

complaint

Mr M complains that The Royal Bank of Scotland plc (RBS) put a charge on his property. He doesn't believe it should have done so as he was in the process of setting up a trust deed at the time. Mr M would like the charge taken off his property.

background

Mr M says in 2007 he engaged in a Trust Deed, as part of that process all of his debts, including those with RBS, were noted on a Creditor's list. And all contact from his creditors went to his appointed Trustee. He says he believes that RBS applied a charge to his property in the knowledge he intended to enter into a Trust Deed. And so shouldn't have done so.

He says he has had no contact from RBS about the debt or charge in eleven years. And only became aware of the charge when he was trying to repair his credit file in 2018.

He says RBS said it would remove the charge. But then told him it wouldn't. It has given him a redemption figure. But he isn't sure it's correct.

RBS said its records showed that a Decree was received on 27 March 2008 for the total sum of £11,927.69. This debt was secured against Mr M's property on 19 September 2008. It noted Mr M didn't enter into a Trust Deed until 16 December 2008. It says trust deeds don't manage secured debts. So doesn't believe it has done anything wrong.

It said when it became aware of Mr M's insolvency it didn't pursue further repayments or make a claim for the debt within the Trust Deed. It says it has provided a redemption figure of £11,291.12

Our investigator didn't uphold the complaint. He found the charge process started in March 2008 and concluded before the Trust Deed had been set up. So he didn't feel RBS had done anything wrong. He said he would RBS to clarify the calculations for the redemption figure.

Mr M didn't accept this view. He said the Trust Deed process started in 2007 and all his creditors were including RBS were in discussion with his appointed trustee at the time. And he says that his debts with RBS were advertised along with other debts and were on the court listing for his Trust Deed. He says his appointed trustee was unaware of RBS's intention to put a charge on his property.

Our investigator considered these comments but didn't change his view. He said that the solicitors RBS used served Mr M with court papers on 17 April 2008. The charging order was then approved by the Court. So he did feel there was evidence to show Mr M had been advised of the charge on his property.

Mr M didn't accept this. He says he didn't get any correspondence from RBS as all correspondence was being dealt with by his appointed trustee. And he said he had two other debts secured by charges that were declared to the Court but set aside to be dealt with by a 'side letter and arrangement' and were fully paid back over the duration of the trust deed.

However Mr M said his main point was that he felt RBS should have responded to press and court advertisements about his debts

my findings

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

I don't think there is any dispute that RBS has a charge against Mr M's property. The issue seems to be if RBS correctly applied this charge. Mr M feels it applied it knowing he was entering into a Trust Deed arrangement.

As I understand it a Trust Deed is where an individual agrees to make affordable monthly payments over a fixed period of up to four years in order to reduce debts. At the end of this four year period any outstanding debts are written off. The deed covers unsecured debts.

Mr M says that RBS should have responded to press and court advertisements about his debts as RBS was listed as a creditor. I've noted Mr M has given us a list of his creditors which includes RBS. If I have understood him correctly I think this means if RBS had done this his debts with RBS would have been dealt with under the Trust Deed which clearly would have been to his benefit as any outstanding debts would have been written off by now.

I've asked RBS about this. It has told us there is an automated process which alerts the bank to insolvencies. It then takes any appropriate action. I appreciate this response will be frustrating for Mr M as it doesn't answer his specific question as to whether RBS was aware of press and court advertisements. And if so why it didn't approach his appointed trustee.

However I have also seen RBS's customer notes which include reference to the charge on his property but don't refer to Mr M entering into a Trust Deed arrangement. I have also asked if RBS has any information to say when it became aware of the Trust Deed. It says it doesn't have any other information other than what it has given us. That's unfortunate but banks don't have to keep information for ever and its over ten years now since these events occurred so I don't find that unreasonable.

I have also asked Mr M if he has any information from his appointed trustee that might be able to help. Although he has given us letter confirming that the trustee could go ahead and get the Trust Deed protected this letter doesn't give me any specific information about RBS.

Other than the list of creditors Mr M has given us which I can't be sure RBS saw I have no other information to show that RBS was aware Mr M was entering into a Trust Deed arrangement when it started the process to put a charge on his property.

However I do have a letter from RBS's solicitors dated 18 April 2008 stating it had served court papers on Mr M on 17 April 2008. The charge was subsequently applied on 19 September 2008 but Mr M's Trust Deed wasn't set up until 16 December 2008.

I can't accept Mr M was unaware RBS was applying for a charge to be put on his property given the court papers I have referred to above were hand delivered to Mr M's address. Also although I haven't seen any further documentation I think it's unlikely that neither the court nor the solicitor wouldn't have confirmed the charge on Mr M's property when the court agreed this.

Taking all of this information into account I don't feel I have any evidence to show that RBS deliberately applied a charge on Mr M's property knowing a Trust Deed arrangement was being set up. So I can't reasonably ask RBS to take the charge off the property.

I accept as RBS hasn't been in touch with Mr M for some years about his debts. And that might be reason for Mr M to think these had been included and resolved via his Trust Deed. RBS has explained once it became aware of Mr M's insolvency it closed his account which would explain why correspondence ceased. However the debt secured against the property is still valid.

I know that Mr M has queried the redemption figure that RBS has given him. He hasn't explained why he thinks the figure RBS gave him was wrong. So it's difficult for me to judge if the figure is accurate. However I have asked RBS to confirm the figure and how this has been made up to Mr M.

my final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 12 March 2019.

Bridget Makins
ombudsman