

The complaint

Mr C and Mrs C complain that The Royal Bank of Scotland Plc (RBS) are still pursuing them for a debt.

What happened

Mr C and Mrs C owed RBS the following amounts:

Date	Loan Balance	Current Account A	Current Account B
30 September 2008	£18773.32	£2027.43	£279.91
30 September 2018	£981.99	£2699.01	£539.80
28 January 2019	£981.99	£1717.02	£539.80

Between 7 November 2018 and 28 January 2019, there were three credits paid into account A - £450, £170.80 and £361.19 – a total of £981.99. The total debt on all accounts was then therefore £3,238.81.

In February 2009, the debts were passed to RBS' recoveries department, and then to debt collectors in May 2010. The accounts were passed to second debt collectors in October 2018. In September 2019, the debt collection agency changed hands. The debts remained with RBS.

Mr C and Mrs C say they made an agreement with the debt collection agency that – if they paid off the large loan of over £18,000 – then the remaining debts on the two other accounts would be written off. So – they paid in £981.99 to do that. They paid this amount to the debt collectors – who passed it to RBS. But the payments were credited to the current account A. They needed to borrow money from Mr C's father to make the payments to the large loan – in order to honour the deal they'd made. They also said that RBS cannot pursue them for the debts as they are time limited – as they've not been asked for any payments for seven years.

RBS said they had no record of any agreement to write off any debts - between the debt collectors and Mr C and Mrs C – and asked them for evidence of this. The debts weren't time limited as they amalgamated all the debts when they were transferred to the debt collectors. And – they'd written to Mr C and Mrs C in October 2019 when the debts were transferred to the second debt collectors. They said the debts were valid and should be repaid.

Mr C and Mrs C brought their complaint to us. Our investigator said he considered the debts weren't time limited – as there was a 'welcome' letter from the debt collectors in December 2018. And in Mr C and Mrs C's letters to them, they'd acknowledged the debts. He said the debts were valid and enforceable.

Mr C and Mrs C didn't agree. They said again that if there wasn't such an agreement (to write off the current accounts debts if the loan was repaid) - then why did they pay exact

amount of the loan (£981.99) between November 2018 and January 2019?

I reached a provisional decision where I said:

This complaint had been the subject of a lot of correspondence between Mr C and Mrs C, ourselves and RBS. But – I will try to cut through to the main points.

Firstly – the issue of whether there was an agreement to write off the balances on accounts A and B. This is the crux of Mr C and Mrs Cs complaint – which is that they agreed with the debt collectors that if they paid off the large loan of over £18000 – then the remaining, smaller, debts on the two current account would be written off. Based on this agreement, they say they went ahead and paid £450 a month – which I can see happened from December 2015 onwards. The debt on the loan was only £981.99 in October 2018. Mr C and Mrs C say – they then paid this in to pay off the loan under the terms of the agreement they had with the debt collectors and RBS. I can see they paid in this amount. But – the debt collectors sent this amount to RBS, who applied it to the current account A, not the loan.

The account statements show £450.00 was paid each month and credited to the loan account – up to and including October 2018. For reasons that are not clear, the last ‘normal’ monthly payment of £450.00 in November 2018 and the last two payments (bringing the total to £981.99) were credited to current account A. That seems to be a clear error and not something in the control of Mr C and Mrs C. It doesn’t matter whether the error was on the part of the debt collection agency RBS was using at the time or RBS themselves. This is supported by the letter from the debt collection agency dated 6 December 2018 referring to only two debts – for the two current accounts.

We’ve asked RBS several questions about this. They’ve said it doesn’t matter which account the credit was paid into – as they considered the debt were amalgamated into one. But – I don’t understand this as separate statements are being produced for all three accounts. And – RBS haven’t been able to show us a letter to Mr C and Mrs C which explains the amalgamation. So – I don’t think this argument stands up. RBS have said the payments into the current accounts (of £981.99) were ‘adjustments’ – I don’t understand what that means either.

RBS have said they don’t have a record of any agreement to write off the debts. And – if there had been one, the debt collectors would’ve had to get RBS’ agreement to it, so RBS would have a record of it. The debt collectors don’t have any record either. RBS haven’t been able to show us the general agency agreements they had with the debt collection agencies. But equally, there have been three firms of debt collectors used over the years – so records may have been mislaid. But also – Mr C and Mrs C haven’t been able to show us any evidence that an agreement existed. But in summary – little material evidence exists.

Having determined that the intention of the payments totalling £981.99 was to clear the loan I can now consider the crux of the matter – was there an agreement for the two current account balances to be written-off? Here, RBS doesn’t have any evidence there wasn’t any such agreement. Having no evidence as such, I have to then consider the testimony from Mr C and Mrs C.

And I find that quite compelling. They say, “why would we have paid £981.99 exactly if we didn’t think it was all that was needed to be paid to the bank?”. I think there is something in that. They had been paying £450.00 each month since December 2015. So, they would have been able to clear the amounts due on the current accounts in only five months. It seems strange that they would stop making the £450.00 payments if they believed the amounts on the two current accounts remained payable to the bank.

I view the letter dated December 2018 as significant in terms of what happened directly after it. The letter said there were debts of £2699.01 and £539.80 on the two current accounts – and it was directly after that time that Mr C and Mrs C paid in a further £170.80 and £361.18 to take the total payments to £981.99 – the balance of the loan account at the time. This cannot be a simple coincidence, and I can't think of any other reason such an amount would've been paid in. For me, this indicates that there was an agreement as Mr C and Mrs C claim.

On Mr C and Mrs C's argument that the debts are time limited – I can see that the debt collectors wrote to them on 6 December 2018 and said the balances owing on the current accounts were £2699.01 and £539.80. But – the legality of the debt under time limitation legislation is a matter for a court to decide, not this service.

This is a balanced provisional decision, where Mr C and Mrs C have consistently argued their case for a long time. And – there's an absence of any form of written evidence, so I must base my judgement on a balance of probabilities as to what I think happened. And – on the basis, I think there was an agreement to write off the outstanding debts on the two current accounts – if the loan was repaid. And so – RBS should do that and put Mr C and Mrs C in the position they would've been in in January 2019 – because the debts should've been written off then. This means that RBS should close the loan account and the two current accounts and write off the total debt of £3238.81. They should remove any entries on Mr C and Mrs C's credit file in connection with those debts from that date. But because this is very much a balanced decision, I don't think it's appropriate to award any compensation here.

Responses to the provisional decision:

RBS accepted my findings. So did Mr C and Mrs C – and asked for confirmation that this would mean the debt collection agencies would be informed and stop calling them.

So - I now need to make a final decision.

(continued)

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.

Because both RBS and Mr C and Mrs C agreed with the provisional decision, I won't be departing from it. And so – RBS must do what I said in it. I am only changing the final decision very slightly to confirm that Mr C and Mrs C get no more calls from the debt collection agencies – which I assume would be the case anyway.

My final decision

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

- Write off the outstanding debts on the two current accounts and loan account - £981.99, £539.80 and £1717.02.
- Ensure the debt collection agencies are notified and cease calls to Mr C and Mrs C.
- Remove any entries on Mr C and Mrs C's credit file in respect of those debts with effect from January 2019.

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

Martin Lord
Ombudsman