

complaint

Mr S complains that The Royal Bank of Scotland Plc acted irresponsibly when it gave him a loan in March 2013.

background

Mr S told us that he is a gambler. He no longer gambles, but he was gambling in early 2013, when he applied to RBS for a loan for £18,000. He also told us he also had an undiagnosed mental illness at that time. Mr S said that RBS should've noticed from the pattern of spending on his current account that something was wrong. And he said it should also have realised that he'd just taken out another large loan with a different bank. He thought that RBS hadn't carried out a proper assessment of his situation before it lent him the money. He told RBS in October 2013 that he wasn't able to keep paying the full repayments on the loan, and he has since been trying to pay it back with the support of a debt management company. He now thinks that RBS should write off some or all of the outstanding balance.

RBS said that Mr S had told it that the loan was to refinance previous debt. It isn't unusual for people to do this, if they find they can get a better deal on a loan. And it said it had checked that the loan was affordable for Mr S. So RBS didn't think it had done anything wrong when it lent Mr S the money.

Our adjudicator didn't uphold this complaint. She thought that the loan was affordable for Mr S when it was taken out. She thought that he had sufficient money left when he'd paid his living expenses to pay this and the other loan. And he had said that this loan was to pay off his other loans, so RBS didn't need to allow for the other loan in his expenditure, even though it had done so. She said that he'd moved his main account to another bank, so RBS couldn't be expected to tell from his RBS account that something was wrong. And there was no record that he'd told RBS about his gambling before he took out this loan.

Mr S asked whether our adjudicator had seen his statements, and the frequent cash withdrawals. She said she had, and that wouldn't be enough to make RBS think that there was a problem. Mr S said that he'd moved his main account elsewhere in 2012, but the pattern of banking between 2004 and 2008 should've shown RBS that it shouldn't lend him any money. Because Mr S didn't agree with our adjudicator, the case was passed to me for a final decision.

my provisional decision

I issued a provisional decision on this complaint and explained why I proposed to uphold it. This is what I said then:

- In early November 2012, Mr S had £12,000 paid into his account with RBS. I understood that this was the money from a loan that Mr S had taken with another bank. He wasn't using this account for day to day living expenses, he had a different account for that. I thought this would've been reasonably clear to RBS, as Mr S didn't have his salary paid into this account, and there were no signs of the ordinary costs of living being paid from the account.
- By early March 2013, almost half the money from the November 2012 loan had been spent. Mr S was down to a little over £6,000. He then paid off what looks like a peer to peer loan of over £5,000. That left him with a little over £1,000 out of the original £12,000

in the middle of March. Then RBS granted Mr S a new loan of £18,000. It paid this into his account on 15 March 2013. In October of that year, Mr S said that he was struggling financially, and was seeking advice on his debts. At the end of December, RBS agreed to accept token repayments on his loan.

- I thought it was worth looking back at what RBS might have known when it made the loan for £18,000 in March 2013. It could see how the loan Mr S had taken elsewhere the previous November had been spent. Aside from another, presumably earlier still, loan that Mr S paid off in early March, most of the £12,000 from his November 2012 loan had been spent through large cash withdrawals. Although this indicated a high level of personal spending, relative to Mr S's income, if all the money had been spent through cash withdrawals then it might not necessarily have been clear to RBS that there were potential issues with the new loan that Mr S asked it to make.
- But at the end of January 2013, the transactions on Mr S's account changed. From then the transactions were predominantly payments to online gambling companies, mixed with continued large cash withdrawals. I appreciated that Mr S did have some winnings paid into this account in that time, but it was clear from his statements that he spent over £1,000 on online gambling during this period. There was no evidence that RBS considered this, or raised this with Mr S, at all when it gave him the new loan. Because these transactions were clearly identifiable as online gambling, I didn't think that RBS should've decided to make a further, larger loan to Mr S without considering this, and possibly making enquiries about it. I thought RBS made a mistake when it did that.
- When this service decides that a business has made a mistake, it looks to put the customer in the position that it would've been in if that mistake hadn't been made. I didn't think it was possible to say, in this case, that Mr S definitely shouldn't have been given this loan. As our adjudicator explained, it wasn't clearly unaffordable for him, given the income and outgoings he told RBS about. And I thought it was important to remember that Mr S had told us that he had a gambling addiction at this time. I thought it was unlikely that he would've accepted at that point that he had a problem, and ought not to have the loan. I thought that if RBS had raised the issue of his spending with him, it's more likely that he would've sought to reassure RBS. And because Mr S had some winnings paid into this account at the time, which covered most of his gambling outgoings, I couldn't rule out that Mr S would've been able to reassure RBS about his spending. So I didn't think it was clear RBS shouldn't have made the loan at all. I also didn't think that RBS needed to write this loan off.
- But I did think that RBS did let Mr S down by deciding to make a loan without considering the nature of his spending, and perhaps making further enquiries about that. I didn't think that RBS did enough to ensure that the loan would be both responsible and affordable for him in that context. So I thought that RBS should pay Mr S some compensation for that. I appreciated that this issue has had a significant effect on Mr S, who was still struggling to pay off this and other debts. And although it seemed to me that RBS wasn't mainly responsible for that, it was partly responsible for that. So I thought that RBS should pay Mr S £500 to make up for its part in his subsequent debt problems.

