

Complaint

Mr H and Mrs H have complained that The Royal Bank of Scotland Plc mis sold a business loan and gave poor financial advice.

Background

Mr H and Mrs H run a farming business. At the relevant time, they were trading as the WAJH partnership.

In 2013, an opportunity arose to buy a plot of land and develop the business. The partnership had been renting the land and its business was dependent on it. The partnership approached its bank for a loan but by then its bank had ceased lending activities. Mr H and Mrs H were advised to speak to RBS about a loan.

RBS wanted security for any borrowing. However, the existing bank already had a charge over the partnership's properties. It was agreed, therefore, that the partnership would borrow £420,000 to repay all existing borrowing and £52,000 to buy the plot of land. RBS would register a charge on the partnership's properties.

The partnership expected the refinancing to complete within a short time. It said it was told it would be quick. However, it took approximately eight months for the refinancing and registration of the charge to be completed. At the end of this period, the partnership said it was financially worse off because of the arrangement fees, the higher than expected legal fees and a higher interest rate.

In 2014, the partnership ran into financial difficulties after a bad summer. It asked RBS for financial assistance. The relationship manager and senior relationship manager visited the farm to discuss how RBS might assist. RBS offered a short-term loan with a 12 months repayment plan to ease the cashflow problems and a 'capital holiday' on existing loans, which were placed on an 'interest only' payment schedule.

The partnership agreed to this, but subsequently it found that the monthly payments were higher, and it couldn't keep up to date with monthly bills. This caused problems with local suppliers.

The partnership said when it became difficult to trade, it contacted RBS again, but the senior relationship manager had left the bank and RBS couldn't provide contact details for his replacement.

In 2015, the partnership borrowed £27,000 to buy a share in land from Mr H's sister. In 2016, it borrowed £52,000 to refinance the loan taken in 2015 and to help with the day to day running of the farm and to sustain future profits.

However, the partnership remained dissatisfied with the service it had received from RBS. It complained that its bad advice and lack of understanding of the farming business meant that it had incurred expensive additional costs and higher interest rates. It said the impractical facilities which RBS provided strangled its cashflow and severely damaged its farming business. And by 2016, it said it didn't know what it was paying each month.

The partnership raised a complaint with RBS about poor financial advice. It asked for financial compensation for having to pay additional interest, fees and charges, including the legal fees, and for the stress and worries caused by its financial worries.

RBS didn't agree that it had mis-sold any borrowing which the partnership had taken up since 2013. It said it considered whether lending was responsible and held full discussions with the partnership about its financial situation, especially its existing borrowing and debts when it approached the bank in 2013 and again in 2014. It also said the partnership received full support from its relationship managers who went out to the farm to discuss its financial situation. It acknowledged there had been a temporary hiatus when the senior relationship manager left, but his post was quickly filled, and the new manager sent the partnership a strategy letter.

Also, a relationship manager sent the partnership a summary of all the payments when it said it didn't know what it was paying each month.

The partnership wasn't happy with RBS's decision and so it asked this service to investigate.

It has asked this service to look only at the loan for £420,000. It doesn't feel the advice received for this loan was correct. The partnership told us it has no concerns about the other loans.

An investigator looked into the partnership's complaint. The investigator referred to the Standards of Lending Practice. She didn't think RBS had breached this code or industry standards. She said:

- the additional legal costs were reasonable, given there was extra work to do
- there's no evidence the original loan for £420,000 was irresponsible – it was taken out to refinance the internal and external debt
- there's no evidence the relationship managers provided a poor service and one of them did have a background in farming and had also managed some other farming businesses.

However, she concluded that the refinancing shouldn't have taken as long as it did, even if there was extra work required. She recommended that RBS pay the partnership £200 for the inconvenience caused to it by the delay.

The partnership didn't accept the investigator's opinion and it has asked for an ombudsman's final decision.

My findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

When considering what is fair and reasonable, I'm required to take into account: relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time.

Having done so, I'm afraid my review of the evidence has led me to the same overall conclusions as those reached by the investigator and for broadly the same reasons.

