

The complaint

Mrs N complains about the actions of The Royal Bank of Scotland Plc ('RBS') when she informed it that lending may have been fraudulently taken out in her name.

What happened

The circumstances of this complaint are well known to both parties, so I'll only include a brief overview of the key events that have led to Mrs N's complaint.

In December 2020 Mrs N tried to surrender a whole of life policy ('the policy') she held with an insurer, who I'll refer to as "W". W informed Mrs N that the policy could not be surrendered without RBS' consent as there was a Notice of Assignment registered with RBS. Mrs N complained to both W and RBS as she said the policy should not have been assigned to RBS. She also made a Subject Access Request (SAR) to both W and RBS.

Information received from the SARs showed that the policy had been assigned to RBS in 1992. A notice of retrocession in 1994 transferred ownership back to Mrs N. W acknowledged it had made an error by not correctly recording the notice of retrocession to show the policy had passed back to Mrs N. W later offered her £500 compensation for the distress and inconvenience caused by its error.

Mrs N maintained that the policy should never have been assigned to RBS and that she had not signed any forms to instruct the assignment. From the information provided as part of the SAR, Mrs N says she also became aware of loans and unsuccessful loan applications applied for and taken out in her name between 1992 and 2003. Mrs N said she did not apply for these loans and so it must be evidence of identity theft. She complained again to RBS. She also requested a discharge notice for a legitimate loan taken out in 2019 and repaid in November 2020.

RBS said it was unable to provide a response to Mrs N's concerns about identity theft as it did not know which loans she was disputing. It suggested she raise a fraud claim if she wanted it to investigate her concerns further. It confirmed it could provide an update on the status of any of her loans if she confirmed the account details. RBS offered £80 compensation to address the concerns Mrs N had with the way her complaint had been handled, and specifically the problems she'd had accessing her SAR.

Mrs N remained unhappy and referred her complaint to the Financial Ombudsman in August 2021. In summary, she complained that:

- RBS had failed to provide her with evidence that her legitimate loan had been repaid, despite requesting this on multiple occasions.
- RBS had failed to properly investigate her concerns that she'd been the victim of identity theft, and her concerns were treated as frivolous. She also raised concerns about an earlier allegation of identity theft that had been raised with RBS in 2014 that she said had not been investigated appropriately. She was also unhappy it had paid £80 into her account without her permission, which she felt was an attempt to stop

her escalating her concerns.

- RBS had failed to respond appropriately to her SAR and had not provided her with all the information and documentation it should have.

Mrs N asked that her complaint be reconsidered, and her allegations of identity theft be properly investigated. She said she should also be reimbursed for the costs she'd incurred in pursuing her complaint, along with any direct and indirect losses she'd incurred.

Our Investigator thought there were limits to which aspects of Mrs N's complaint we could consider. And for the parts we could consider, he didn't think the complaint should be upheld. In summary, he said:

- We could not consider Mrs N's complaint about possible identity theft relating to loans taken out in her name prior to 2003 because this had been raised too late. He noted the loans were taken out more than six years ago. He also thought Mrs N ought to have been aware of the loans as they were paid into her current account and repayments made from her account at the time.
- While we could consider her complaint regarding unsuccessful loan applications made in her name (as there was no evidence Mrs N would have been aware of these at the time) there was no evidence that this had caused her any loss so there was nothing for RBS to put right.
- We could not consider Mrs N's complaint concerning identity theft on her account in 2014, as RBS had issued a final response at that time offering referral rights to the Financial Ombudsman within 6 months. He explained this complaint had therefore been brought too late.
- Due to the passage of time, there was limited information to confirm what happened in 1992 and 1994. While he accepted that RBS may have made an error in 1992 by registering a notice of assignment against the policy, RBS had confirmed in 1994 that it no longer had an interest in the policy. As such, our Investigator noted that any delay in Mrs N being able to surrender the policy was due to W incorrectly advising her that it needed RBS' consent to surrender the policy. He noted W had offered Mrs N compensation for this error and so thought there was nothing further for RBS to do to put matters right.
- RBS had told us that it had disclosed all the information it needed to in response to the SAR. Given the passage of time he didn't think it was unreasonable that the information RBS held was limited. But ultimately, he was unable to verify if RBS had provided all the information it was required to. As such, Mrs N's concerns about the SAR were best dealt with by the Information Commissioner's Office (ICO).

