

complaint

Ms K complains, on behalf of her mother Mrs H, about the administration of Mrs H's mortgage with The Royal Bank of Scotland Plc. Ms K has power of attorney to act on Mrs H's behalf.

background

Mrs H, together with her former partner (who I shall call Mr L) took out a joint mortgage with RBS in the mid-1990s. In doing so, they granted RBS an "all monies" charge over the property. This means that they agreed that RBS could use the charge to recover any money they owed it, not just the mortgage debt.

Mr L and Mrs H separated. Mrs H continued living in the property and for some years both continued to pay the mortgage. Mr L missed payments from time to time and Mrs H had the support of the then Department of Social Security for a time. Eventually Mr L stopped contributing, though the mortgage is still in joint names.

Mr L separately had some business borrowing with RBS. It seems that for whatever reason he was unable to service that debt, and RBS took him to court. In 2010, the court made a charging order over Mr L's interest in the property in respect of the debt.

Mrs H complained to this service about various matters related to the mortgage, including a failure to provide documents or explanations, and the adding of the charge over the property. Another ombudsman issued a decision in respect of that complaint, in which he said:

- RBS was entitled to register the charging order;
- RBS's failure to provide statements and explanations was poor customer service, but wasn't wilful maladministration.

He directed RBS to pay £250 compensation. He noted that RBS had said that it wouldn't require Mr L's business debts to be paid from the proceeds of sale of the property and asked it to confirm that that was still the case. But RBS said that that was no longer the case; it had said that before it obtained the charging order, but now it would rely on the charging order on sale. That meant that both the mortgage balance and the debts secured by the charging order would have to be repaid before the proceeds of sale were released to be divided between Mrs H and Mr L.

Ms K wasn't satisfied that all parts of her mother's complaints had been dealt with. In particular, she was concerned that it had recently come to light that the mortgage in fact included two sub-accounts. Ms K was worried that that meant that Mr L had taken further borrowing on the mortgage without Mrs H's knowledge.

The case has come to me to deal with these further matters. As our rules provide for a two stage process, I issued a provisional decision to set out my preliminary view of the case and invited further comment from both parties. I've now received that further comment, and will set out below my provisional view, the responses to it and my final decision.

my provisional decision

In my provisional decision, I said:

In this decision, I'm not going to deal with matters covered by the previous ombudsman's findings – that RBS was entitled to register a charging order over the property but had provided poor customer service. This is because neither I nor any other ombudsman has the power to set aside or amend an ombudsman's decision, and so it stands as our final word. But I will deal with the issue of the mortgage sub-accounts, and RBS's responses to Ms K's requests for further information since the last decision was issued.

I've considered the mortgage history carefully, in particular RBS's system notes that go back to its start. I've no reason to doubt that they are an accurate record of how the account was managed over time, and that is what I take them to be.

The notes show that on 9 March 2001, Mrs H called RBS. She told it that she and Mr L had split up and he had left the property. They were to be paying half the mortgage each from then on and her direct debit was to be amended to take half of each monthly payment. This was done. The next day Mr L called to pay the other half of that month's payment by debit card.

For the next few months, with RBS's agreement, only Mrs H's half was paid. In May 2001, RBS split the account into two sub-accounts to enable there to be two separate direct debits, one each for Mrs H and Mr L. Ten days later, RBS received Mrs H's new direct debit mandate and by the end of the month two separate direct debits had been set up.

This arrangement continued for the next few years. In 2005 Mrs H's son, with her authority, contacted RBS to ask why there were two sub-accounts. It isn't entirely clear when the arrangement stopped, but at some point it did, and Mr L hasn't been paying his share for some time. Mrs H started receiving the Support with Mortgage Interest state benefit from 2005, but didn't make any payments beyond this herself.

As a result, arrears built up on the account, and by 2012 they had reached almost £20,000. Ms K paid off some of the arrears by way of a lump sum, and brought a complaint about the management of the account.

I'm satisfied that the two sub-accounts currently on the mortgage are there because of the events I have set out above – in other words, that the original mortgage account was split because of the breakdown in the relationship between Mrs H and Mr L and the agreement that each would pay half of the mortgage. The account was split into two sub-accounts to allow that to happen. Neither sub-account relates to any additional borrowing. There has been no additional borrowing on the mortgage account.

Splitting the account into two sub-accounts was essentially an administrative arrangement. It allowed RBS to take two payments each month to the same mortgage. But it didn't formally separate the mortgage between Mrs H and Mr L. Each remained jointly and severally liable for the whole amount – which means that RBS could require them both together, or either of them individually, to repay the whole amount.

I can see that this arrangement has caused confusion. At times correspondence has only referred to one, not both, sub-accounts, and Ms K was surprised to discover the

existence of the second one. And as the arrangement between Mrs H and Mr L to pay half each has broken down, there doesn't seem to me to be any need to retain it.

It would, it seems to me, make it easier for Mrs H and Ms K to manage the account if it was set up as a single account with no sub-accounts. While Mr L isn't a party to this complaint and I can't therefore get his agreement to the change, I can't see that he would be disadvantaged by it. I therefore propose to direct RBS to merge the sub-accounts into one single account – though I invite comments from RBS as to the practicalities of doing so, which I will consider before finally deciding to make the direction.

Ms K has also complained that RBS hasn't provided her with statements for the account or information about payments over the years. I have seen what has been provided, and I agree that it isn't very helpful. I accept that RBS can't now identify which payments were made by Mrs H and which by Mr L. But I consider that it should at least be able to provide a full history of the account, showing both sub-accounts, and showing debits, credits and rolling balances each month, as well as the arrears balance. I intend to direct that it do so.

