## Complaint

Mrs W has complained about the way that overdraft charges were applied on her The Royal Bank of Scotland Plc ("RBS") bank account. In essence, she's said RBS continued applying these charges and didn't help her when it was apparent that she was living in her overdraft and unable to pay this off.

She's also unhappy because of payment processing difficulties she had when her current account was closed and her direct debit and standing order mandates were transferred to her replacement foundation account.

## Background

Mrs W complained to RBS in May 2019. RBS didn't think it had done anything wrong because. RBS also said Mrs W might benefit from *"a relaxed 20 minute chat with one of our highly qualified Senior Personal Bankers in the branch"* and suggested that she made contact. Mrs W remained dissatisfied at this and referred her complaint to our service.

Mrs W's complaint was reviewed by two of our investigators. As this decision is based on the second investigator's assessment not being accepted, I don't propose to cover the first assessment here. And all reference made to the investigator and assessment from herein is made with reference to the second investigator and the second assessment.

Our investigator issued an assessment to RBS in May 2020. In her assessment, our investigator:

- referred to the key relevant rules, regulations, law and good industry practice applicable at the time;
- found that RBS ought reasonably to have realised that Mrs W's overdraft wasn't being used as intended by December 2013 at the latest, as Mrs W was using her overdraft to meet her day-to-day living rather than for emergency borrowing and had been doing so for some time. So RBS should have stepped in, offered assistance and reviewed Mrs W's overdraft at this stage;
- found that if RBS had proactively contacted Mrs W at this stage, it would have seen she was struggling to make ends meet and was in no financial position to repay her overdraft within a reasonable period of time. So RBS shouldn't have allowed her to continue using her overdraft in the same way from December 2013 and adding interest and charges from this date. As she found that this would more likely than not have led to a default at this stage she thought the default applied in 2019 should be backdated;
- found that RBS hadn't done anything wrong when transferring the direct debits and standing order mandates from Mrs W's account old account to her new foundation account.

RBS didn't accept our investigator's assessment. It said that our investigator was retrospectively applying the regulator's new overdraft rules which only came into force more recently. As RBS didn't agree with our investigator's assessment and proved unwilling or unable to resolve matters informally the case was passed to an ombudsman as per our usual process.

As RBS clearly hasn't accepted the basis of our investigator's assessment and has questioned her use of and referral to certain rules and regulations, I think that it would be useful for me to start by setting out the regulatory standards in place during the period I'm looking at.

**The regulatory framework**

*Regulation by the Office of Fair Trading (up to 31 March 2014)*

When RBS initially provided Mrs W with her overdraft, it held a standard licence from the Office of Fair Trading ("OFT"), which permitted it to carry out consumer credit activities.

Section 25(2) of the Consumer Credit Act 1974 set out the factors the OFT had to consider when deciding whether to grant a consumer credit licence to a lender. It said:

> *(1) In determining whether an applicant for a licence is a fit person for the purposes of this section the OFT shall have regard to any matters appearing to it to be relevant including (amongst other things)—*
>
> *(a) the applicant's skills, knowledge and experience in relation to consumer credit businesses, consumer hire businesses or ancillary credit businesses;*
>
> *(b) such skills, knowledge and experience of other persons who the applicant proposes will participate in any business that would be carried on by him under the licence;*
>
> *(c) practices and procedures that the applicant proposes to implement in connection with any such business;*
>
> *(d) evidence of the kind mentioned in subsection (2A)*
>
> (2A) *That evidence is evidence tending to show that the applicant, or any of the applicant's employees, agents or associates (whether past or present) or, where the applicant is a body corporate, any person appearing to the OFT to be a controller of the body corporate or an associate of any such person, has—*
>
> *(a) committed any offence involving fraud or other dishonesty or violence;*
>
> *(b) contravened any provision made by or under—*
>
> *(i) this Act;*
>
> *(ii) Part 16 of the Financial Services and Markets Act 2000 so far as it relates to the consumer credit jurisdiction under that Part;*
>
> *(iii) any other enactment regulating the provision of credit to individuals or other transactions with individuals;*
>
> *(c) contravened any provision in force in an EEA State which corresponds to a provision of the kind mentioned in paragraph (b);*

*(d) practised discrimination on grounds of sex, colour, race or ethnic or national origins in, or in connection with, the carrying on of any business; or*

***(e) engaged in business practices appearing to the OFT to be deceitful or oppressive or otherwise unfair or improper (whether unlawful or not)** [my emphasis]**.***

Section 25(2B) set out a direct example of the type of practice referred to in Section 25(2A(e)) and said:

*For the purposes of subsection (2A)(e), the business practices which the OFT may consider to be deceitful or oppressive or otherwise unfair or improper include practices in the carrying on of a consumer credit business that appear to the OFT to involve irresponsible lending [my emphasis].*

In March 2010, the OFT sought to produce clear guidance on the test for irresponsible lending for the purposes of section 25(2B) of the Consumer Credit Act 1974. And so it issued its guidance on irresponsible lending ("ILG").