Mrs N disagreed with our Investigator's conclusions and asked for her complaint to be referred to an Ombudsman for a final decision. She said the evidence the Investigator relied on in relation to the disputed loans did not match the information she had been provided with. Mrs N was asked for further clarification on what information differed, but no further clarification was provided.

I issued a jurisdiction decision on 1 February 2023, in which I explained that parts of Mrs N's complaint had been referred to us too late and so could not be considered as part of this final decision. I explained that I could not consider Mrs N's concerns about loans taken out in her name between 1992 and 2003 or the allegation of ID theft in 2014.

I explained that I would only be able to consider the following aspects of Mrs N's complaint:

- Whether RBS failed to provide her with evidence that a legitimate loan, taken out in July 2019 and repaid in November 2020, has been discharged;
- Whether RBS ought to have further investigated alleged identity theft in relation to unsuccessful loan applications;
- Whether RBS' response to Mrs N's SAR request was reasonable and whether its offer of £80 compensation was fair in the circumstances;
- Whether RBS was incorrectly listed as having an interest in the policy held with W.

Mrs N responded to the jurisdiction decision with more information for my consideration. In summary she said:

- She had still not been sent evidence that her loan taken out in July 2019 had been properly discharged. She said that RBS' response to this point – that she had not specified what information she needed – was disingenuous as she had frequently given details of the loan in her correspondence.
- She had made her complaints about alleged identity theft within three years of becoming aware of suspicious activity at her local RBS branch. She could not have known something had gone wrong until she received the SAR documentation. She also maintained that the information provided by our Investigator regarding the loans was new information that did not correlate with information she'd been provided.
- The ICO had completed its investigation and issued a notice of non-compliance to RBS in relation to her SAR. She said RBS failed to return documentation to her that had been held in its secure custody. RBS also sent Mrs N personal data relating to a third party in error. It was also unable to rule out that Mrs N's data had been sent to a third party in error. RBS offered her £250 compensation which she did not accept.
- The policy Mrs N held with W had always been in her possession and had never been assigned to RBS. She noted that the date of the notice of retrocession for the policy was the same date as the closure of a mortgage Mrs N denies applying for.
- She had not received £500 from W as she had not accepted the Ombudsman's final decision regarding her linked complaint, as she did not want to limit her legal rights to pursue her complaints.

As there has been no agreement on how this complaint should be resolved, it is now for me to reach a final 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.

Having done so, I am not upholding this complaint. And for largely the same reasons as our Investigator. I realise this will be disappointing for Mrs N, so I'd like to explain my reasons for reaching this conclusion.

Evidence of discharge of 2019 loan

I can see that Mrs N asked RBS on several occasions for evidence that a loan she took out in 2019 had been discharged. She has explained that she wanted a written receipt to confirm the loan facility had been fully discharged following repayment in November 2020. Mrs N has provided a copy of a letter she sent to RBS in February 2021, in which she asked for a written receipt and referred to an earlier letter, dated November 2020, where she first requested confirmation and discharge of the settlement of the loan. She later chased RBS for the same in April and June 2021.

In a letter dated 28 June 2021, RBS provided Mrs N with historic data relating to credit agreements taken out in her name. This included details of the 2019 loan and showed the loan closure date as 24 December 2020.

RBS has also recently provided the Financial Ombudsman with a loan statement for the 2019 loan, again confirming that the loan has been repaid, albeit the closure date differs from the date provided in RBS' letter. This evidence has been shared with Mrs N.

I have also now sent RBS a copy of Mrs N's letter from February 2021 and asked that it provide her with a written receipt as requested.

While I can see RBS has so far failed to provide Mrs N with a specific written receipt to confirm the loan had been discharged, I'm satisfied it has provided her with enough information to show her loan had been repaid in full and that the account was closed. There also seems to be no doubt on either part that the loan had been satisfactorily repaid.

Other than frustration that her requests had been unsatisfactorily answered, I can't see Mrs N has suffered any detriment that needs to be compensated beyond what RBS has already offered.

Alleged ID theft regarding unsuccessful applications

I should note that, while Mrs N has raised further points about why she thinks the Financial Ombudsman should consider her complaint regarding loans allegedly fraudulently taken out in her name, for the reasons set out in my jurisdiction decision, I cannot consider that part of her complaint as it has been referred too late.