I invited the parties to make any final points, if they wanted, before issuing my final decision. Both parties wrote to disagree with my decision.

my findings

I've reconsidered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. I haven't changed my mind.

RBS said that it understood that I believed it had made a mistake in offering a loan to Mr S without enquiring about his gambling transactions, but that it hadn't made a mistake in offering Mr S the loan. It said that it didn't understand how the outcome could've been different, because I said I thought that Mr S would've sought to reassure RBS that there was no issue with his gambling at the time.

RBS said that it hadn't found any adverse credit data and the loan wasn't unaffordable so it thought that it had no reason to decline Mr S's application. It said that the gambling transactions on his account didn't trigger a warning on the account, and transactions like that wouldn't usually trigger a warning. RBS said that its position was that gambling was a lifestyle choice, and it can't make lending decisions on this basis alone. RBS didn't think it should take partial responsibility for Mr S's subsequent debt problems.

Mr S said that he thought I should increase my award. He said that he didn't think that the loan should be written off entirely. But he didn't think that a compensation payment of £500 was sufficient penalty to make banks change the way they assess their customers' ability to repay a loan. He said that RBS had made over £6,390 from the loan. He thought that the compensation should reflect the amount that RBS had profited from the loan, and should make a meaningful contribution to paying off his debt. So he thought that compensation of £7,000 to £8,000 would be more appropriate. And he said he hoped that this would make it more difficult for gamblers to access loans in future. He said he was paying a heavy price for his addiction, and he wanted other people facing the same problems in the future to "hit the wall" earlier than he did.

I've considered the arguments from both sides. RBS has focussed on the argument that it didn't have any reason to turn down Mr S's loan. At the time that this loan was made, The Lending Code required lenders to assess whether the consumer would be able to repay lending in a sustainable manner, by considering information from CRAs, including existing financial commitments where provided, as well as a number of other criteria where appropriate. Those other criteria included how the customer has handled their finances in the past, and why the customer wants to borrow the money. Banks have to decide which criteria to take into consideration for each loan. One of the things they are supposed to think about, when assessing just how much information they might need to decide whether to make a loan, is the risk to the customer. In this instance, I think it would've been appropriate to consider more than just Mr S's credit history and income.

RBS says that it doesn't make decisions on the basis of gambling alone when it decides about loans. I'm not suggesting that it should refuse loans to anyone who bets money. But I do think that Mr S's transaction history, plus his history of a number of loans, apparently increasing in size, within a short period of time, plus the high spending on gambling, should've signalled to RBS that it needed to make further enquiries in this case.

We can't know what would've happened if Mr S had been asked further questions about his loan. I suggested in my provisional decision that it was likely that Mr S would've sought to reassure RBS, and that I couldn't rule out the possibility that he would've been successful. Because of that, I didn't think it would be fair to ask RBS to cancel the loan now. RBS said that if I didn't think the outcome would've been any different, then it didn't think it should have to pay any compensation. But we can't know what would've happened if RBS had asked further questions. There is a possibility that it would've refused the loan. And there

must also be some chance that Mr S would've faced up to his problems then, as he apparently did not long after that. So I still do think that RBS carries some responsibility for the fact that Mr S did borrow that money, which it turned out he couldn't afford. So I still think RBS should pay Mr S some compensation.

Mr S thought that I should ask RBS to pay much more. He said that £500 wasn't enough of a penalty, and wouldn't make RBS change how it behaved in future. But this service isn't a regulator. It doesn't make awards to punish banks, and it can't make banks change how they treat all their customers. I can only look at what happened in Mr S's case. So I've done that. I understand that Mr S also thinks it's wrong for RBS to make any profit from his loan. But, as I've explained, I think this case isn't clear-cut. I think that RBS does carry some responsibility for Mr S borrowing money he couldn't afford, but not all of the responsibility. So I still think that a compensation payment of £500 is the right amount to make up for the mistakes I have decided that RBS made in this case.

my final decision

My final decision is that Royal Bank of Scotland Plc should pay Mr S £500.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 2 January 2018.

Esther Absalom-Gough
ombudsman