So I consider the ILG to be of central importance in reaching a fair and reasonable outcome on Mrs W's complaint.

The foreword to the guidance set out its purpose and it said:

*The primary purpose in producing this guidance is to provide greater clarity for businesses and consumer representatives as to the business practices that the Office of Fair Trading (OFT) considers may constitute irresponsible lending practices for the purposes of section 25(2B) of the Consumer Credit Act 1974. It indicates types of deceitful or oppressive or otherwise unfair or improper business practices which, if engaged in by a consumer credit business, could call into consideration its fitness to hold a consumer credit licence.*

*Whilst this guidance represents the OFT's view on irresponsible lending, it is not meant to represent an exhaustive list of behaviours and practices which might constitute irresponsible lending.*

Section two of the guidance sets out the general principles of fair business practice.

Section 2.1 says:

*In the OFT's view there are a number of overarching principles of consumer protection and fair business practice which apply to all consumer credit lending.*

Section 2.2 of the guidance says:

*In general terms, creditors should:*

- *not use misleading or oppressive behaviour when advertising, selling, or seeking to enforce a credit agreement*

- *make a reasonable assessment of whether a borrower can afford to meet repayments in a sustainable manner*

- *explain the key features of the credit agreement to enable the borrower to make an informed choice*

- *monitor the borrower's repayment record during the course of the agreement, offering assistance where borrowers appear to be experiencing difficulty and treat borrowers fairly and with forbearance if they experience difficulties*

Section 2.3 lists other expectations of lenders. Amongst other things, it says:

*In addition to the above there should be:*

- *fair treatment of borrowers. Borrowers should not be targeted with credit products that are clearly unsuitable for them, subjected to high pressure selling, aggressive or oppressive behaviour or inappropriate coercion, or conduct which is deceitful, oppressive, unfair or improper, whether unlawful or not*

*Borrowers who may be particularly vulnerable by virtue of their current indebtedness, poor credit history, or by reason of age or health, or disability, or for any other reason, should, in particular, not be targeted or exploited.*

Section 4 of the guidance is concerned with the assessment of affordability that lenders were required to carry out before granting credit. I mention this for reference because as I'm not looking at RBS' decisions to provide an overdraft in the first place or increase Mrs W's overdraft limit, I'm not considering any lending decisions in this case.

Section 6 of the ILG sets out other "specific irresponsible lending practices" relating to lender behaviour once credit has been provided. Section 6.2 says it would be an unsatisfactory practice where a business is:

*Failing to monitor a borrower's repayment record*

Section 6.2 goes on to say:

*"The OFT considers that creditors should take appropriate action, including notifying the borrower of the potential risk of an escalating debt, and signposting the borrower to not-for-profit providers of free independent debt advice, when/if there are signs of apparent/possible repayment difficulties – for example, a borrower failing to make minimum required payments or making a number of consecutive small/minimum repayments or a borrower seeking to make repayments on a credit card account using another credit card. This is particularly important in the case of borrowers who it is known - or it is reasonably believed - may lack the mental capacity to make financial decisions about repayments at the time the repayments are due, especially under circumstances in which the borrower or his representatives have specifically requested that this should be done.*

*A symptom of some conditions such as bipolar disorder is that the borrower may engage in unusual spending patterns."*

*Regulation by the Financial Conduct Authority (from 1 April 2014)*

RBS continued to provide Mrs W with her overdraft after regulation of consumer credit activities had transferred from the OFT to the Financial Conduct Authority ("FCA") on 1 April 2014. RBS was already authorised by the FCA at this time so it was subject to the FCA's rules in respect of credit related regulated activities from 1 April 2014.

- *the FCA Principles for Business ("PRIN")*

The FCA's Principles for Business set out the overarching requirements which all authorised firms are required to comply with.

