

The complaint

A limited company, which I'll refer to as H, complains that The Royal Bank of Scotland Plc unfairly declined its request to extend the term of its Coronavirus Business Interruption Loan ("CBIL").

What happened

In August 2020, H successfully applied for a £180,000 CBIL. The CBIL had a term of six years. Monthly capital repayments began in September 2021 and have all been made on time.

In late 2023, H requested an extension of the term of its CBIL to ten years. It said this was to cover an annual seasonal cash low-point for the business, which had been exacerbated by the £3,000 a month CBIL instalments.

RBS declined. They said H was not in severe financial distress and therefore didn't qualify for a term extension under their forbearance policies. Instead, RBS suggested a new small business loan or an overdraft.

H appealed and complained to the bank, but the complaint was not upheld. It then referred the complaint to the Financial Ombudsman Service.

I issued a provisional decision on 8 October 2024, in which I provisionally found that RBS had not treated H fairly when they turned down H's request. I thought RBS should offer the term extension in the circumstances. I said:

CBILS are not regulated by the Financial Conduct Authority, so there are no specific regulations with which banks must comply. There is guidance from the British Business Bank, which I have reviewed. This confirms that term extensions to CBILS are possible, for up to a maximum of ten years, but that they are "made in connection with the provision of forbearance relating to the facility, at the discretion of the lender if within its usual forbearance policies".

RBS' own website echoes this guidance "The loan term may be extended to a maximum ten years in exceptional circumstances and at lender discretion". So there is no debate that extensions are possible for this product – and it is up to the bank to decide. RBS have complied with this guidance, as far as it goes, but I don't consider they have reached a fair outcome.

RBS have used various wording to justify turning down H's request. They have mentioned the requirement for "severe financial stress" and that the business' ability to repay must be "severely compromised". They argue that H does not meet these requirements and is therefore ineligible for an extension. Severity is not defined, as far as I have seen, but I see no reason why H's real, and growing, cash deficit would be deemed not severe.

I accept that H does not fit the normal mould of financial difficulties, in that it has been able to meet all its loan repayments and it is profitable. But its problem is future cashflow. It seems to me that the bank's considerations have not attached sufficient weight to its cashflow forecasts, which show a negative cash balance of £23,200 at the end of March 2025 and a negative figure of almost twice that in March 2026. This may not fit the bank's normal template for financial difficulties – and it has been flagged in advance rather than after it has happened – but I am minded to think any reasonable definition of financial difficulties would include this situation.

The bank's final response letter also said:

"I appreciate that your business currently has a cash flow problem and that the CBILS payments do increase this problem... Your relationship manager XXX is able to assist you further with options available if you encounter difficulties in the future".

This does not seem to me to be fair position to take. They acknowledge H has a problem, but will only offer help "if you encounter difficulties in the future". This seems essentially to suggest that the bank will only be able to assist once H actually runs out of cash – and perhaps gets into arrears - at which point its financial stress might be deemed "severe". It cannot be the bank's position that they are unable to show forbearance to customers who identify their problems in advance and look for the bank's support to avoid them becoming critical.

As well as the BBB's guidelines, RBS have registered with a body called the Lending Standards Board and have undertaken to comply with its Standards of Lending Practice for business customers. I have therefore considered RBS' conduct in this case against the requirements of those standards. They include a specific section on "Treatment of Customers in Financial Difficulty". I think the following points are relevant here:

"4. 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 appropriate and mutually acceptable solution.

5. Firms should apply an appropriate level of forbearance where, if after having made contact with the customer, it is clear that this would be appropriate for their situation. Firms should ensure that the solution offered does not exacerbate the customer's situation.

6. If a Firm is aware that a customer is, or suspects that they are, in financial difficulty but is able to uphold their borrowing commitments to the Firm, the customer should be given the opportunity to take action to turnaround the business".

H has so far been able to uphold its borrowing commitments to RBS and has repaid over half its CBIL. But it has identified that this has caused a drain on its cashflow and asked for the bank's assistance with this problem. The above standards all emphasise that banks should listen to their customers and seek to agree a mutually acceptable solution that is appropriate to the problem and won't exacerbate it. I don't think that RBS have followed these standards here.

RBS say that they have offered multiple alternative solutions to H. I can see that they have suggested new borrowing, either in the form of a small business loan (with various expiry options), or an overdraft, all at higher interest rates than the CBIL. I am minded to agree with H that these options are not appropriate for H's situation. First, they do not seem to be sufficient to cover the cash gap H has identified. And second, they would leave H with a greater drain on its cashflow, since it would need to repay them as well as the CBIL.