It seems clear from the evidence that the partnership was looking to expand and develop its farming business. It seized on opportunities to buy land for the farm as they arose. And the

partnership seems content with the loans it took out to buy new land and to assist its cash flow problems.

However, the partnership feels that the refinancing in 2013 was ill advised, although it hasn't been very specific about what should have happened instead or how it should be compensated.

I need to be clear that it's not my role to determine whether the amount of £420,000, or the refinancing itself, was the right decision. These are commercial decisions for the lender to make against its own criteria for assessing risk. And I can't substitute my view for the decision taken by the lender. My role is to consider whether RBS followed the general industry guidance and principles, which are mainly set out in the Standards of Lending Practice.

I think it did.

The Standards of Lending Practice sets out the minimum standards of good practice for lenders when dealing with small businesses. The investigator has referred to the standards in her opinion, so I won't repeat them here.

The partnership now questions whether the £420,000 loan met its needs. Whilst I can't answer this question, I can see from RBS' interview notes that in 2013/14 it carried out a full assessment of the business, with specific reference to farming and agricultural data, and of the partnership's financial commitments. I noted that it described the repayment terms on the existing loan as 'aggressive,' which suggests that perhaps that loan was also creating financial difficulties.

Based on the interview notes, I can't say that RBS didn't provide the partnership with clear information about products which met its needs. Moreover, it seems from the documents that RBS asked, not unreasonably, for security but there was already a charge over the property and business. So, there were other reasons for consolidating its existing debts and refinancing with the loan for £420,000.

RBS also adhered to the guidance by setting out the monthly repayments, the interest rate, the security and terms and conditions of the loan in writing in the loan agreement, which Mr H and Mrs H signed on 11 February 2014.

I also note that the partnership had an accountant and a solicitor acting for it at the time and so it had the opportunity to seek independent financial and legal advice. I think the partnership went into the refinancing with its eyes open.

Delay

The partnership said it was told that the refinancing would be completed quickly.

The partnership wanted land held by Mr H to be transferred into joint names with Mrs H. I've seen correspondence which shows that the partnership's solicitor advised RBS's solicitor that this was going to be more complicated than at first thought.

It seems the land was made up of four separate plots. Only one plot was registered with the Land Register. The title deeds for the other three plots were extensive and the plans were unclear. The lawyers advised having a new plan prepared, with an application to the Land

Register for the three plots not currently in the Land Register. RBS's solicitor advised that the proposed date for completion was unrealistic.

I don't consider that RBS was at fault here or that it caused the delay. However, I can't see any evidence that it gave the partnership any revised timescales or kept it updated. So, I think the investigators recommendation that it pay £200 for the inconvenience caused is a fair one.

RBS Legal fees

I sympathise with the shock of receiving an unexpected bill for legal fees. But again, it's not my role to determine whether the lawyers' fees were excessively high. And as I've explained above, there was additional work involved in sorting out the legal titles and registering the plots. So, it was only to be expected that the legal fees would increase. Besides, this wasn't a result of anything RBS had done.

Poor advice and lack of expertise

RBS told us that one of the relationship managers had a background in farming and had also managed some other farming businesses. The interview notes are also very specific to farming and agriculture and are not generic. I'm afraid I can't see any evidence that the bank didn't understand the nature of the partnership's business.

Taking everything into account, I consider that RBS followed the principles set out in the Standards of Lending Practice. I don't think it would be fair and reasonable to ask it to compensate the partnership for additional legal fees, banking fees charges or interest. However, I am asking it to pay £200 for not keeping the partnership up to date about the timescales.

I'm sorry this will be disappointing news for Mr H and Mrs H. I can see from their correspondence that they have had some difficult and challenging years and I have no doubt it has been a worrying time for them.

I hope the reasons for my decision are clear and that their financial situation improves for them.

My final decision

For the reasons stated above, my final decision is that I'm partially upholding this complaint and I'm asking the Royal Bank of Scotland Plc to pay £200 to the WAJH Partnership.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H and Mrs H to accept or reject my decision before 6 December 2020.

Razia Karim
ombudsman