PRIN 1.1.1G, says

*The Principles apply in whole or in part to every firm.*

The Principles themselves are set out in PRIN 2.1.1R. And the most relevant principles here are PRIN 2.1.1 R (2) which says:

*A firm must conduct its business with due skill, care and diligence.*

And PRIN 2.1.1 R (6) which says:

*A firm must pay due regard to the interests of its customers and treat them fairly.*

- *the Consumer Credit sourcebook ("CONC")*

This sets out the rules which apply to firms specifically when carrying out credit related regulated activities. CONC also replaced the requirements set out in Section 55B. Bearing in mind the complaint before me, I think the most relevant sections of CONC here are CONC 1 which sets out guidance in relation to financial difficulties; CONC 5 which sets out a firm's obligations in relation to responsible lending; and CONC 6 which sets out a firm's obligations after a consumer has entered into a regulated agreement.

CONC 1.3G provides guidance on financial difficulty. It says:

*"In CONC (unless otherwise stated in or in relation to a rule), the following matters, among others, of which a firm is aware or ought reasonably to be aware, may indicate that a customer is in financial difficulties:*

*(1) consecutively failing to meet minimum repayments in relation to a credit card or store card;*

*(2) adverse accurate entries on a credit file, which are not in dispute;*

*(3) outstanding county court judgments for non-payment of debt;*

*(4) inability to meet repayments out of disposable income or at all, for example, where there is evidence of non-payment of essential bills (such as, utility bills), the customer having to borrow further to repay existing debts, or the customer only being able to meet repayments of debts by the disposal of assets or security;*

*(5) consecutively failing to meet repayments when due;*

*(6) agreement to a debt management plan or other debt solution;*

*(7) evidence of discussions with a firm (including a not-for-profit debt advice body) with a view to entering into a debt management plan or other debt solution or to seeking debt counselling"*

CONC 5 sets out the rules and guidance in relation to 'responsible lending', CONC 6 sets out the rules and guidance in relation to Post contractual requirements; and finally CONC 7 sets out the rules and guidance in relation to Arrears, default and recovery (including repossessions).

It's clear there is a high degree of alignment between the OFT's Irresponsible Lending Guidance and the rules set out in CONC 5, CONC 6 and CONC 7. As is evident from the following extracts, the FCA's CONC rules specifically note and refer back to sections of the OFT's *Irresponsible Lending Guidance* on many occasions. For the same reasons that I didn't set out the relevant passages of section 4 of the ILG, I don't propose to set out the sections in CONC 5 which relate to responsible lending. Instead I'll focus on what I consider to be the relevant sections of CONC 6 and CONC 7.

CONC 6.7.2 R states:

*"A firm must monitor a customer's repayment record and take appropriate action where there are signs of actual or possible repayment difficulties."*

*[**Note**: paragraph 6.2 of ILG]*

CONC 6.7.3 G states:

*The action referred to in CONC 6.7.2 R should generally include:*

*(1) notifying the customer of the risk of escalating debt, additional interest or charges and of potential financial difficulties; and*

*[**Note**: paragraph 6.16 of ILG]*

*(2) providing contact details for not-for-profit debt advice bodies.*

*[**Note**: paragraph 6.2 (box) of ILG]*

CONC also provides guidance to lenders about how to deal with consumers in arrears, this time making reference to the Office of Fair Trading's Debt Collection Guidance (DCG).

CONC 7.3.2G states:

*When dealing with customers in default or in arrears difficulties a firm should pay due regard to its obligations under Principle 6 (Customers' interests) to treat its customers fairly.*

*[**Note**: paragraphs 7.12 of ILG and 2.2 of DCG]*

*CONC 7.3.4R states that:*

*A firm must treat customers in default or in arrears difficulties with forbearance and due consideration.*

*[**Note**: paragraphs 7.3 and 7.4 of ILG and 2.2 of DCG]*

*CONC 7.3.5G lists some examples of forbearance and due consideration and states:*

*Examples of treating a customer with forbearance would include the firm doing one or more of the following, as may be relevant in the circumstances:*

*(1) considering suspending, reducing, waiving or cancelling any further interest or charges (for example, when a customer provides evidence of financial difficulties and is unable to meet repayments as they fall due or is only able to make token repayments, where in either case the level of debt would continue to rise if interest and charges continue to be applied);*

