

complaint

Mr and Mrs B complain that The Royal Bank of Scotland Plc ("RBS") cannot provide them with a copy of the loan they entered with it in 2005. They say the debt is therefore not enforceable and would like it written off.

background

Mr and Mrs B say they held a loan with RBS before 2005 but around that time a member of staff called them to top up their borrowing and added additional borrowing that they did not want or need. They said while they were thinking about the offer the funds were deposited to their account and a new direct debit was established for £327 and the term of the borrowing increased. They say they queried this but were told the member of staff who altered their arrangement had been dismissed by the bank for "errors of judgement". In 2009 they asked RBS to provide a copy of the credit agreement. RBS could not do so and Mr and Mrs B say it told them in March 2010 that it would not be able to enforce the debt in a court as a result.

Then in November 2011 Mr and Mrs B were told they were in default and owed £5232. The direct debit was reinstated and payments taken. Mr and Mrs B complained and their complaint was upheld in 2012. RBS cancelled the direct debit and refunded payments and charges and paid Mr and Mrs B £200 compensation.

Since then RBS has tried to enforce the debt and threatened legal action to do so. It has also recorded the default on Mr and Mrs B's credit file. They would like the matter resolved once and for all.

RBS cannot locate the loan agreement but have provided copies of the statements for the loan showing that Mr and Mrs B made repayments from 2005 to 2012. Since May 2012 no further payments have been received by RBS. RBS in its final response letter advised Mr and Mrs B to put in place a repayment plan or risk the loan being placed in recoveries.

Our adjudicator did not recommend that this complaint should be upheld. He concluded that there was no dispute that Mr and Mrs B had had the benefit of the loan monies since May 2005. He noted that Mr and Mrs B made repayments each month. He concluded that the bank's inability to provide them with a copy of the Loan Agreement does not mean the debt is in dispute. Rather, he considered that it would not be fair and reasonable to require RBS to write off the debt.

Mr and Mrs B disagree. They say the matter has been going for five years and that RBS cannot enforce the debt. They say RBS has admitted errors in the past and the adjudicator's recommendation is not fair and reasonable for both parties.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

While I know this will come as a disappointment to Mr and Mrs B, I agree with the adjudicator that even in the absence of an enforceable loan agreement, there is clear evidence as well as admissions from Mr and Mrs B that a debt exists and that RBS lent them money. My understanding is that the circumstances surrounding the alteration to their loan in 2005 were the subject of an earlier complaint which RBS upheld. As a result payment and charges were refunded to Mr and Mrs B and compensation paid. However, I have seen no

evidence to suggest that the pre-existing borrowing that preceded the alteration in 2005 has been repaid or written off.

I am satisfied money was lent to Mr and Mrs B and that they had the benefit of those funds. I am also satisfied they made repayments of the borrowing on a regular basis for seven years. I also see they have not disputed, and still do not dispute, that they owed and continue to owe money to RBS. Therefore even though the original loan agreement cannot be located I do not consider that it would be fair and reasonable for the outstanding debt to be cancelled or written off. I accept that RBS may have said that its failure to provide a copy of the loan makes the enforcement of the debt in a court difficult. I also accept Mr and Mrs B have relied on this statement and believe they are justified in refusing to repay the balance.

But in relation to the complaint before me, my role is not to comment on the likelihood of a successful legal action but to determine whether it is fair and reasonable to require RBS to write off the debt. Overall, I do not find that I can fairly require RBS to do this. I am satisfied that RBS is entitled to try to enforce the debt.

my final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr and Mrs B to accept or reject my decision before 17 April 2015.

Zoe Copley
ombudsman