DRN-4250670

The complaint

Mr C complains about The Royal Bank of Scotland Plc's ("RBS") administration of the loan he held jointly with his wife. He's unhappy that the bank stopped collecting payments and recorded adverse information on his credit file.

What happened

Mr and Mrs C had a joint RBS loan, which they took out in 2017. The loan account ran broadly in line with the credit agreement between the parties until August 2021, with repayments made by direct debit.

However, in September 2021 RBS stopped collecting payments. This led to arrears developing on the loan and Mr C being issued with a termination notice. Mr C complained to RBS, pointing out that the account was up to date until the bank stopped taking payments. However, since then he had missed payment markers on his credit file and the bank had recorded a default.

RBS says it cancelled the direct debit because at that point it became aware that in February 2020 Mrs C had entered a trust deed, an insolvency process that triggers termination of the credit agreement. The bank acknowledged that the account should have been passed to its Recoveries department. It said it would do this, refund interest since August 2021 and backdate the default to that point. It also paid Mr C £100 in light of service shortcomings it set out in its letter of 22 February 2022.

However, Mr C's problems with RBS continued, as the bank returned payments he attempted to make through March and April 2022. RBS paid Mr C a further £50 in compensation, and credited the loan with £75.

Our investigator didn't think RBS had dealt fairly with Mr C. She found that Mr C had made reasonable attempts to maintain payments towards the debt when he found the direct debits had stopped, and that the bank hadn't done enough to assist with that. The investigator considered this was the root cause of the arrears that developed, and the adverse information recorded on Mr C's credit file.

She further noted guidance on arrears and credit records issued by the Information Commissioner's Office ("ICO"). The ICO guidance said that where only one party to a joint debt is the subject of an insolvency order, the account shouldn't automatically be marked in default if it is being maintained by the other party. The investigator recommended that RBS remove the default and adverse payment information from Mr C's credit file, enable him to repay the balance and pay £500 in recognition of the distress and inconvenience caused.

RBS didn't accept our investigator's recommendation. It said the default hadn't been automatically recorded and it had informed Mr C when it issued the termination notice. This was a process giving him a period of time to repay the balance it demanded, for example by arranging to borrow the money elsewhere.

The bank felt the investigator hadn't correctly understood the ICO guidance, and said it couldn't legally amend the credit file entry unless it had made an error. It further expressed the view that the payments Mr C had made since the direct debit was stopped were much lower than the contractual payment, suggesting the possibility he couldn't afford them.

Our investigator wasn't persuaded by the bank's response to reach a different conclusion and as matters remain unresolved, the complaint has been passed to me for review and determination.

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.

Mr and Mrs C held their loan jointly. Under General Condition 8(iii) of their loan agreement, subject to proper notice RBS was entitled to terminate the loan and demand immediate payment due to Mrs C's insolvency.

The agreement is silent on what constitutes 'proper notice'. Section 76 of the Consumer Credit Act 1974 ("CCA") requires at least seven days' notice before an agreement term can be enforced involving termination of the borrowers' rights under the agreement, or early repayment demanded. Section 98 of the CCA makes the same provision of seven days for notice of termination in respect of non-default cases.

RBS sent Mr C a letter on 9 February 2022, enclosing a termination notice that appears compliant with the CCA provisions. The notice says the loan agreement will be terminated on 2 March 2022 due to the insolvency, and gives notice of the bank's intention to demand immediate and full repayment of the loan balance. While the covering letter to Mr C notes an arrears sum on the account, the only reference to default is in relation to the action that will be taken following that formal demand.

RBS issued a further letter and termination notice to Mr C on 10 March. The correspondence was along the same lines as the 2 March letter, save that the arrears balance was slightly higher and the termination date was changed to 23 March. On 31 March RBS wrote to Mr C to say it had terminated the loan and demanded full repayment of the loan balance by 10 April. The bank's letter said that it would record a default on Mr C's credit file if payment wasn't made by this date.

Although a party's insolvency can be detailed as a default event in a credit agreement, RBS's agreement with Mr and Mrs C didn't include this. Given the correspondence above I find that at this point, RBS was not treating the account as being in default despite the insolvency, the account arrears and missed payments.

Mr C didn't pay the full balance by 10 April and the bank recorded a default on 30 April. I think it's reasonable to infer from all of this that the default RBS recorded on Mr C's credit file relates to him not meeting the obligation to repay the full balance when required following the termination of the loan.

I can understand why from a contractual perspective RBS considers that it did nothing wrong in taking the action it did. However, the bank will also be aware that this isn't the only factor that speaks to whether it has treated its customer fairly. The bank's entitlement to terminate the loan and issue a demand for full payment doesn't mean it was obliged to report Mr C as being in default as a result. It stands to reason that many people would be unable to repay such borrowing in full in similar circumstances.

With this in mind, I would expect the bank to have explored with Mr C whether there was a reasonable prospect of him being able to repay the balance or, if not, a regular amount he could pay that might avoid the need to default. Although RBS's letters gave Mr C a contact number to call if he has any questions, the only way they state for him to avoid the default is by settling in full.

I can see why our investigator considered that the bank's approach might conflict with the ICO's guidance. RBS's process for dealing with Mrs C's insolvency is what triggered the termination, and the termination led directly to the payment demand and default. At no point does RBS appear to have proposed that if Mr C maintain the payments it wouldn't record the default.

The mere fact that the bank issued correspondence to comply with its regulatory obligations to give notice of its actions doesn't strike me as evidence that it complied with the wording – nor indeed the spirit – of the ICO guidance. And while Mr C didn't maintain payments after August 2021, I'm satisfied he made reasonable efforts to do so. The bank acknowledged it cancelled his direct debit, that it didn't set up the alternative payment facility he needed, and returned those payments he did make.

I'm conscious RBS has suggested in its response to our investigator the possibility that Mr C would have been unable to afford to maintain the loan. Whether or not that's correct, the bank hasn't submitted persuasive evidence of this to me, and I can't fairly conclude that this would have been the position. Mrs C's insolvency started in February 2021, but Mr C was continuing to make the contractual payments some six months later.

Putting things right

Having considered matters overall, I find that RBS didn't treat Mr C fairly when it recorded the default on his credit file. I therefore direct the bank to remove this information from his credit file, along with any missed payment information it recorded in respect of payments due from September 2021 to June 2022, when he referred his complaint to us.

If it hasn't already done so, RBS should instigate discussion with Mr C with a view to reaching a realistic and mutually agreeable repayment arrangement for the remaining debt. Provided that Mr C keeps to any such arrangement, RBS should ensure it doesn't record a default or any other adverse information on Mr C's credit file in respect of the debt.

The bank's actions have undoubtedly caused avoidable distress and inconvenience to Mr C. It has already acknowledged some of its service shortcomings and paid him compensation for these. I consider it appropriate to award Mr C £500 in addition to those previous payments, to fairly reflect the distress and difficulty he's had arising from the bank's handling of the matters I've dealt with here. For the avoidance of doubt, that payment should be made directly to Mr C rather than applied as a credit against the debt, unless Mr C asks for this.

My final decision

My final decision is that I uphold this complaint. To settle it, The Royal Bank of Scotland Plc should, within 28 days of receiving Mr C's acceptance of my decision, take the steps I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 18 August 2023.

Niall Taylor

Ombudsman