

complaint

Ms L, a sole trader, has complained about the way The Royal Bank of Scotland Plc dealt with her accounts and particularly that no help was given when she told her business manager that she was having financial difficulties.

background

Our adjudicator reviewed the case and was of the opinion that the bank's response to Ms L's request for assistance with her financial difficulties was not reasonable and caused her upset and inconvenience. She recommended the bank provide compensation of £200 for that.

Ms L was not happy with this outcome and the complaint came to me for review. I issued a provisional decision, a copy of which is attached below, and which now forms part of my final decision. In this I upheld the complaint, but neither the bank nor Ms L accepted my provisional decision.

The bank responded that it considers it too generous, by way of compensation, to suspend interest and charges on a limited company account for the period from 1 January 2012. It doesn't agree that it should refund interest on an account that was still in use and says if Ms L was ill during 2012 and unable to run the business effectively, it would have expected the business to be wound up at that stage.

Ms L, in her response said, in brief summary, that:

- because of the guarantee from her bank business manager that she would obtain additional funding, she used all her savings to provide a short term director's loan to the business for stock purchases, leaving her without funds for rent and bills when the funding did not come through which negatively affected her credit score
- she does not agree that the business was having some difficulties anyway as she says although things were extremely hard, there was light at the end of the tunnel
- the refunds of interest and charges will need to go to her directly as the company account has been closed and the debt passed on to debt recovery companies which Ms L's debt management company are now dealing with.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

I understand that it is frustrating for Ms L but as I explained in my provisional decision, I am unable to consider the part of her complaint about her director's loan, the fact that the bank failed to provide her company with additional funding and the consequences that this had for her because the limited company of which she was a director no longer exists. I appreciate that Ms L feels the failure of her business stems from the bank's failure to follow through on its promise to provide additional funding to her company. However, as the company was the bank's customer on these matters and not Ms L, the regulatory rules under which I must operate do not allow me to look at a complaint from her about this.

I do understand that Ms L hoped there was light at the end of the tunnel for her business and because of this I do not accept the bank's point that Ms L should have wound up the

business when she found out she was ill. It does not seem reasonable to me to expect at this point that Ms L would have known how the state of her health might have continued.

Ms L told the bank she was unwell and asked for their assistance in August 2012 which it is clear to me she did not receive. Banks should be sympathetic and positive when considering a customer's financial difficulties, which was not the case here. After she told the bank she was ill, Ms L continued to meet the required payments under the business loan she took out in her name, which the bank hadn't transferred across to her company, using her company overdraft until January 2013, shortly after which the company was wound up.

The bank does not consider it should refund interest on an account that was still in use. However, the fact that the business account was still in use does not mean that the business was not in financial difficulty. I am therefore of the same mind as I was in my provisional decision which is that the fair outcome here is for the bank to refund the interest and charges on Ms L's loan and the company overdraft for which she is now personally liable from the date she asked them to freeze her payments because she was ill and they refused, which was on 7 August 2012.

my final decision

My final decision is I uphold this complaint and require The Royal Bank of Scotland Plc to take the following action in full and final settlement:

1. Remove all interest and charges that were added to the company overdraft for which Ms L is now personally liable with effect from 7 August 2012, and to the extent to which such interest and charges might have already been paid by Ms L, reimburse these to her personally.
2. Refund to Ms L all the interest paid on the business loan in her personal name since 7 August 2012.
3. Pay Ms L £500 compensation for the stress she has been caused.

Under the rules of the Financial Ombudsman Service, I am required to ask Ms L to accept or reject my decision before 1 May 2015.

Sarah Carter
Ombudsman

Copy Provisional Decision

complaint

Ms L, a sole trader, has complained about the way The Royal Bank of Scotland Plc dealt with her accounts and particularly that no help was given when she told her business manager that she was having financial difficulties

background

In 2009 Ms L took a £25,000 loan from RBS to help her start up a business. In 2010 she says she was advised by her bank business manager to put her business into a limited company's name which she did. She said she was told her loan would be transferred over to the company but this did not happen, although from the middle of 2011 the repayment instalments for the loan were paid by the company.

Ms L is registered as disabled and was unable to work in 2012. She asked if she could freeze the repayments on her loan but was told by her business manager that this wasn't how things worked. She struggled to run her business and meet her debt repayments and wound down her company in 2013. The bank then made a call under the personal guarantee she had provided for the company's debts. Ms L is now using the services of a debt management company to help her sort things out.

Ms L complained to the bank about the way things had been handled by her business manager. In addition, she said cheques sent in to reduce her current debt hadn't been applied. In response, the bank apologised for the level of service she received. It also apologised that it had misinformed her about being able to transfer her sole trader loan account to her company. In compensation, it offered her £200. However, it did not agree that credits were not being applied to the account although it agreed to refund some of the overdraft interest and charges. Ms L did not accept the compensation offered and referred her complaint to this service.

Our adjudicator was of the opinion that the bank's response to Ms L's request for assistance with her financial difficulties was not reasonable and caused her upset and inconvenience.