But I can consider Mrs N's allegations regarding the unsuccessful loan applications. Unlike the loans that were taken out and serviced through Mrs N's account, there's no evidence to show Mrs N was aware (or ought to have been aware) of the loan applications prior to her receiving documentation by way of her SAR in 2021.

In one of her original reports to our service, Mrs N referred to there being reportedly "*8 loans and numerous loan application attributed to me some with no associated account numbers*". RBS provided an application history for Mrs N. It explained the entries without associated account numbers reflected applications that had been made but that were ultimately not agreed. It explained the majority of the entries related to requests to increase the overdraft limit on the account. Due to the passage of time RBS says it has not been able to provide any additional information relating to these applications. And so, it is not possible to assess whether RBS made any errors in relation to these applications, but equally there's no evidence that Mrs N has suffered any loss because of these applications. As such, I agree with our Investigator that there's nothing for RBS to put right here.

RBS' SAR response

Mrs N considers RBS has failed to respond appropriately to her SAR request. She's noted concerns about the way it responded to her request; the information that was contained in

the SAR; and data breaches – both in relation to Mrs N's data and unknown third parties. But I can see that Mrs N referred these concerns to the ICO.

The ICO concluded RBS had not complied with its data protection obligations because Mrs N did not receive an accessible copy of her personal data within the legislative timeframe. But it concluded RBS had undertaken reasonable searches to locate Mrs N's personal data and had provided her with all the personal data she was entitled to. It also confirmed RBS had retained Mrs N's personal data in line with its usual retention periods.

The ICO is the appropriate authority to refer concerns about whether a business has complied with its obligations under the relevant data protection legislation. Ultimately it can order businesses to comply with data protection laws and fine them if they fail to do so. But in this case the ICO determined that RBS had provided Mrs N with all the information she was entitled to.

While the Financial Ombudsman can usually consider data protection complaints, our focus is on the impact any data protection complaint has had on the consumer. We cannot punish a business if it has failed to comply with data protection legislation and we cannot compel it to provide further information – as that is for the ICO.

I can see that RBS' responses to the SAR requests have been a cause of frustration for Mrs N. But I can see that RBS has offered Mrs N £80 compensation in recognition of the difficulties she faced accessing the information she had been sent.

Although Mrs N has yet to accept RBS' offer of compensation, I think it was reasonable in the circumstances. The compensation offered is in line with the types of awards we would make in other cases where a business' error has caused some inconvenience and frustration to sort out.

As RBS has already made an offer of compensation, which I think is reasonable, there's nothing further I can ask it to do to put this matter right.

RBS' interest in the policy held with W

Due to the passage of time, there is very limited information available to show how and why RBS were recorded as having an interest in the policy Mrs N held with W. But what is clear is that RBS rescinded any interest in the policy in 1994. W has also accepted that it made an error when informing Mrs N in 2021 that RBS still had an interest in the policy.

The complaint concerning W has been considered by the Financial Ombudsman and the Ombudsman in that case agreed that while W had made an error, its offer of £500 compensation was fair in the circumstances. I understand Mrs N did not accept the Ombudsman's decision and so the compensation has not been paid.

While I can't rule out the possibility that RBS made an error when corresponding with W in 1992, I can't see that its actions or inactions have resulted in Mrs N suffering any detriment. So again, I couldn't reasonably expect RBS to do anything further to resolve this part of Mrs N's complaint.

Putting things right

It's clear this complaint is very important to Mrs N. And I can understand why she would want to assure herself that her identity has not been used fraudulently and that RBS has done all it should to protect her. But, for the reasons previously explained, there are limits to what I can consider as part of this complaint. And for the parts of the complaint I can

consider, I'm satisfied RBS has done all it reasonably needs to do to resolve those issues. So, while I appreciate Mrs N feels certain issues remain outstanding, I cannot reasonably ask RBS to do anything more that it has already offered (£80 compensation) to resolve her complaint.

My final decision

My final decision is that I uphold this complaint in part and require The Royal Bank of Scotland Plc to pay Mrs N £80 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs N to accept or reject my decision before 5 April 2023.

Lisa De Noronha
Ombudsman