

The complaint

Miss S complains about the way The Royal Bank of Scotland Plc managed a loan she took out in 2011.

What happened

In November 2011, Miss S took out an RBS business loan for £30,000, which was due to be repaid over 120 months.

RBS told Miss S she had missed loan repayments in January and March 2021 and that she had arrears of £496.34. On 23 May 2021, Miss S set up a repayment plan and the stated arrears were repaid by 19 July 2021.

Miss S then complained to RBS that it was reporting missed payments to her credit file. She also complained that RBS kept contacting her about the arrears when she believed she had cleared them. At the same time, she requested a copy of her loan agreement.

In response, RBS said it had made a mistake when it told Miss S that her arrears were £496.34. It said that she had also missed payments in March 2018, April 2020, June 2020 and August 2020. RBS said the arrears should have been calculated at £1,972.86. When the payments Miss S made as a result of the payment plan were taken into account, the arrears stood at £1,476.52. RBS apologised for its mistake and said that it would remove any adverse information from Miss S's credit file in respect of the missed payments. RBS also told Miss S that it no longer had a copy of her credit agreement.

Miss S requested information from RBS about the terms of her loan and she complained to this service. She queried whether the loan was enforceable in the absence of a credit agreement. RBS continued to contact her about the alleged arrears by letter, telephone and text message. Our investigator asked RBS to put the account on hold while she investigated Miss S's concerns and RBS agreed.

Our investigator then considered the complaint. She said that it would be for a court to decide whether the agreement was enforceable and such a decision was beyond the remit of this service. Nevertheless, although the original credit agreement was not available, our investigator had asked RBS to reconstitute the agreement, but it was unable to do so. That said, our investigator thought there was no question that Miss S had borrowed the money from RBS and it was fair for it to seek repayment of the amount borrowed.

As to the alleged arrears, our investigator said RBS clearly made a mistake when it told Miss S that her arrears were only £496.34 when the real amount was much higher. She thought it would have been distressing for Miss S to think her arrears had been cleared only to find that she still owed RBS over £1,000. She thought RBS should apologise to Miss S and pay £350 to her to compensate her for that mistake.

RBS agreed with our investigator's view. It said it would not seek to recover any interest on the outstanding arrears and that it would work with Miss S to agree a repayment plan. Once the arrears were cleared, RBS agreed to remove the loan from Miss S's credit file entirely. RBS said that Miss S may receive a default notice, but that it was trying to arrange a workaround of its electronic processes to prevent that. RBS said that if Miss S received such a document, she should ignore it.

Miss S sought some further clarification before she decided whether to accept our investigator's view. In the meantime, RBS contacted her again, which she considered to be bullying behaviour. RBS said she was contacted because its collections team mistakenly thought the complaint was resolved. RBS then clarified that nothing had been reported to any credit reference agencies in respect of the loan at all.

Miss S then received a default notice from RBS which caused her some distress. She said RBS continued to chase her for payment when the complaint hadn't yet been settled. She said she was worried she would be charged interest on the arrears.

Our investigator referred the complaint for an ombudsman's 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.

I've upheld the complaint to the same extent as our investigator. I'll explain why below.

I can see that Miss S told us that she had some concerns about what happened with her payments in 2012. She said she could not understand why her payments had increased significantly between 2011 and 2012. In response to our investigator's view, Miss S also raised concerns about an account she says RBS required her to open as a condition of taking out the loan in question back in 2011.

Our investigator looked at these issues separately and said Miss S had complained too late about those particular issues. That means I have not considered these matters further.

Miss S also told us that she does not consider the loan agreement to be enforceable. That's because RBS cannot produce a copy of it and the terms of lending were unclear, including the rate of interest she was paying. I agree with our investigator that it is beyond the remit of this service to decide whether a credit agreement is enforceable, which is a matter that should be decided by a court.

That said, RBS provided us with a statement of Miss S's loan account. I can see the account was opened on 2 November 2011 with an opening balance of £30,000. Miss S doesn't dispute that she borrowed this amount. So, I agree with our investigator that as Miss S borrowed an amount from RBS, it's fair for her to pay that back.

I know Miss S has raised concerns about the rate of interest she has been charged. RBS told us that Miss S was charged a variable interest rate of 5.25% above the Bank of England's base rate. Looking at the statement of account, it seems to me that the interest was calculated daily but charged to the account on a quarterly basis. I have not calculated interest down to the last penny, but it seems most likely to me that the interest charged to the account is broadly in line with that interest rate. That's similarly the case when the Bank of England's base rate changed.

With all of this in mind, it appears to me most likely that Miss S borrowed £30,000 from RBS at a variable rate of interest that was 5.25% above the Bank of England's base rate.

Miss S queried why, if the interest rate charged was variable, her payments did not change. However, looking at what we've been told about the account, it appears Miss S paid for her loan by standing order. So, RBS wouldn't have been able to change the monthly repayments. In any event, the key issue here is the rate of interest that was applied to the account. And I'm satisfied whilst the repayments may have remained the same, interest was most likely charged to the account at the rate I've set out above.

I've next looked at whether there were arrears on Miss S's account. Looking at the statement of account, it appears no payments were made in March 2018, April 2020, June 2020, August 2020, January 2021 and March 2021. I can see Miss S did make some additional

payments. She paid £196.34 on 5 May 2021, £300 on 19 July 2021 and £243 on 11 November 2021, but these payments were insufficient to cover the total arrears.

On that basis, I'm satisfied there are most likely arrears on Miss S's account. RBS calculated those arrears to be £1,337.29. However, it said it would remove interest from that amount and would only seek to recover £1,233.52. It also agreed not to charge any further interest on that amount. I'm satisfied this is a fair outcome in respect of the amount that Miss S would need to pay back to RBS.

I've considered the way in which RBS handled Miss S's account from 2021 onwards. As our investigator said, it's clear RBS made an error when it said the arrears on the account were £496.34 when they were significantly greater than that. I can see how it would have been upsetting for Miss S to later learn that she owed RBS significantly more than she thought.

There has also been confusion about whether the account has been reported to the credit reference agencies. RBS has now clarified that there has been no reporting in respect of this account and that it will not report information in respect of this account going forward.

I understand that RBS contacted Miss S to seek recovery of the arrears despite assurances to our investigator that the account would be put on hold pending the outcome of this complaint. I can see RBS also sent a default notice to Miss S.

I know Miss S found the default letter upsetting. But I can't see any detriment to her because of that letter. Our investigator told her in advance that she may receive this document because of the way RBS's electronic systems worked. No information was reported to credit reference agencies and RBS confirmed that no action will arise from it. Nevertheless, I can see how receiving contact from RBS would have been upsetting for Miss S if she had been told that it would cease.

With all of this in mind, I agree with our investigator that RBS made mistakes in the way it handled Miss S's loan account from 2021 onwards. I can see how those mistakes have caused her distress and inconvenience. I further agree with our investigator that RBS will need to pay £350 to compensate her for that distress and inconvenience.

RBS has already agreed that it will ensure that this account has not been and is not reported to any credit reference agency. It also agreed that it would seek to recover no more than £1,233.52 from Miss S in respect of this loan account and that no further interest would be added to this outstanding amount.

RBS said it would work with Miss S to set up a suitable repayment plan. I know Miss S finds receiving correspondence from RBS stressful, so she may wish to contact RBS to arrange that repayment plan.

Putting things right

To put things right in this case, RBS must pay £350 to Miss S to compensate her for the distress and inconvenience I have identified above.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 1 March 2023.

Nicola Bowes
Ombudsman

