

The complaint

Mr B complains that The Royal Bank of Scotland Plc took too long to return surplus funds to him after it took possession and sold his property. He asks that RBS pays the funds to him with compound interest at 8% and pays compensation for the distress caused.

What happened

RBS took possession and sold Mr B's property in 2006.

Mr B was contacted in December 2021 by a third party who told him he had unclaimed proceeds from the sale of the property. He says this is the first time he knew there were surplus funds. He says he had other accounts with RBS and it could have contacted him sooner. Mr B says he was in financial difficulty in 2006 and these funds would have made his situation easier. He says he feels like a victim of crime.

Mr B contacted RBS, which told him it had limited information about what happened in 2006 due to the amount of time passed. It said the surplus funds from the sale were about £6,000. It used these funds to pay off Mr B's outstanding loan and overdraft. Mr B says there was about £600 remaining after this. RBS can't now explain what happened to this money.

Mr B says his loan and overdraft were not secured on the property and RBS wasn't entitled to use the funds to repay them. Mr B says RBS took too long to explain what had happened to the funds after he contacted it. And he wants to know how the third party got information about him and whether there's been a data breach.

Our investigator said

- RBS was entitled to apply its right of set off and use the funds to repay debts owed by Mr B.
- RBS should pay Mr B the remaining surplus funds that it can't account for, plus interest at 8% simple from the date of the sale of the property.
- It was unclear how the third party had Mr B's details. Mr B could contact ICO if he was concerned about this.
- RBS can't show it contacted Mr B at the time to explain what had happened to the funds. It should pay £150 for the confusion and distress this caused.

RBS agreed. Mr B didn't agree and asked that an ombudsman re-consider the matter.

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.

RBS says the information it can provide about this matter is limited, due to the time passed. I

should explain that where the evidence is incomplete, inconclusive or contradictory, I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

RBS used the proceeds from the sale of the property to repay the mortgage loan and related costs (such as legal fees and estate agent fees). This left about £6,000 which RBS used to repay a personal loan and overdraft owed by Mr B. It says all of these accounts were with its recoveries team at the time.

Mr B disputes that RBS had the right to repay the unsecured debts from the sales proceeds without his consent. Banks do have a general right to set off money in this way. And, based on the available evidence, I don't think it was unfair for RBS to do so here. I don't think it would be fair and reasonable to require RBS to pay these funds to Mr B now, given they were used to repay debts he owed.

RBS should fairly have told Mr B in 2006 what had happened with the sale of his property and how the sale proceeds were used. It can't now provide evidence that it did – or that it made reasonable efforts to do so. And RBS can't now explain what happened to the remaining funds, of about £600.

Mr B is upset about the amount of time it took RBS to explain what had happened to the surplus funds when he contacted it in late 2021. I think that isn't unreasonable given the amount of time that has passed since 2006.

Mr B told us that he was in financial difficulty in 2006 and receiving funds of about £6,000 would have helped his situation. But, as I said, I don't think RBS was unfair or made an error when it used most of these funds to repay Mr B's other debts. This left about £600. Mr B was in financial difficulties, he had his house taken into possession and owed other debts. I think it's unlikely that returning the £600 to him in 2006 would have had an impact on his situation such as to make it fair and reasonable to require RBS to pay substantial compensation for not contacting him about this at the time.

RBS agreed to pay Mr B the funds it can't account for (about £600) plus interest at 8% simple from completion of the sale of the property. RBS also agreed to pay £150 compensation for the confusion and distress caused by not contacting Mr B in 2006. I think that's fair and reasonable in the circumstances.

It's unclear how the third party had Mr B's details. Mr B might want to ask the third party about this. I don't think I can fairly find that this was the result of a data breach by RBS without some evidence that this was the case. Mr B can of course contact ICO if he remains concerned about this.

My final decision

My decision is that I uphold this complaint and order The Royal Bank of Scotland Plc to:

- pay Mr B the remaining funds it can't account for (of £625.74) plus interest at 8% simple from the date the sale of the property completed to the date of payment.
- pay £150 compensation to Mr B.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 1 June 2023.

Ruth Stevenson
Ombudsman