*[**Note**: paragraph 7.4 (box) of ILG]*

*(2) allowing deferment of payment of arrears:*

*(a) where immediate payment of arrears may increase the customer's repayments to an unsustainable level; or*

*(b) provided that doing so does not make the term for the repayments unreasonably excessive;*

*(3) accepting token payments for a reasonable period of time in order to allow a customer to recover from an unexpected income shock, from a customer who demonstrates that meeting the customer's existing debts would mean not being able to meet the customer's priority debts or other essential living expenses (such as in relation to a mortgage, rent, council tax, food bills and utility bills).*

**Other relevant publications**

The ILG and CONC set out the regulatory framework that firms carrying out consumer credit activities have to adhere to. But they represent a minimum standard for firms. I'm also required to take into account any other guidance, standards, relevant codes of practice, and, where appropriate, what I consider to have been good industry practice.

RBS was a subscriber to the Lending Standards Board's *'Lending Code'* ("the code") and is a current subscriber to the *'Standards of Lending Practice'* ("the standards"), which replaced the code in 2016.

Section 9 of the code relates to Financial difficulties. It starts by saying:

*"137. Subscribers should be sympathetic and positive when considering a customer's financial difficulties. Although there is an onus on customers to try to help themselves, the first step, when a subscriber becomes aware of a customer's financial difficulties, should be to try to contact the customer to discuss the matter. This applies to both personal and micro-enterprise customers.*

*138. Personal customers should be considered to be in financial difficulty when income is insufficient to cover reasonable living expenses and meet financial commitments as they become due. This may result from a change in lifestyle, often accompanied by a fall in disposable income and/or increased expenditure, such as:*

- *loss of employment;*
- *disability;*
- *serious illness;*
- *relationship breakdown;*
- *death of a partner;*
- *starting a lower paid job;*
- *parental/carer leave;*
- *starting full-time education; and*
- *imprisonment*

*139. Financial difficulties may become evident to a subscriber from one or more of the following events:*

- *Items repeatedly being returned unpaid due to lack of available funds;*
- *Failing to meet loan repayments or other commitments;*
- *Discontinuation of regular credits;*
- *Notification of some form of insolvency or court proceedings;*
- *Regular requests for increased borrowing or repeated rescheduling of debts;*
- *Making frequent cash withdrawals on a credit card at a non-promotional rate of interest; and*
- *Repeatedly exceeding a credit card or overdraft limit without agreement."*

It then goes on to talk about Proactive contact and says:

*"141. If, during the course of a customer's account operation, a subscriber becomes aware via their existing systems that the customer may be heading towards financial difficulties, the subscriber should contact the customer to outline their approach to financial difficulties and to encourage the customer to contact the subscriber if the customer is worried about their position. Subscribers should also provide signposts to sources of free, independent money advice."*

In relation to the Standards, there is a section on *'Money Management'* and paragraph 3 of this section says:

*"3. Firms should monitor customers' credit card and overdraft limits to ensure that the customer is not exhibiting signs of financial stress and where relevant, offer appropriate support."*

There is also a section on Financial Difficulty. And it says:

*"1. Firms should have triggers and processes in place to identify customers who may be in financial difficulty and should act promptly and efficiently to address the situation with the customer. [CONC 7]*

*2. Customers identified as being in financial difficulty should be provided with clear information setting out the support available to them and should not be subject to harassment or undue pressure when discussing their problems. [CONC 7]*

*3. Firms should demonstrate an empathetic approach to the customer's situation; listening to and acting upon information provided by the customer with a view to developing an affordable and appropriate solution.*

*4. If an offer of repayment is made via the common financial statement/standard financial statement, this should be used as the basis for pro-rata distribution amongst creditors covered by the plan. [CONC 7]*

*5. Firms should have appropriate policies and procedures in place to identify and support vulnerable customers where this impacts on their ability to pay. [See also consumer vulnerability]*

*6. Customers who are in financial difficulty will, where appropriate, be signposted to free, impartial debt advice. [CONC 7]*

*7. Firms should apply an appropriate level of forbearance, where, after having made contact with the customer, it is clear that this would be appropriate for their situation. [CONC 7]*

*8. Where a customer remains engaged with the Firm and maintains their repayment plan, they will not be subject to unnecessary contact.*

*9. Firms should consider freezing or reducing interest and charges when a customer is in financial difficulty. [CONC 7]"*

**My Findings**

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

I've started by looking as Mrs W's concerns about her overdraft and the charges RBS applied.

