

The complaint

Ms H complains that The Royal Bank of Scotland Plc (RBS) asked her to pay a mortgage loan she says she knew nothing about.

What happened

In 2023, Ms H was contacted by RBS. It was seeking payment of a mortgage taken out in the mid-1980s. It said that the loan had been taken out in joint names by Ms H and her then husband and remained outstanding.

Ms H said that she had no knowledge of this loan. She and her former husband had divorced many years ago and had since both re-married. He has now passed away, and she understood that his then current wife had paid off his debts as part of dealing with his estate. She didn't believe that she was liable for this mortgage or that it was fair that she had been contacted by RBS and asked to pay it – at what was already a stressful time as she is caring for her current husband during a period of serious illness.

RBS said that Ms H and her former husband had taken out the mortgage jointly. Although they had later divorced, Ms H had never been removed from the loan account and it remained in joint names. After her former husband passed away, there was still an outstanding balance of around £11,000 – which it said it was fair to expect Ms H to pay. But it was willing to discuss things with her and try to come to some arrangement. RBS acknowledged that it hadn't dealt with Ms H's questions about the mortgage as quickly as it should have done, and it offered £150 compensation for the impact of that on her at a difficult time.

Ms H brought her complaint to us. Following our investigator's involvement, RBS agreed to write off the remaining loan balance and pay Ms H a further £250 compensation.

Ms H wasn't happy with that. She also wanted an apology from RBS and a full explanation of what had happened. She wasn't happy with how she had been treated since RBS first contacted her – in particular, by making it difficult for her to go through security to discuss the mortgage. She said RBS had accused her of lying by doubting her version of events. She wanted confirmation that there would be no impact on her credit record. She said RBS had sent her details of a third party's bank account by mistake, which is a data breach. She said the compensation wasn't enough to reflect the impact of everything on her.

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.

Given the passage of time, there is very little information available about this mortgage. No loan agreement survives. RBS has provided a copy of an endowment policy taken out in 1988, linked to a mortgage account, covering borrowing of £11,000. The life policy document is signed in the names of both Ms H and her former husband and witnessed by an RBS staff member – though Ms H says that they had already separated by then and she would not

have signed such a document.

However, RBS's records do show that there was a charge over a property, and that charge was removed in December 2011. The endowment policy was due to mature in March 2012. It's not clear what happened to the proceeds, or whether – if it still existed – a claim was made on the life cover element when Ms H's former husband passed away a few years later.

It's therefore possible that the loan continued to exist past 2012 – not least because payments were still being made to it past this point.

It's also possible that – given the closeness in time of the removal of the charge on the property and the maturing of the endowment – the proceeds of the endowment were used to repay the mortgage but the account wasn't properly closed down.

RBS's records of the history of transactions also begin in March 2012. The transaction record suggests that a new account was created at this date – rather than a continuation of an old one. So a further possibility is that the endowment had previously been surrendered or cashed in, and at the end of the term of the mortgage the outstanding balance – then around £10,000 – was re-scheduled into a new unsecured debt. Given that the charge over the property was also removed around this time, this seems to me to be the likeliest possibility – but if that was the case, Ms H didn't agree to and wasn't party to any re-financing.

The last payment to the account was made by Ms H's former husband in August 2016. Even if the loan still properly existed, it was by that time unsecured.

RBS then took no action in respect of the loan, until it traced and contacted Ms H in August 2023.

Even if Ms H did agree to the loan in 1988, it's not clear that it should still be regarded as outstanding. There is uncertainty around the terms of the original lending – only the endowment and not the mortgage agreement survives – as well as whether it was paid off around the time of the endowment maturity or not. As I've said, it may well have been re-scheduled into, or replaced with, unsecured debt in Ms H's former husband's sole name. And even if it was still outstanding, it's also not clear why it wasn't paid off when Ms H's former husband's estate was wound up (for example, via a claim on the life cover element of the borrowing).

It's also unclear whether RBS has any legal right to require Ms H to repay the loan, even if the debt does remain outstanding. I've not seen persuasive evidence – given all the uncertainties I've outlined above – that the debt RBS is seeking to reclaim now is the same debt as the joint mortgage loan from 1988. If it's not, then it may well be the case that this is no longer Ms H's debt at all – that the joint mortgage was replaced with sole debt in 2012.

Even if this was a joint mortgage, I think it's likely that the term ended around 2012, at which point the entire balance would have been repayable. I say that because that's when the endowment was due to mature, and it was usual to align the two.

Under the Limitation Act, RBS has twelve years to recover the capital outstanding on a mortgage from when it falls due. If the mortgage term did end in 2012, that twelve years had almost expired when it contacted Ms H in 2012, and has now expired.

The Act also says that it only has six years to recover interest. Since no payment has been made, and Ms H has not acknowledged the debt in any other way, since 2016 – the six year period has also now passed.

Putting things right

For all those reasons, it's not clear to me that there is persuasive evidence that (i) this is Ms H's debt; (ii), if it is, it remains outstanding; or (iii) if it does, that RBS is now entitled to recover it from Ms H.

In the circumstances, I think RBS's agreement to write the remaining balance off and not pursue Ms H for it is the right and fair way forward.

I agree that RBS has not handled this matter well. I can't see why it left it so long to trace Ms H if it did regard her as responsible for the debt. When it got in contact, it did so at a very difficult time for Ms H – although it couldn't have known that at the time, its poor handling of things since had a particular impact on her. I understand the importance of security procedures and data protection, but its insistence on writing to Ms H at her current address but using an entirely different address for verification when she contacted it – an address she says she has never had a connection with – caused her great difficulty. Sending her documents relating to another customer is not a breach of Ms H's data rights (rather, it's a breach of the rights of the other customer), but I can see how Ms H thought it symptomatic of how RBS had handled its contact with her. At the very least, RBS should have made sure it had a better understanding of the situation before it contacted Ms H – it was inevitable she would question being contacted about the loan after so long even if it was her debt, and so RBS ought to have established all the facts before doing so.

All of that caused Ms H considerable distress and upset, as well as inconvenience, at an already difficult time in her life. In all the circumstances, I agree that it's fair to increase the compensation for that distress and inconvenience from £150 to £400. It should also ensure that it does not contact Ms H about this loan again, and should not make (and remove if already made) any report about it to her credit file.

My final decision

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

- Release Ms H from any liability for this debt, and not take further action to collect it from her
- Remove any report about it that it may have made to her credit file
- Increase its offer of compensation to £400.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms H to accept or reject my decision before 7 January 2025.

Simon Pugh
Ombudsman