Under section 228 of the Financial Services and Market Act 2000, my role is to determine complaints by reference to what is, in my opinion, fair and reasonable in all the circumstances of the case. Having done so, my provisional finding here is that an extension to the CBIL, something which is within the bank's power to provide, would have been a fair and reasonable solution. Subject to cashflow projections, this would not necessarily have to be for the maximum ten years, but could be for a shorter period, although it might need to be in conjunction with a short term overdraft.

I am currently not aware of any losses H has sustained as a result of RBS not agreeing to the term extension (I am aware of tax losses, but I believe these are the result of the cash problem itself rather than the bank's position at this stage). But if H wishes to make any further submissions on this point, I will consider them before issuing my final decision.

H accepted my provisional decision and made the following points:

- H had reservations as to whether RBS would act reasonably in agreeing the term for the extension so would prefer me to specify the maximum term.
- Since I had found that RBS's decision was wrong, the extension should be backdated to December 2023, a month after the original request.
- RBS should refund to C the amount overpaid since December 2023.
- H had made an agreement with HMRC in order to manage its cashflow difficulties in 2024 in the absence of the term extension. This had resulted in it paying interest of £197. If the term extension was in place, H said it would have been able to pay more of its corporation tax on time, thereby reduce the interest paid by £78 to £119. H thought the bank should refund this.
- H asked me to consider some further compensation for distress and inconvenience.

RBS did not agree to my provisional decision. They made the following points:

- The agreement between the bank and the Government in respect of the CBIL scheme was not simply guidance but defined rules to which they had to adhere.
- The rules said that an extension must conform to the lender's normal forbearance policies.

- The crux of the matter might be how I perceived financial difficulties and forbearance. They provided further information on the criteria they considered when assessing actual or potential financial difficulty.
- H had predicted a cashflow deficit of £1,000 as at March 2024, but in fact H's balance had never dropped below £13,000 in the past year. It had clearly been able to manage this temporary "blip".
- Looking more than 12 months ahead when predicting cashflow was generally not standard practice as it becomes highly unpredictable and unreliable.
- Had consideration been given to the fact that H would have to pay more interest overall if it extended its loan, thereby exacerbating its situation in the future?
- I had stated that the alternative options they had offered were not appropriate, and yet had suggested an overdraft might be required on top of the CBIL extension. This was contradictory, if an overdraft was inappropriate.
- If I left the term open, they might never be able to reach an agreement with H.
- H was free to supply updated financial information and they could reconsider. They would require this updated information in any case to ensure they were lending responsibly.

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.

Having done so, I haven't been persuaded to change my provisional view that in the specific circumstances here, it is fair and reasonable for RBS to grant H a CBIL term extension. I know that RBS disagrees very strongly with this decision, so I will explain why below.

I accept that I may have been inaccurate in characterising the contract between the bank and the British Business Bank as guidance. However, I do not accept that what I proposed represented a breach of these requirements. I still think that H's request should have been accommodated within the terms of the scheme, which clearly envisage the granting of term extensions in certain circumstances.

My starting point here (and something to which all parties agree) is that CBIL term extensions up to a maximum of ten years are possible at the discretion of the bank in accordance with banks' forbearance policies. I acknowledge that RBS feels that I am interfering with their reasonable commercial discretion in this matter. But my role is to determine cases based on what's fair and reasonable in all the circumstances. I have looked closely at the individual circumstances of H and at RBS' forbearance policies and concluded that it is fair and reasonable for an extension to be granted.

I agree with RBS that the crux of the matter is how 'financial difficulties' and 'forbearance' are interpreted. RBS acknowledge that they have no set definitions, because each customer is unique and operates differently. But they also argue that H did not meet their criteria when it requested the term extension. The bank have provided additional information on their approach to forbearance requests, which I have considered carefully.

The information I have been given by RBS begins by setting out that forbearance “is usually applied to businesses, where there is evidence of actual financial difficulty or potential for financial difficulty”. So the policy acknowledges the possibility of future financial difficulty – which is the position H says it is in – rather than just current financial difficulty. They then go on to list a set of “characteristics/mandatory triggers” that indicate actual or potential financial difficulty, although they acknowledge that this list is not exhaustive. Many of these triggers indicate severe immediate financial difficulty and there’s no debate that H does not exhibit these signs.

As I’ve said, RBS accepts that there might be forbearance triggers that aren’t included in their list. But there is also one on their list that arguably applies: it relates specifically to CBILs and says “evidence that customer cannot meet forthcoming payments”. H’s cashflow forecasts in my view show a significant cash “hole” that might well cause it to be unable to meet forthcoming payments.

