

The complaint

Mr H complains that The Royal Bank of Scotland PLC ("RBS") lent to him irresponsibly when it gave him a loan that he says he couldn't afford.

What happened

Mr H took out a fixed sum loan agreement with RBS in March 2018 for £17,050. The loan was intended to pay off Mr H's business and personal overdrafts and repayable over 91 months.

Mr H says that RBS failed to conduct sufficient checks on his individual financial position. He thinks RBS was negligent in allowing him to take the loan. He asks that RBS pay back all interest and any charges he paid and to pay him compensation.

Our investigator didn't think Mr H's complaint should be upheld. Mr H disagreed.

Our investigator reviewed the further points Mr H made but concluded it didn't make a difference to their view. As Mr H didn't agree with the investigator's view his complaint has been passed to me to make 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.

We've set out our general approach to complaints about unaffordable and irresponsible lending - including the key relevant rules, guidance and good industry practice - on our website and I've taken that into account when I have considered Mr H's complaint.

Having done so, I have come to the same conclusion as that of our investigator. I will explain why I have reached this decision. Mr H made detailed submissions, all of which I have read and considered. I will only refer to those points which are relevant specifically to the matter of whether RBS did anything wrong when it gave him the loan.

Mr H's loan was taken out to pay off Mr H's business overdraft and his personal overdraft. He was a sole trader and, as such, I am satisfied I have the jurisdiction to consider his complaint (which has not been disputed by either party).

Mr H had exceeded his business overdraft and it had subsequently expired and become due. He had been in discussion with RBS for some time about how to pay back the money he owed on his business account. RBS was not willing to agree to the terms Mr H was proposing as he hoped to pay off the overdraft over a much longer period than RBS was willing to accept. The alternative was to allow Mr H's business account to enter recoveries (effectively to default) and to be made non-operational. Understandably, Mr H didn't want this to happen. RBS offered to refinance his overdraft at a lower interest rate, which Mr H

accepted. And he asked for the amount to be increased to allow him to also pay off his personal overdraft. Mr H intended for his personal overdraft facility to be reduced to £1,000.

RBS agreed to this. In March 2018 the loan was drawn down. Mr H later complained that RBS did not conduct due diligence on this lending and that if it had it would have realised he couldn't afford the loan.

RBS needed to take reasonable steps to ensure that it didn't lend irresponsibly. In practice this means that it should have carried out proportionate checks to make sure Mr H could afford to repay what he was being lent in a sustainable manner. These checks could take into account a number of different things, such as how much was being lent, the repayment amounts and Mr H's income and expenditure.

Certain factors might point to the fact that RBS should fairly and reasonably have done more to establish that any lending was sustainable for Mr H. These factors include things like understanding Mr H's income, the total amount Mr H borrowed, and the length of time Mr H had been indebted. There may even come a point where the lending history and pattern of lending itself clearly demonstrates that the lending was unsustainable. For smaller sums and in the early days of a lending relationship it may be reasonable for RBS to have done fewer checks. It follows that for larger sums, over a longer period, more checks may be necessary and proportionate.

In Mr H's case, he already had an existing relationship with RBS because he had both his personal and business accounts with the business. This provided RBS with a good picture of Mr H's income and expenditure without detailed external checks. Having said this, I can see that RBS did conduct a check with an external credit reference agency and the results were recorded as 'clear'. It is likely this refers to whether Mr H or his business had any arrears, defaults or County Court Judgments.

RBS also calculated Mr H's personal and business disposable income each month. It was able to do this accurately as it had direct access to those accounts. RBS assessed that Mr H had sufficient disposable income each month through each account to cover the repayments on the loan.

Mr H has provided copies of his bank statements and I have seen nothing on these to suggest the outcome of RBS's assessment was inaccurate. We also asked Mr H for a copy of his credit file from the time, which ought to be readily available as the lending was less than six years ago, however he hasn't been able to supply this. So, I don't have any evidence to suggest that even if RBS did more checks it would have seen anything different.

On this basis, I consider that RBS did sufficient checks to make sure the lending was affordable. I don't think it needed to do any further checks and so I consider RBS acted fairly in lending to Mr H.

While I know this will be disappointing for Mr H, it may be helpful if I explain what would likely have happened in principle if I had upheld his complaint.

In such circumstances I would have sought to place Mr H back in the position he would have been if he hadn't taken the loan. This would normally involve directing a refund of interest and charges paid during the loan term. However, in Mr H's circumstances I don't think this would have been fair. In Mr H's case, without the loan it is likely his business account would have been sent to recoveries. Ultimately, without the debt being repaid in full, this would have led to his business becoming insolvent, which was clearly something Mr H was hoping to avoid. While it is not clear the same was proposed for Mr H's personal overdraft, the

interest rate on the loan was far more favourable than the interest rate on each overdraft, meaning that Mr H was in a *better* financial position by taking the loan.

Although Mr H complains that he was '*forced*' to take the loan, it was open to Mr H to approach any other lender to seek a loan or another way of meeting his obligations to RBS.

I note also that Mr H complains about the way RBS handled his complaint and its response to his requests for information. Complaint handling is not in this service's jurisdiction and so I am unable to make a finding about this.

I understand this will be deeply disappointing for Mr H, but I do not think he lost out as a result of anything RBS did wrong.

My final decision

I do not uphold Mr H's complaint. It follows that The Royal Bank of Scotland PLC does not have to do anything further.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 5 October 2023.

Sally Allbeury
Ombudsman