss M's case isn't one where the borrower was marooned in their overdraft with no prospect of exiting it. Furthermore, while I'm not seeking to make retrospective value judgements over Miss M expenditure, there are significant amounts of non-committed, non-contractual and discretionary transactions going from Miss M's account.

I accept that Miss M may well have had other credit commitments at this time. But this in itself does not mean that she was reliant on credit to meet her essential expenditure. And from Miss M's RBS account statements, it isn't immediately obvious to me that Miss M was borrowing from unsustainable sources – in order to pay for these overdraft charges, or meet other committed expenditure either.

Of course, I accept neither of these things in themselves (or when taken together) mean that Miss M wasn't experiencing difficulty. And I'm sorry to hear about the financial difficulties that Miss M has told us she experienced. However, I don't think that Miss M's account conduct and overdraft usage obviously show that she was struggling in this way. And bearing in mind I'm satisfied that Miss M did not directly tell RBS that she was experiencing financial difficulty, that's what I'd need to be persuaded of in order to uphold her complaint.

Looking from the outside, I think that RBS was reasonably entitled to conclude that Miss M had the funds to be able to reduce the amount that she used her overdraft. Therefore, I don't think that Miss M was obviously locked into using her overdraft and paying the charges for doing so.

Finally, and for the sake of completeness, I would add that the earliest statements I've seen, which are from well over a decade ago, do suggest the possibility that Miss M's circumstances might have been worse than what they were in more recent times and certainly since the regulator's overdraft repeat use rules came into force. In these circumstances, I accept the possibility that unfairness may have existed well over a decade ago. Although the regulatory regime in place at this time was substantially different and it's difficult to say it's more likely than not RBS should have intervened in these circumstances. Nonetheless, there is a theoretical possibility that RBS could have applied charges in circumstances where it shouldn't have a number of years before Miss M complained.

However, just because there may have been unfairness in a debtor's relationship with a creditor doesn't automatically mean it would be fair to refund any and all of the interest and charges on an account. And in giving careful thought to whether I should direct a refund in this case, I'm mindful that in *Smith v Royal Bank of Scotland Plc*¹, the Supreme Court pointed out that remedies for unfair relationships are at the court's discretion and the court may deny a remedy where the claimant had knowledge of the facts relevant to their claim, but substantially delayed making that claim.

There is no fixed period of delay that brings this principle into play, but the Supreme Court approved the District Judge's comment in the case that a court would be slow to remedy unfairness in a situation where the claimant delayed more than six years after knowing the facts.

Therefore, in determining a fair and reasonable outcome to Miss M's complaint it's important for me to take this into account as relevant law. Indeed, it is this relevant law that has resulted in me being able to look at Miss M's complaint in the first place. I consider that a complainant would have knowledge of the facts that caused any unfairness when they became aware of a problem and that they were suffering a loss.

I think that Miss M had enough to know whether she considered the overdraft charges excessive and unfair when she had to pay them. She would also have known whether these charges were keeping her in her overdraft too. I'm therefore satisfied that this is sufficient for her to have had knowledge of the relevant facts from at least February 1997² and certainly by the time Miss M chose not to remove her overdraft after she was in receipt of funds that left her with a credit balance in excess of £50,000.00, in April 2015.

Miss M didn't do anything about this complaint until she complained in February 2025. So I don't think that it would be right for me to direct a refund of interest and charges in circumstances where, for the reasons I've explained above, the lending relationship between Miss M and RBS has not been unfair to Miss M, for at least almost a decade.

As this is the case, the fact that Miss M might have been experiencing difficulty around a decade prior to when she complained, hasn't persuaded me that it would be fair and reasonable for me to now uphold the complaint where that difficulty no longer exists and hasn't been present for a number of years.

Overall and having considered everything, I don't think that it would be fair and reasonable to

¹ *Smith and another v Royal Bank of Scotland plc* [2023] UKSC 34.

² When she first began being charged for using her overdraft.

require RBS to do anything in this instance. So while I can understand Miss M's sentiments and appreciate why she is unhappy, I'm nonetheless not upholding this complaint. I appreciate 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 16 February 2026.

Jeshen Narayanan
Ombudsman