Bearing in mind Mrs W's complaint and RBS' response to our investigator's assessment, I think that there's one main question that I need to consider in order to fairly and reasonably determine Mrs W's complaint about her overdraft. And depending on the answer to that question, there may be a series of sub-questions for me to consider too.

This main question is:

1. Did RBS have an obligation to review Mrs W's use of her overdraft facility?

Should the answer to this question be yes, I'd then need to consider a series of potential sub-questions. These would be:

- When should any review or reviews have taken place?
- Was Mrs W experiencing financial difficulty?
- Does any and/or all of this mean that RBS should refund any interest and charges added?

If I determine that RBS didn't act fairly and reasonably towards Mrs W and that she has lost out as a result, I will go on to consider what is fair compensation.

I've started by considering the main question.

Did RBS have an obligation to review Mrs W's use of her overdraft facility?

RBS believes that it didn't have an obligation to review Mrs W's use of her overdraft facility. It says the FCA's current rules aren't to be applied retrospectively. It added that its handling of the situation should be judged by the rules in place at the time and not those in force now.

I've thought about what RBS has said. While it told our investigator she retrospectively applied rules, it has repeatedly refused to inform her which specific FCA rule it considered she applied erroneously. But given the dispute before me, I'm assuming that RBS is referring to the regulator's rules regarding *'Overdraft repeat use'* set out in section 5D of CONC and which have been in force since 18 December 2019.

I am aware of these rules and what they say. But like our investigator, I don't think that these rules only coming into force in December 2019 mean RBS didn't have any obligations in relation to reviewing Mrs W's facility prior to this. I say this because as I set out the in regulatory framework section of this decision Section 6.2 of the ILG and CONC 6.7.2R require a lender to monitor and take account of a borrower's repayment record and offer assistance in the event it appears they may be experiencing financial difficulty.

So I'm satisfied that while the regulator's rules at the time may not have referred to overdraft repeat use specifically, as Mrs W's overdraft facility was a consumer credit agreement, RBS was, in any event, required to monitor her repayment record for any apparent signs of financial difficulty.

Bearing all of this in mind, I'm satisfied that RBS ought to have been monitoring and reviewing Mrs W's use of her overdraft in the way that our investigator explained in her assessment.

When should RBS' reviews have taken place?

As I've mentioned in the previous section, CONC 6.7.2 R requires a lender – such as RBS here – to monitor a customer's repayment record. So I think it's perfectly fair and reasonable to expect RBS to have monitored Mrs W's repayment of her overdraft on an ongoing basis. And also offer assistance where it may have been apparent Mrs W may have been experiencing difficulty.

RBS has said that it normally agrees overdrafts on an 'evergreen' basis without a review date, so a borrower can use their facility without having to worry. It says that this was in line with many of its competitors at the time. RBS might not have had review dates for its

overdraft customers. But I don't agree that this is line with its competitors at the time as many of them at least committed to reviewing and/or renewing overdraft facilities on an annual basis.

Equally, I don't quite understand why having a review date would cause a borrower to worry about using their overdraft. But, in any event, RBS' overdraft terms and conditions say that any overdraft is repayable on demand. So it seems to me that RBS is required to have kept in mind that a borrower could be expected to repay their overdraft on demand at any stage.

I'm also mindful that it has generally been accepted across the industry that overdrafts are high-interest products which were designed to cover short-term borrowing needs. This is a view shared by the FCA in Consultation Paper 18/42 *High-Cost Credit Review: Overdrafts consultation paper and policy statement* ("CP18/42").

I accept that this was published sometime after the period I'm looking at. But I do think that it offers some insight on the current regulator's perspective on how overdrafts should have been used. So I do consider it to be of some relevance in this case.

Paragraph 3.35 of CP 18/42 states:

*"Overdrafts are intended for short-term or emergency borrowing, but some consumers use them repeatedly over a long period of time. This repeat overdraft use can harm consumers because it can be an expensive way to borrow, and they can build up problem debt over time."*

So while RBS may have agreed an 'evergreen' overdraft without a review date, I consider it fair and reasonable for it to have periodically checked that Mrs W could still repay it on demand and that it was meeting its regulatory obligations to Mrs W. Although for reasons I'll go on to explain, in the next section, I don't think this is too important in this case.

Was Mrs W experiencing financial difficulty?