She recommended the bank provide compensation of £200 for that. Ms L was unhappy with this. In brief, she said:

- she was told she could have no further assistance from the bank unless she took a life insurance policy through them
- her bank business manager obtained her email address for her own personal use
- she was told by the debt management company that cheques they sent the bank were cashed but then reissued back to them, during which time interest and charges were being applied to her account
- she would like her overdraft to be removed as it's mostly made up of bank charges
- the compensation recommended isn't sufficient
- the stress she's suffered has significantly impacted her health.

my provisional findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

Ms L has complained about the bank's requirement for a policy to insure her life, which was paid for by her company and was for the benefit of the company. Ms L also complained that a loan which the policy was supposed to support was not provided by the bank and that she agreed to make a director's loan expecting it would be. Unfortunately, I'm not able to consider these elements of Ms L's complaint. This is because they relate to a limited company which no longer exists, as it was dissolved in May 2013.

Concerning the complaint about cheques from the debt management company which were not credited to Ms L's account, I can see that credits have been made to her accounts since the debt management company started handling them. I am unable to explain why certain cheques may not have been credited. However, the bank did provide a refund of £959.19 of interest and charges for the previous 11 months on the business overdraft account, for which Ms L is responsible under her personal guarantee. I, therefore, do not consider Ms L has suffered any financial loss because of any errors the bank might have made with these cheques. As such, I am not able to award any compensation for this.

With respect to the part of Ms L's complaint about the bank's handling of her request for help with her loan, Ms L says she asked them in August 2012 if they could freeze her repayments as she was ill and had been signed off work by the doctor for some months. She said she received a very unsympathetic response from her business manager and her request was not considered. On a number of occasions she said her business manager completely failed to respond to attempts to contact her.

The bank says Ms L's business was trading throughout 2012 and the first loan payment was not missed until January 2013. It said it would not have agreed to her request to freeze her payments when she asked because at the time as there was no sign that the business was in financial difficulties.

I consider the fact that Ms L was in business on her own and had told the bank that she had been signed off by the doctor for some months, should have alerted them to the fact that this would cause her financial difficulty, which was the reason she contacted them about it. Ms L did continue with the contractual payments on her loan, paid from her company overdraft, for a few months afterwards, but I can understand that this would have caused her stress and that she does not feel the bank handled her situation sympathetically. For this, and other reasons she has explained, I can also see why she feels the contact she had from her business manager generally was unsatisfactory.

Ms L believes the bank should write off her loan as she says if they'd worked with her to ease her situation when she was ill then she wouldn't be in the debt situation she's in now and her company would not have been dissolved. Unfortunately, I think the fact that Ms L had been advised to take time off work by the doctor because of illness would have had a negative effect on her business whether or not the bank had agreed to freeze her loan instalments, although I fully appreciate that their response was not at all helpful and may have made matters worse. However, I don't think it would be reasonable for me to suggest that the bank's unwillingness to respond to her request caused the failure of the business.

Ms L's business account had been in overdraft for much of the year before she asked for the repayments to be frozen and I think it more likely than not that the business was having some difficulties anyway. In terms of her debt, Ms L borrowed the money from the bank some years previously to set up her business and did have the benefit of the money she borrowed. I, therefore, cannot say it is the bank's fault she has this debt and do not think it would be reasonable for me to expect the bank to write it off.

Ms L says that her loan should have been in the company's name as her business manager told her it would be transferred over. The bank has apologised for this and said that Ms L received incorrect information about the possibility of transferring the loan over. It said a new loan would have needed to be sought in the company's name and this would then been used to repay Ms L's loan. At this stage, I cannot know whether the bank's credit department would have agreed a loan for the company if that had been requested and therefore do not consider I can reasonably ask the bank to put Ms L into the position she would have been in now had that happened.

With respect to the company overdraft for which Ms L is now liable, she has asked for this to be written off as it largely consists of bank charges. However, I can see that there was an overdraft on the account for quite some time before she became ill and so do not think it fair to ask the bank to do this. However, I am minded to think the bank ought fairly to refund all interest and charges applied to the overdraft after she advised them she was ill, as well as all the interest that was applied on the loan.

Our adjudicator recommended that the bank pay £200 in compensation for the upset and inconvenience Ms L was caused in the way it handled her request for assistance. Ms L thinks this is inadequate and I am inclined to agree with her on this. I think compensation of £500 would be more appropriate in the circumstances.

The bank now has a duty to act positively and sympathetically towards Ms L with respect to her current financial difficulties.

my provisional decision

It is my provisional decision to uphold this complaint and I propose to order The Royal Bank of Scotland Plc to take the following action in full and final settlement:

1. Reimburse all interest and charges added to the business overdraft since the date when Ms L advised the bank she was ill.
2. Refund to the business account all the interest paid on Ms L's loan since the date she advised the bank she was ill.
3. Pay Ms L £500 compensation for the stress she has been caused.

Sarah Carter
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