

The complaint

This complaint is brought by Mr F's son, on behalf of his late father's estate. The complaint is that The Royal Bank of Scotland Plc ("RBS") irresponsibly granted him a credit card he couldn't afford to repay.

What happened

In May 2002 the late Mr F entered into an agreement with RBS to have access to credit by way of a credit card account. He was given an initial credit limit of £5,750 that was increased three times: in November 2002 to £7,500; in June 2004 to £9,500 and in December 2003 to £10,000.

RBS said that Mr F's complaint had been made too late under our time limit rules. This was because the account had been opened more than six years before Mr F started his complaint. RBS also said Mr F ought to have been aware that something had gone wrong when his credit limit was reduced in April 2022.

RBS did however make a refund and goodwill payment due its failure to set up a direct debit to collect minimum payments in 2017.

Our investigator agreed the complaint had been brought too late under both the six-year and three-year parts of our time limit rules, saying that Mr F ought to have been aware of having reason to complain when his card credit limit was reduced, which happened 7 times.

Our investigator also thought Mr F's complaint could be interpreted as being about an unfair credit relationship as described in Section 140A of the Consumer Credit Act 1974 (s140). That meant the complaint would have been made in time. Having looked at the complaint on this basis, however, our investigator didn't think RBS had acted unfairly or unreasonably in agreeing to grant the card. And he said that RBS had done enough to help and support Mr F.

As Mr F's son didn't agree with our investigator's finding, his complaint has been passed to me for a decision.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

There are time limits for referring a complaint to the Financial Ombudsman Service, and RBS thinks this complaint was referred to us too late because the decision to lend took place more than six years ago. Also, RBS says Mr F ought to have been aware that RBS may have done something wrong more than three years before he started his complaint, given the reductions made to his credit limit.

However, our investigator explained why it was reasonable to interpret the complaint as being about an unfair relationship as described in Section 140A of the Consumer Credit Act

1974, and why this complaint about an allegedly unfair lending relationship had been referred to us in time.

Seeing as I've decided not to uphold Mr F's complaint and given the reasons for this (which I'll go on to explain), whether Mr F's son referred the complaint more than six years after the lending decision has no impact on that outcome. Nor does the fact that I think Mr F ought reasonably to have known that he might have reason to make a complaint at least three years before the complaint was started on behalf of his estate.

That's because, like our investigator, I think the complaint should be considered more broadly than just the decisions to grant him and then increase his credit, seeing as the complaint is not just about the decision to lend but also the impact it had on Mr F at the time. The complaint can therefore reasonably be interpreted as a complaint about the fairness of Mr F's relationship with RBS. I acknowledge RBS may still not agree we can look at the complaint, but given the outcome I have reached, I don't intend to comment on this further.

In deciding what is fair and reasonable, I am required to take relevant law into account. Because the complaint can be reasonably interpreted as being about the fairness of Mr F's relationship with RBS, relevant law in this case includes s.140A, s.140B and s.140C of the Consumer Credit Act 1974 ("CCA").

S.140A says that a court may make an order under s.140B if it determines that the relationship between the creditor (RBS) and the debtor (Mr F), 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.

S.140B 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 what this complaint is about, I therefore need to think about whether RBS's decision to provide Mr F with the credit on his card, or any of its later actions, created unfairness in the relationship between him and RBS such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove that unfairness.

Mr F's relationship with RBS is therefore likely to be unfair if RBS didn't carry out proportionate affordability checks, where doing so would have revealed its lending to be irresponsible or unaffordable, and if it didn't then remove the unfairness this created somehow. I will approach the complaint on that basis.

When assessing affordability, there wasn't a set list of checks that RBS needed to complete, but they needed to be borrower-focused and proportionate to things like the type of lending, the cost of the lending as well as the amount, and how long Mr F would need to maintain his repayments for.

Before opening the account, I would expect RBS to have gathered evidence and information from Mr F about his ability to repay, including things like checking his income and looking at his credit file. However, given the length of time since the account was opened and the credit limit increases were granted, RBS hasn't been able to provide us with the actual details. So, I'm not able to make a finding that its checks were reasonable and proportionate.

I must be clear that not being able to establish that the lending checks were proportionate doesn't necessarily mean that the credit itself was unaffordable.

To make a finding that RBS had acted unfairly, I also need to establish what RBS would have been likely to have seen had it carried out better checks. I do recognise that Mr F's son has gone to a lot of effort to try to help with this aspect of the complaint. But we just don't have the necessary information about Mr F's financial circumstances from the time of the account opening and each limit increase to establish a likelihood that RBS acted unfairly. And relying on statistical data, as Mr F's son has suggested, wouldn't be consistent with our borrower-focused approach to understanding financial circumstance in cases like this.

It follows that unfortunately, I don't have enough evidence to fairly say that Mr F was likely to be unable to sustainably repay the amount of the credit limit he'd used when on the card.

I haven't seen anything else that might suggest RBS ought to have done more to support Mr F than it did. I've noted the steps RBS took when it was aware that Mr F was seriously ill. I think these were fair and reasonable steps to take in response to these unfortunate circumstances and I therefore don't think RBS can reasonably be expected to have acted differently than it did in seeking to help and support Mr F.

It follows that I won't be making a finding that RBS acted unfairly or unreasonably or that Mr F's relationship with RBS was unfair. It's not clear enough to me that RBS created unfairness in its relationship with Mr F by lending to him irresponsibly. And I don't find RBS treated Mr F unfairly in any other way based on what I've seen.

I realise this finding will come as a disappointment to Mr F's son and I'm sorry that I'm unable to help him further on this occasion.

My final decision

For the reasons given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr F to accept or reject my decision before 16 March 2026.

Michael Goldberg
Ombudsman