As RBS had access to them, I consider it perfectly fair and reasonable to use Mrs W's bank statements to form my view on whether RBS treated Mrs W fairly and reasonably. I have therefore done so and set out what I think Mrs W's statements ought reasonably to have demonstrated to RBS.

Having reviewed Mrs W's statements, I can see she that by 2013 she was using her overdraft heavily and regularly. RBS says that at this time Mrs W was operating the account within the terms and conditions with minimal over-limit activity. So it would have been unfair to have taken any action.

But Mrs W's income was wholly made up of benefits. I agree with RBS when it says that Mrs W being on benefits doesn't, on its own, mean that RBS shouldn't have provided her with an overdraft facility, as this would arguably have been discriminatory. But I do think that RBS ought to have been on notice Mrs W was on a fixed income with limited scope for increases. And, in these circumstances, I think that RBS ought to have been particularly mindful that Mrs W could ill afford to develop a dependency on her overdraft or any other high-cost credit when deciding whether to continue offering the facility to her and if so on what terms.

Mrs W received an average amount of approximately £1,500.00 a month. And I can that this was never enough to take Mrs W into a credit balance at any stage in 2013. Mrs W's statements also appear to show that she was only making minimum payments to her other creditors. RBS says it used external bureau data to perform an automated pre-delinquency review. I don't know what these bureau checks showed as RBS hasn't provided the output of them. But given Mrs W's minimum payments and her accounts eventually being defaulted, I think the checks are unlikely to have shown the balances being well maintained or being sustainably repaid.

What is most concerning of all is that Mrs W's account was in a similar position in December 2018. Mrs W is unhappy that RBS chose to take corrective action in relation to the overdraft at this stage. But I'm satisfied that the overdraft balance on Mrs W's account was showing clear signs of being unsustainable for her.

However, the overdrawn balance being maintained on the account was roughly the same as it had been throughout 2013 (arguably there were periods in 2018 where it was actually better) and the credits being made weren't much better either. I can't understand why it was that RBS didn't take corrective action in relation to the overdraft in December 2013, when the same signs of financial difficulty were apparent some five years earlier.

So notwithstanding whether RBS ought to have carried any reviews and didn't do so, by December 2013, at the absolute latest, RBS ought to have got in contact with Mrs W to offer assistance.

What would more likely than not have happened had RBS got in contact with Mrs W in December 2013?

I accept that even if RBS had got in contact with Mrs W in December 2013, it's possible she might well have said she wanted to continue using her overdraft – I know this is what happened when discussions between RBS and Mrs W did belatedly take place in December 2018.

But bearing in mind Mrs W's apparent inability to sustainably repay her overdraft and her long-term health conditions meaning it was unlikely her employment and therefore financial circumstances would improve going forward, I think that RBS should have stepped in and taken action notwithstanding any potential objections.

However, instead of realising this and taking steps to help Mrs W, as per its regulatory obligation to provide a customer in financial difficulty with assistance, RBS unfairly and unreasonably instead continued added a significant amount of interest, fees charges to her balance for a further five years. This meant Mrs W paid RBS high amounts of interest and charges for the privilege of allowing her to continue to hold what, in my view, had clearly become a demonstrably unsustainable debt.

I don't think it's fair and reasonable for a bank to continue adding charges to an overdraft in circumstances where it ought to realise a customer clearly can't afford it, as they're experiencing difficulty, simply because that consumer may wish to continue having access to unsustainable credit they can't afford. In my view, there comes a point where a lender has to recognise its not in the customer's best interests to continue and step in.

Taking all of this into account, I find that RBS didn't act fairly and reasonably towards Mrs W. It continued to provide and charge Mrs W for her overdraft facility when her account usage

ought reasonably to have shown she was having difficulty meeting her commitments and her debt had become unsustainable in circumstances where she was experiencing financial difficulty.

So I find that RBS didn't treat Mrs W fairly and reasonably in relation to her overdraft from December 2013 onwards. As I'm satisfied that RBS should have taken action in relation to Mrs W's account in December 2013, it follows that it taking action despite Mrs W being against this, December 2018, wasn't in itself unfair.

Did Mrs W lose out because RBS didn't act fairly and reasonably towards her?

RBS added high amounts of interest, which it shouldn't have done, to a debt which was unsustainable when it ought reasonably to have realised that Mrs W was in financial difficulty by December 2013 at the latest. So Mrs W had to pay, and she's still being expected to pay interest and charges that shouldn't have been added to her balance.

