

## **The complaint**

Mr N complains about an arrears notice sent by The Royal Bank of Scotland Plc (RBS).

## **What happened**

A representative acting for Mr N requested copies of documents in relation his loan agreement with RBS. The business was able to provide various documents, including statements showing Mr N had made repayments over an extended period. But RBS wasn't able to provide an original or reconstituted copy of Mr N's original credit agreement. RBS wrote to Mr N's representative in September 2021 and confirmed the credit agreement couldn't be provided.

In December 2021 RBS sent Mr N an arrears notice. The arrears notice explained RBS is required to issue them every six months and included a Financial Conduct Authority (FCA) factsheet that provided general information about debts. Within the factsheet, it notes the lender could take legal action to recover the debt.

The issue was raised as a complaint with RBS in January 2022 and it issued various responses. In short, Mr N's representative said the arrears notice had contravened CONC (industry rules) that say a business has to make it clear a debt isn't legally enforceable in court. Mr N's representative said they thought the arrears notice and FCA factsheet failed to make it clear the debt was unenforceable. RBS' responses acknowledged the debt is not legally enforceable but explained it still intended to pursue the balance from Mr N.

An investigator at this service looked at Mr N's complaint. The investigator said that some of the issues raised were out of time as they weren't referred to us within six months of RBS' final responses. The investigator agreed we could look at Mr N's complaint about the contents of the arrears notice RBS sent in December 2021.

The investigator didn't uphold Mr N's complaint and wasn't persuaded RBS had made mistakes or treated him unfairly when issuing the arrears notice and factsheet. Mr N's representative asked to appeal and said RBS' actions went against a number of sections of CONC 13.1.6. The representative said RBS was aware the agreement is unenforceable so had to ensure all communications made that clear and didn't imply otherwise. As Mr N asked to appeal, his complaint has been passed to me to make a 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'd like to begin by saying I'm aware Mr N's representative made a number complaint submissions to RBS over the course of several months. Our investigator explained some of those issues were out of time so we're unable to comment. In this decision, I'm focusing on the arrears notice issued in December 2021 and Mr N's complaint that it went against the provisions set out in CONC. I want to assure all parties I've read and considered everything

on file. I've set out the background above in brief as all parties broadly agree about the circumstances of Mr N's complaint.

Mr N's representative has told us they think RBS' arrears notice goes against various provisions set out in CONC 13.1.6. In particular, Mr N's representative said CONC 13.1.6(4) notes any request for payment or communication relating to a payment (other than a statement issued in accordance with the Consumer Credit Act (CCA)) should make it clear the debt is unenforceable. Here, the arrears notice RBS sent was something it's obliged to send as noted in the CCA. I've looked at the wording and whilst I understand it doesn't say the debt is unenforceable, it doesn't make a direct request for payment either. The arrears notice does give information about how a payment can be made. But that's not the same as asking Mr N to specifically make payments.

Mr N's representative has also pointed out that CONC 13.1.6(8) says where a firm is aware that an agreement is unenforceable it should make that clear. It adds that any communication that implies that a debt is enforceable when it's not, would be misleading. Mr N's representative has noted the FCA factsheet says the lender could take legal action. I agree that RBS' arrears notice didn't say the debt is unenforceable. And I agree the FCA factsheet says the lender could take legal action. But, overall, I'm not persuaded that RBS has treated Mr N unfairly or misrepresented its position. I'll explain why.

Whilst we take all the relevant laws and regulations into account when considering how to resolve a complaint, our decisions are made on a fair and reasonable basis. That means we'll consider how any errors or omissions have impacted the consumer. Here, I understand Mr N's representative's argument that the arrears notice doesn't comply with the relevant CONC provisions he's set out. But I think it's fair to note that RBS had already confirmed to Mr N and his representative that the debt is unenforceable. RBS' correspondence with Mr N's representative noted that point several months before the arrears notice was issued. So I'm satisfied that RBS had already confirmed whether the debt was enforceable when it sent the arrears notice.

In addition, I understand the FCA factsheet notes that the lender could take legal action. But RBS has to send the factsheet out along with the arrears notice. And the factsheet is issued by the FCA so it's not something RBS can change. I agree that it would be clearer if RBS' arrears notice specifically noted the debt was unenforceable and it's arguable that approach would be more compliant in terms of CONC. But I'm satisfied that Mr N and his representative were aware of the status of the debt and that it can't be enforced in court. So whilst I note all the arguments made, I haven't been persuaded that RBS acted unfairly in this case.

I'm sorry to disappoint Mr N, but for the reasons I've noted above I haven't been persuaded RBS treated him unfairly when it sent the arrears notice. As a result, I'm not telling RBS to take any further action.

### **My final decision**

My decision is that I don't uphold Mr N's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 24 February 2023.

Marco Manente  
**Ombudsman**