

The complaint

Mr K complains that The Royal Bank of Scotland Plc (RBS) are pursuing him for two old debts.

What happened

Mr K had two debts. In January 2012, a debt of £772.85 (debt A) was referred to a debt collection agency (DCA). In August 2014, a debt of £1,178.37 (debt B) was referred to a DCA. By September 2020, the balance of the debts was £772.85 and £959.80. In July 2020 and October 2020, RBS wrote to Mr K about the two debts to say they'd been passed to another DCA. Mr K also had a mortgage with RBS which was repaid in April 2020.

Mr K complained. He said the debts should be written off. He paid in £5 a month to the second debt for a while. But RBS hadn't been in touch with him about the debts since 2011-12. The letters he received in July 2020 and October 2020 were a surprise to him.

RBS said they were entitled to ask for repayment of the debts. On debt A, formal demand was made in November 2011 and transferred to their recoveries department. On debt B, they'd emailed him to say he should check the status of his accounts. They hadn't sent Mr K any correspondence about either of the debts until his mortgage had been repaid.

Mr K brought his complaint to us. Our investigator said that as RBS hadn't contacted Mr K for more than six years, it wasn't reasonable that RBS, or their agents, pursue him for the debts. And because Mr K had spent a lot of time and effort to try to sort things out with RBS, they should also pay him compensation of £250.

RBS disagreed and asked that an ombudsman look at Mr K's complaint.

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.

I can see that Mr K's two debts were passed to RBS' recoveries department in 2011; and then to debt collection agencies in January 2012 and August 2014. Mr K says he's heard nothing from RBS since 2011 - then and was surprised when they wrote to him about the two debts in July 2020 and October 2020. He did have a mortgage with RBS which was repaid in April 2020. RBS said that they didn't refer to Mr K's unsecured debts while they were trying to get repayment of his mortgage. I don't think that is a valid argument – asking for the repayment of the mortgage is separate to the two other debts.

The relevant guidance here is in the FCA's handbook (CONC). In section 7.15.1 it says "*A debt is statute barred where the prescribed period within which a claim in relation to the debt may be brought expires. In England, Wales and Northern Ireland, the limitation period is generally six years in relation to debt.*"

Section 7.15.4 says "*Notwithstanding that a debt may be recoverable, a firm must not attempt to recover a statute barred debt in England, Wales or Northern Ireland if the lender*

has not been in contact with the customer during the limitation period.”

Section 7.15.7 says *“It is misleading for a firm to suggest or state that a customer may be the subject of court action for the sum of the statute barred debt when the firm knows, or reasonably ought to know, that the relevant limitation period has expired.”*

Section 7.15.8 says *“A firm must not continue to demand payment from a customer after the customer has stated that he will not be paying the debt because it is statute barred.”*

We asked RBS for evidence of any communications they’ve sent to Mr K since 2011 to 2012 – including statements, requests for repayment, copies of default notices and letters of demand. Unfortunately, they haven’t provided anything. And so – it looks as though the debts are statute barred. But – it’s only a court which can finally determine whether a debt is irrecoverable. But that said, the FCA handbook does say that RBS shouldn’t attempt to recover the money or suggest to Mr K that they may go to court - if they’ve not been in contact with Mr K for six years – which they haven’t. The FCA guidance also says that RBS shouldn’t continue to ask for repayment after Mr K has said the debts are statute barred.

And so – while as I’ve said – it’s only the courts that can decide that a debt isn’t repayable, the regulator’s guidance says that RBS should now stop pursuing Mr K for the debts. It’s not clear if the debts are on the books of the debt collection agency, or if they’re with RBS. But – RBS should ensure they are dealt with in such a way that Mr K isn’t pursued for repayment. Whether that leads to RBS writing the debts off in their books is a matter for them to decide.

It’s also not clear if the two debts appear on Mr K’s credit file. I assume they no longer appear, but if they do, RBS should remove them.

I can see that Mr K had spend a lot of time in 2020 in calling RBS to try to resolve matters. Also, having paid off the mortgage – he thought he was finally free of all his debts – and so to get letters from RBS after such a long time must have been upsetting for him. And so, he should be paid compensation of £250 for distress and anxiety.

(continued)

My final decision

I uphold this complaint and The Royal Bank of Scotland Plc must:

- If needed, RBS should take the debts back onto their books – and stop pursuing Mr K for the outstanding debts of £772.85 and £959.80.
- Pay compensation of £250.
- If the debts are on Mr K's credit file, remove them.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 17 November 2021.

Martin Lord
Ombudsman