I've set out that there isn't any additional borrowing on the account. But there is a charging order over the property in relation to Mr L's business debts. I can't comment on the validity of the order or RBS's actions in registering it, since that was a matter dealt with by the previous ombudsman.

Ms K has said that RBS won't give her any information about the charge, what it relates to or how much it is for. I'm afraid that I agree that it can't do that. It is a matter that relates to Mr L's banking arrangements with RBS, and RBS owes him a duty of confidentiality. I do appreciate that it concerns Mrs H too, since the charge is secured over property that she jointly owns with Mr L. But RBS can't give her information that would breach Mr L's confidentiality.

It seems to me that this is essentially a dispute between Mrs H and Mr L about the ownership of the property. The registering of a charge against Mr L's interest in it does have the potential to impact on how much of the proceeds Mrs H would receive on sale of the property. But that has to be resolved between Mrs H and Mr L, and is something on which Mrs H, or Ms K on her behalf, may want to get legal advice. I can't direct RBS to do anything about it.

I've set out in this provisional decision my understanding of the position. I've said that I think RBS ought to take some steps to assist Mrs H. But I've also explained the limitations on what I can require it to do. I invite further comments from both parties, and when I've considered those I will go on to issue my final decision.

the responses to my provisional decision

Mrs H and Ms K didn't accept my provisional decision. They said that there were three separate accounts – Mrs H's account, Mr L's account, and the arrears account. Mrs H is the principal on the first and third of these but not the second.

Ms K said that I had failed to deal with the extent of RBS's maladministration. In particular:

- The mortgage was split into two separate accounts in 2001. Since 2005, only Mrs H has contributed to the mortgage. But RBS has denied her information about her accounts, the interest and the arrears. It has failed to communicate with her.
- This meant that Mrs H and her attorney Ms K were put at a real disadvantage in managing her affairs, which meant that they were unable to manage the debt and so incurred extra interest.
- Despite a written agreement that Mr L's business debts wouldn't be recovered against the property, RBS took out a charge over it without telling Mrs H.
- RBS was trying to disadvantage Mrs H by allowing arrears to accrue without telling her so that it could repossess the property.
- Mrs H wasn't given any independent legal advice about the all monies charge at the time she agreed to the mortgage. The mortgage was arranged by the part of RBS that dealt with Mr L's business banking. The law says that RBS can't rely on an all monies charge for the business debts of one partner without the express agreement of the other.
- It isn't fair or lawful to deny Mrs H information about the business debt because of Mr L's confidentiality
- RBS deliberately withheld information about the arrears until it would have been too late for Mrs H to prevent repossession; it was only the intervention of her family that saved the property.
- RBS's failure to provide information about the account has made it impossible for Mrs H to settle her affairs with Mr L following their separation. Even now it won't provide a redemption statement.

RBS also replied to my provisional decision. It said that because of the age of the account it was managed on an older computer system and so it wouldn't be possible to merge the two sub-accounts. It said it would be possible to produce the full breakdown I had asked for but would take some time due to the age of the account. It confirmed that the account is not currently in arrears.

my findings

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

I do understand Ms K's frustration about the communication history with RBS. But that was a matter looked at by the previous ombudsman, for which he awarded compensation, and so it isn't something I can consider again in this decision. While I can sympathise with how difficult Mrs H and Ms K have found these things, there isn't any evidence that RBS has deliberately withheld information from them or tried to drive Mrs H to repossession.

I'm afraid it isn't right that there are three separate accounts. There is one mortgage account, which is in the joint names of Mrs H and Mr L. For administrative purposes, it was split into two sub-accounts to allow them both to make individual payments. But it wasn't ever split into two separate mortgages. There is one mortgage account for which both Mrs H and Mr L are, and always have been, jointly and severally liable. There aren't any arrears on the account at the moment, but even if there were, that wouldn't be a separate account either. Any arrears owing is simply that part of the mortgage instalments (plus interest) that remains unpaid and, while it might be shown separately on statements, it is part of the single overall mortgage debt.

Nor is Mr L's business debt secured against the all monies charge that Mrs H agreed to when the mortgage was taken out. It is a separate debt, the subject of a separate legal

charge over the property not related to the mortgage debt or mortgage charge. That charging order was issued by a court. It is secured against the property because Mr L is still joint owner of it, and so the charge secures his debts against his interest in the property.

That's why it can't give Mrs H any information about that charge or debt, and I can't require it to. It isn't a debt to which she is a party or for which she is liable. It is secured over a property she jointly owns. But it is Mr L's debt alone, and so giving her any information about it would be a breach of his confidentiality. However, I understand from Ms K's letter that Mrs H and Mr L are looking to sell the property and separate their finances, and so this can be dealt with as part of that process.

I accept that it isn't practically possible for RBS to merge the two sub-accounts. Nor do I think, from Ms K's response to my provisional decision, that doing so is a priority for Mrs H and Ms K. They want to know the overall position, and want an up-to-date redemption statement, and so that is what I will direct RBS to provide.

my final decision

For the reasons I have given, my final decision is that I uphold this complaint and direct the Royal Bank of Scotland Plc to:

- Give Ms K, on behalf of Mrs H, a full breakdown of the history of the account in the terms I set out in my provisional decision (quoted above)
- Give Ms K, on behalf of Mrs H, an up to date redemption statement for the mortgage that takes into account both sub-accounts.

Under the rules of the Financial Ombudsman Service, I am required to ask Ms K, on behalf of Mrs H, to accept or reject my decision before 13 July 2015.

Simon Pugh
ombudsman