

## **The complaint**

This complaint is about a commercial loan that Mrs and Mr R hold with The Royal Bank of Scotland Plc (RBS). The essence of the complaint is that Mrs and Mr R believes RBS' treatment of them since court proceedings in 2014 has been unfair.

## **What happened**

The broad circumstances of this complaint are known to all parties. I'm also aware that the investigator issued a detailed response to the complaint, a copy of which has been sent to both parties, and so I don't need to repeat all the details here. Our decisions are published, and it's important that I don't include any information that might result in Mrs and Mr R being identified.

Instead I'll give a summary of the key issues (rounding the figures to avoid the risk of identification by including information that is overly specific) and then focus on giving the reasons for my decision. If I don't mention something, it won't be because I've ignored it. It'll be because I didn't think it was material to the outcome of the complaint.

The credit facility at the heart of this complaint is a commercial loan taken out in 2011 to finance a restaurant. The opening balance was around £160,000, the scheduled repayment term was fifteen years, and the interest rate was set at Bank of England Base Rate (BEBR) plus 6.45% for the life of the loan. As security for the loan, RBS took legal charges over the restaurant property and Mrs and Mr R's home.

In legal proceedings RBS brought in 2014 following a default, the court issued a Tomlin Order requiring Mrs and Mr R to maintain regular monthly payment of £1,850. Mrs and Mr R have maintained this in subsequent years. For a period in 2018, when Mrs R was incapacitated, RBS agreed to accept lower payments. In January 2024, RBS agreed to crystallise (i.e. freeze) the outstanding debt, which at the time had fallen to around £92,000. This meant no more interest would accrue, and all of the payments received thereafter would reduce the balance owing.

Mrs and Mr R complained; they were unhappy that RBS hadn't provided information they'd asked for about the interest rate, or the terms of the loan since the Tomlin Order was issued. Whilst grateful for the debt being frozen, they also thought RBS hadn't done enough to help them over the ten years they'd struggled in the meantime.

RBS rejected the complaint; Mrs and Mr R referred it to our service. Our investigator said that he could look into the fairness, or otherwise, of RBS's treatment in the six years immediately preceding the start of the complaint. Overall, though he wasn't persuaded RBS had done anything wrong.

The investigator also said that we could consider whether there had been an unfair relationship between RBS and Mrs and Mr R as a result of the way the account had been handled since the Tomlin Order was issued - taking into account all matters relevant to the

fairness of that relationship whenever they occurred, and even where they are time barred if subject to a complaint in their own right. However, he considered that no unfair relationship had been created and that RBS hadn't acted unfairly towards Mrs and Mr R.

Mrs and Mr R asked for the complaint to be reviewed by an ombudsman.

### **What I've decided – and why**

I'll start with some general observations. We're not the regulator of financial businesses, and we don't "police" their internal processes or how they operate generally. That's the job of the Financial Conduct Authority (FCA). We deal with individual disputes between businesses and their customers. In doing that, we don't replicate the work of the courts, nor in any way interfere with that work.

We're impartial, and we don't take either side's instructions on how we investigate a complaint. We conduct our investigations and reach our conclusions without interference from anyone else. But in doing so, we have to work within the rules of the ombudsman service.

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, what follows are my conclusions and the reasons for them.

Mrs and Mr R's complaint is based on two broad points:

- their request for a copy of the Tomlin Order and information about the interest rate and loan terms since the Order was issued; and
- RBS not doing enough to help them generally in the years of financial struggle since the Tomlin Order was issued.
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I'll address each in turn.

#### the provision of the Tomlin Order and information about the interest rate and loan terms since the Order was issued.

This was a request Mrs and Mr R made in 2023. It's my understanding that RBS did reply, by email which Mrs and Mr R seemingly didn't receive. I'm not sure anything turns on that, though. It's important to remember that the Tomlin Order is not an RBS document but a court document. If Mrs and Mr R specifically wanted a copy of the original signed document, that would need to come from the court, albeit I understand that the records may not have been retained.

In terms of RBS' conduct, I don't find it has done anything wrong over this aspect of the complaint. The Tomlin Order didn't alter the interest rate chargeable under the original loan terms; that's remained at BEBR + 6.45% throughout. As far as the *repayment* terms are concerned, I agree with our investigator that Mrs and Mr R were, or at least should have been, aware of what those were, because they were set out in the Tomlin Order, and as I've already set out, Mrs and Mr R have largely maintained the payment requirements since 2014.

#### RBS didn't do enough to help them generally in the years of financial struggle since the Tomlin Order was issued.

Prior to March 2018, Mrs and Mr R maintained the required payments under the Tomlin Order, and there's nothing in RBS' contemporaneous contact records to suggest that

Mrs and Mr R told it they were struggling and needed help. When they did contract RBS, in March 2018, the business did help them by agreeing to accept lower payments than the Tomlin Order required them to make until Mrs R was able to resume work again. That strikes me as a reasonable and fair response.

The next request for help came in 2021 when RBS declined an offer to accept £40,000 in full and final settlement. Given that the debt balance was in the region of £122,000 at that time, I don't think it was unfair or unreasonable of RBS to say no, given that the short settlement being proposed was less than a third of the amount owed.

In November 2023, Mrs and Mr R approached RBS with concerns about possible future retirement plans. That's when RBS agreed to freeze the debt; again, in my view, a fair and reasonable response.

In summary, each time Mrs and Mr R asked RBS for assistance in the period following the Tomlin Order, it responded in a reasonable and proportionate manner.

Putting all of the above together, I'm not persuaded there is anything in the actions as set out above that would have created an unfair relationship between RBS and Mrs and Mr R, or that there was any unfairness flowing from those actions which RBS is under an obligation to remedy.

Lastly, in their closing submission of 23 March 2025, Mrs and Mr R say that as a result of the court action, they'll pay far more than they would have paid if they'd kept to the original loan terms. That much is true, but of course they didn't keep to the original loan terms, and they agreed to the Tomlin Order superseding the original terms to avoid their properties being repossessed in 2014. I'm satisfied the loan has operated fairly and in line with the Tomlin Order, and that RBS has treated Mrs and Mr R fairly, since then.

### **My final decision**

My final decision is that I don't uphold this complaint or make any order or award against The Royal Bank of Scotland Plc.

My final decision concludes this service's consideration of this complaint, which means I'll not be engaging in any further discussion of the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs and Mr R to accept or reject my decision before 26 May 2025.

Jeff Parrington

**Ombudsman**