I don’t dispute that cashflow forecasts have shortcomings and become less reliable the further out they are projected. But it is widely considered in lending practice that cash is more critical than profits. So it seems to me that, when trying to predict potential financial difficulty, which the bank agrees is one of the situations in which forbearance can be applied, cashflow forecasts are one of the more valuable tools available. I’m not sure how else a business could evidence that it cannot meet forthcoming payments. I also think it’s fair to say that the nature of H’s business makes future cashflows more predictable than they might be in many other sectors.

I know RBS considers that H has exaggerated its problems, which RBS calls simply a “blip”. The bank argues that H could manage its cash shortages itself with minor adjustments to outgoings. To back this up, it points out that H originally said it would be overdrawn by roughly £1,000 by March 2024, but in fact remained healthily in credit. Clearly, this information wasn’t available at the time of the original request, but as the bank has used it in its arguments, I will address it here.

RBS is correct that H remained well in credit in 2024, but I don’t think the bank’s conclusion from it is fair. H has provided evidence that it had to make a one-off arrangement to pay its corporation tax in instalments in 2024 in order to keep up its CBIL repayments and avoid running out of cash. Such an arrangement is unlikely to be possible every year and would not in any case be enough to manage the larger deficit forecast for 2025, which was always the point when H said its cash problem would become severe.

H’s 2025 forecast shows a cash shortfall of roughly £42,000 for March 2025. My view remains that this indicates both potential financial difficulty and that forthcoming CBIL payments cannot be met. The evidence of what has actually happened in 2024 would of course not have been available at the time of H’s original request. But in any case, I don’t think it disproves the rationale for the request. My conclusion is therefore that the bank ought to have assessed H against its forbearance criteria and hence eligible for the term extension.

It’s also worth noting that H’s CBIL has been on a fixed interest rate so far. But this comes to an end in 2025, at which point the CBIL will incur interest at a variable rate, which will be considerably higher than the fixed rate, due to the increase in the base rate over that period. This will increase the strain on H’s cashflow.

I accept – and I believe H understands – that by extending the term of its CBIL, it will ultimately end up paying more to the bank. But it will do so more gradually, over a longer period.

Both parties were concerned that my provisional proposal that they should work out an appropriate term between themselves might prove impractical. I have taken account of this and therefore simplified the redress to say that H should be granted the maximum term extension available under the scheme.

I know RBS believe they have offered support to H by offering various new forms of lending. Borrowing more, essentially to cover the costs of existing borrowing, would not generally be regarded as best practice. And while the suggestions might solve H's problem in some ways, I don't consider that any of them would do so as well as a term extension, since all involve extra costs in the short term, including higher interest and arrangement fees, as well as potential new security requirements.

I note that RBS felt that I had contradicted myself when I said that the alternative options they had offered were not suitable, but that an overdraft might be required. I said this because H's cashflow projections suggested that it might need a short term overdraft on top of the term extension, to cover the months of the year when its cash is at its lowest. I don't consider this undermines the argument for a term extension, rather it highlights how large an overdraft would be required to solve the cashflow problem by that means alone.

RBS feels I am instructing them to treat this customer differently from other customers and that this does not represent treating customers fairly. But my decisions do not set precedents and I am commenting only on the very specific circumstances of this case and no other. The bank rightly sets forbearance policies in such a way that they can consider individual circumstances. I am not instructing them to change their forbearance policies in any way. I have simply concluded those policies should reasonably have been interpreted differently in this particular case.

Putting things right

Where I decide that a firm should do something to put things right, my approach is generally to try and put things as near as I can to the position they would be in were it not for the bank's unfair action. For this reason, I have accepted H's argument that I should put things back to the position H would be in if the term extension had been granted when requested. I have already informed RBS of my decision to make this change since my provisional decision.

To put things right, RBS should:

- Extend the term of the loan to ten years.
- Backdate this term extension to December 2023. Repayments and interest paid since then should be recalculated on this basis and overpayments returned to H's current account, net of additional interest (thereby increasing the outstanding balance on the loan).
- Pay H £119, representing the interest it has paid to HMRC as a result of having to postpone paying corporation tax as a result of the delay in agreeing the extension.
- Pay H an additional £500 as compensation for the inconvenience incurred because the bank declined the extension - this is to reflect the effort it has had to put in to juggling its cashflows this year, including reaching an agreement with HMRC and taking out a corporate credit card.

My final decision

I uphold this complaint and direct The Royal Bank of Scotland Plc to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask H to accept or reject my decision before 14 January 2025.

Louise Bardell
Ombudsman