In these circumstances, I find that Mrs W lost out because RBS didn't treat her fairly and reasonably.

Mrs W's concerns regarding the direct debit standing order mandates on her foundation account

I now turn to Mrs W's concerns about the difficulties she had with direct debit and standing order payments on her foundation account.

In January 2019, Mrs W's existing account was closed as a result of the corrective action RBS took in relation to her overdraft. Mrs W was provided with a foundation account (which she wasn't able to have credit on) to use for her day to day banking needs. Mrs W is unhappy about the difficulties she faced transferring direct debit and standing order mandates from her old account to her new foundation account.

RBS has provided its records of the discussions it had with Mrs W about the opening and setting up of the new account. RBS' records show that Mrs W first got in contact about this matter at the beginning of February 2019. At this point, Mrs W was told her direct debits were being transferred but that some of these instructions were still showing on her old account, which she was no longer able to use. It looks funds were transferred to the foundation account to ensure all of the direct debits were paid.

Mrs W appears to have monitored her account and called RBS a few more times about this. On each occasion, RBS made sure funds were in the correct account to pay the direct debits. By April 2019 Mrs W had started received letters confirming her direct debits had been cancelled. Mrs W got in contact again and RBS confirmed this was correct as the direct debits on her old account had been cancelled as they were now active on her foundation accounts and there were sufficient funds in the account for the payments to be taken and her service providers should have been able to obtain payment.

The information I've seen does show that the direct debit mandates from Mrs W's old account were transferred to her new foundation account in January 2019. So I'm satisfied that RBS did do what it said it would. And I don't think that it acted unfairly in relation to Mrs W's direct debits.

I understand Mrs W also had problems with a standing order set up to pay a utility bill. As far as I can see the payments themselves were made. But these payments weren't applied to Mrs W's account by her utility provider because an incorrect account/reference number.

I've carefully looked at what's been provided and have seen that the reference number for the standing order was amended in May 2019. Based its unclear whether standing order on Mrs W's new foundation account matched that on her old account, when it was initially set up. Bearing this in mind, there isn't enough here for me to be able to say that Mrs W's difficulty making payments to her utility provider was as a result of RBS acting unfairly. As this is the case, I'm not upholding this part of Mrs W's complaint.

**Conclusions**

Having carefully considered everything, I find that:

- RBS *did* have an obligation to monitor Mrs W's use of her overdraft facility;

- Any fair and reasonable monitoring of Mrs W's overdraft facility would have resulted in RBS being aware Mrs W was in financial difficulty (and was having difficulty managing her money and existing commitments) by December 2013 at the absolute latest. So RBS ought to have exercised forbearance from this point onwards.

- RBS *didn't* act unfairly when transferring the direct debits and standing order mandates from Mrs W's account, which was closed in January 2019, to her foundation account.

This means that overall I find RBS didn't act fairly and reasonably towards Mrs W in relation to her overdraft. I've already explained why I think that Mrs W lost out because of this. So now I'll explain what RBS should do to put things right.

**Fair compensation – what RBS needs to do to put things right for Mrs W.**

Having carefully considered everything, I find that it would be fair and reasonable in all the circumstances of Mrs W's complaint for RBS to put things right in the following way:

- rework Mrs W's current overdraft balance so that all the interest, fees and any other charges applied to it from December 2013 onwards are removed;

  AND

- if an outstanding balance remains on the overdraft once these adjustments have been made RBS should contact Mrs W to arrange a suitable repayment plan for this. It should also backdate the negative information it has recorded on Mrs W's credit file to December 2013;

  OR (if the effect of removing all interest fees and charges results in there no longer being an outstanding balance)

- any extra should be treated as overpayments and returned to Mrs W. If no outstanding balance remains after all adjustments have been made, RBS should remove all adverse information from Mrs W's credit file.

- pay interest of 8% simple a year on any overpayments from the date they were made (if they were) to the date of settlement†;

† HM Revenue & Customs requires RBS to take off tax from this interest. RBS must give Mrs W a certificate showing how much tax it's taken off if she asks for one.

**My final decision**

For the reasons I've explained, I'm upholding Mrs W's complaint. The Royal Bank of Scotland Plc should put things right in the way that I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 25 April 2021.

Jeshen Narayanan
**Ombudsman**