

## **The complaint**

Mrs M believes The Royal Bank of Scotland Plc ("RBS") has acted unfairly by using its right of set off to move money from her current account to repay an outstanding balance on her credit card account.

## **What happened**

Mrs M has a current account and credit card account with RBS.

Credit card statements for Mrs M's account show that no interest has been applied to the outstanding balance since October 2016. They also show that the last repayment Mrs M made to card was in December 2016. Following that payment, the outstanding balance on the card stood at £6,071.19.

In November 2019, RBS transferred £5,071.19 from Mrs M's current account to the credit card account to reduce the outstanding balance under its right of set off. That left a balance of £1,000 owing on the credit card.

Mrs M complained to RBS about this action. She said it was unfair, she hadn't been warned that it was going to take this action and said that the money used, from the current account, had been intended for a house purchase.

RBS said it didn't think it had done anything wrong. It said it was allowed to use a credit balance on one account to reduce the arrears on another. And it said it had written to Mrs M in October 2019 to let her know that this might happen. It did say that if Mrs M provided some evidence that the funds were to be used as a deposit for a property it would look into the matter further.

Unhappy with RBS' response Mrs M asked our service to look into her complaint. She said she hadn't received the letter RBS says it sent warning her of this action. And having now had a copy of that letter she didn't think this was clear enough as it didn't say how much might be off set. She also said that she had understood the debt had been passed to a different company.

An investigator considered the complaint but didn't think RBS had done anything wrong or acted unfairly. He said that RBS had provided evidence that it had sent notification of its actions to Mrs M in October 2019 and he couldn't hold RBS responsible for this not being received. And based on the available evidence he was satisfied that the balance was still owed to RBS, not another company.

Mrs M asked for the complaint to be reviewed. She said she accepts that she owes RBS money but had received no correspondence from RBS for years so had genuinely forgotten

about the debt. She also said she'd recently cleared other debts and said this proved she hadn't received any information about this account for a number of years, as otherwise she'd have also taken steps to address this balance. As Mrs M didn't agree with the investigator's findings, the complaint has been passed to me to decide.

### **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.

RBS has provided details of the account balance and contact notes relating to Mrs M's credit card. While these indicate RBS used a third-party company at one stage to seek repayment of the balance, which is common practice, I'm satisfied based on what I've seen that the balance was always held by and owed to RBS.

Turning to the use of RBS' right of set off, the right to use a credit balance on one account to repay an outstanding debt on another, in the event of it being unpaid, is set out by the regulator, the Financial Conduct Authority (FCA). It is detailed in the Banking Code of Business Sourcebook (BCOBS) – general rules and guidance for businesses. The rules say that a business is entitled to take this action and what it would be expected to do beforehand – including explaining the right to do this, generally in its account terms, and notifying an account holder in advance that it might exercise this right.

I've seen a copy of RBS' current account terms and conditions and they explain that if a customer has borrowed money and repayments are overdue it may take money from a current account to repay some or all of the money owed.

RBS has sent us information from its systems which shows it holds the correct address for Mrs M. It has also sent us evidence to show that it wrote to Mrs M on 21 October 2019 to inform her that it may use its right of set off to make a payment to the account. Mrs M has said she didn't receive this letter. Which is unfortunate. But based on what I've seen, on balance I'm satisfied that RBS did send the notification to Mrs M at the correct address. So I think it has provided reasonable notice before using its right of set off. Mrs M has said that this letter didn't say how much would be off-set. But this isn't something that the rules require a business to include and I don't think this means RBS wasn't allowed to off set the money.

So overall, I think RBS has done what was required of it before using its right of set off.

Mrs M has said that the money RBS used was intended for another purpose. But I don't think that means RBS has acted unfairly or incorrectly. There was a balance owed to RBS and no repayment had been made to the credit card since December 2016. In the circumstances, and as no repayment proposal had been made, I don't think I can say RBS acted unfairly by using its right of set off. Mrs M has said she'd forgotten about this account. But again, I don't think that means RBS acted unfairly as the balance was owed to it. I also note RBS said it was willing to look at this again if Mrs M was able to provide some evidence to show that the money was needed for another purpose. As I don't think it made a mistake by using its right of set off, I think this proposal is reasonable.

Mrs M talked in her response to the investigator about how the balance came about and about how RBS dealt with her while she was in financial difficulties. She has said she was in correspondence with RBS about the balance in 2016 and that she explained to it she was

having difficulty. And I do note that the account notes provided by RBS indicate a repayment plan was agreed between it and Mrs M for repayments to be £1 per month. And account statements show the minimum repayment was reduced to reflect this between March 2017 and February 2018. So this indicates there was some dialogue between the two regarding Mrs M being in difficulties. But the complaint we've been asked to consider is whether RBS acted fairly when moving money from Mrs M's current account to repay her credit card in November 2019. If Mrs M wishes to complain about how RBS dealt with her, and her credit card account, while she was in financial difficulties this would have to be raised as a separate complaint. This is because a financial business must be given the opportunity to respond to a complaint before our service is able to consider it. And I can't see that these issues have been raised with RBS.

### **My final decision**

For the reasons given above my decision is that I don't uphold Mrs M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 9 April 2020.

Ben Stoker  
**Ombudsman**