

## **complaint**

Mrs O has complained that The Royal Bank of Scotland Plc (RBS) is asking her to pay a shortfall of £60,000 following the sale of a property upon which RBS had a mortgage. She is also unhappy about the way RBS has dealt with her subject access request (SAR).

Mrs O wants RBS to acknowledge that she isn't responsible for the shortfall debt and remove any information about this from her credit file. She also wants RBS to pay compensation for the stress she's been caused. Mrs O is also asking RBS to disclose documents which she says were withheld when she made her SAR.

## **background**

This complaint arises out of unhappy circumstances. Mrs O and her former husband, Mr O, jointly owned a property which was mortgaged to RBS. In 2006 Mr and Mrs O were divorced. A consent order was made by the court that the property was to be sold. Pending that event, Mr O was to pay the mortgage and indemnify Mrs O in relation to this.

Mr O later applied to the court to have the property transferred into his sole name and that Mr O would ask RBS to approve this and release Mrs O from her covenants under the mortgage.

Mrs O says that a court order made in 2008 releases Mrs O from her liability towards the mortgage. She says that RBS confirmed this, but RBS has no record of this. RBS's position is that Mrs O remained on the mortgage and was jointly and severally liable for the debt.

The property was repossessed by RBS and sold in July 2015. In November 2017 RBS contacted Mrs O about the shortfall debt, which is about £60,000.

Mrs O complained about RBS considering her liable for the debt, which she disputes. Mrs O is also unhappy about the way RBS handled her request for a SAR. She thought RBS had failed to provide a full response. Mrs O also says that, although she'd given RBS her email address in 2014, it didn't contact her about the property at all.

Mrs O noted that RBS's solicitors had carried out a search on her credit file, which showed as a "credit application". Mrs O was unhappy about the implications of this on her credit file.

RBS didn't uphold the complaint about the shortfall debt. It explained that she had never been released from the mortgage and so remained liable for it. With regard to the SAR, RBS agreed to pay Mrs O's out-of-pocket expenses incurred as a result of the SAR. On 30 August 2018 RBS paid Mrs O £286.60. This was for legal fees of £240 plus interest of £19.80, a refund of postage costs totalling £14.80 and the £10 SAR fee. RBS also agreed to liaise with its solicitors to have the search on Mrs O's credit file removed.

Mrs O brought her complaint to us where it was considered by an adjudicator. She didn't think that the complaint about the shortfall debt should be upheld. She was satisfied the compensation paid for the bank's handling of the SAR was fair. The adjudicator also thought RBS was acting reasonably in getting its solicitors to remove the credit search. But she didn't think the debt should be removed from Mrs O's credit file.

Mrs O disagreed with her findings and asked for an ombudsman to review the complaint.

Mrs O has also raised additional issues concerning the sale of the property, which she considers was mis-handled by RBS.

### **my findings**

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

**preliminary points;** I trust Mrs O won't take it as a discourtesy that I've condensed her complaint in the way that I have. Ours is an informal dispute resolution service, and I've concentrated on what I consider to be the crux of the complaint – which is that Mrs O is being held liable for the shortfall debt when she doesn't think she is responsible for it.

I have no doubt that this is very important for Mrs O but although I've read and considered the whole file I'll keep my comments to what I think is relevant. If I don't comment on any specific point it's not because I've not considered it but because I don't think I need to comment on it in order to reach the right outcome.

This service is impartial between, and independent from, consumers and businesses. What this means is that we don't represent either party. So although Mrs O has set out what she wants us to tell the bank to do, we don't take instructions from either party about how we investigate a complaint.

I also won't be commenting on any issues relating to Mr O and his current wife. I understand Mrs O has raised concerns about RBS's dealings with those parties, But I don't have permission from Mr O or his current wife to access their personal data. This means that I can't look at any information about their contact with RBS, even where it affects Mrs O.

Mrs O has confirmed to us that she has now referred her complaint about the SAR to the Information Commissioner's Office (ICO), and has provided us with the reference number. In the circumstances, it's not appropriate for me to comment any further on this part of the complaint. Our rules provide that, where a complaint has been referred to another body to investigate, we can decline to consider it further.

I will also explain that, prior to joining the ombudsman service, I was a solicitor specialising in family law. So I'm experienced in the issues Mrs O has raised, and I'm familiar with the terms of the court order she's provided to us.

I see that Mrs O has raised some new issues about the way RBS dealt with the sale of the property. I can't include new issues in the complaint. Mrs O will need to refer her concerns about the sale of the property to RBS first so it has an opportunity to respond to the complaint. If it can't be resolved, then Mrs O will be able to bring a new complaint to us.

**the shortfall debt:** The main issue in this complaint is whether or not Mrs O should be held liable for the shortfall debt.

The court order from 2006 provided that the property was to be sold but, in the interim Mr O would be responsible for the mortgage repayments and would indemnify Mrs O for this. Later on I am told the order was varied. I've seen a copy of an order for directions from 2008 that Mr O was to approach RBS to seek consent to a transfer of the mortgage into his sole name and a release of Mrs O from the mortgage.

RBS has confirmed that it didn't consent to transfer the mortgage into Mr O's sole name or release Mrs O from her covenants under the mortgage. I've seen nothing in the available documentation to show that RBS ever agreed to this, or that it led Mrs O to believe it had done so. In fact, the correspondence from RBS reinforces its position that Mrs O was still on the mortgage and liable for the debt.

The implications of this for Mrs O are that she has remained liable for the debt throughout the existence of the mortgage – and she is also now liable for the shortfall debt. I fully understand and appreciate how unfair this seems to her, particularly as Mr O agreed to indemnify her. But RBS was under no obligation to release Mrs O from the mortgage.

I acknowledge Mrs O's argument that Mr O agreed to indemnify her. The indemnity simply means that if Mrs O is required to pay the debt, she can ask Mr O to indemnify her, and can pursue this in court if he doesn't do so. But that's a matter between them and doesn't involve RBS at all.

I know this will be unwelcome news for Mrs O, but I'm satisfied that she has never been released by RBS from liability for this debt. This means that I'm satisfied RBS is entitled to pursue her for the shortfall. If Mrs O considers Mr O should reimburse her pursuant to the indemnity given in 2006, that's something she'll need to take up with him.

**contact from RBS:** Mrs O says that the court order from 2006 shows the address outside the UK to which she had moved, and so RBS "*knew*" where she was. But RBS is only required to contact customers on the addresses they have registered with the bank. Mrs O did not change her address with RBS to the address abroad. I'm also satisfied that RBS was under no obligation to write to Mrs O by email, which is not a secure method of communication. So I'm satisfied the bank has done nothing wrong in this respect.

**Mrs O's credit file:** RBS has confirmed that it's asked its solicitors to remove the credit search against Mrs O's name. I don't require RBS to do anything further in relation to Mrs O's credit file. That's because I'm satisfied the shortfall debt is legitimately due to RBS and so the bank is entitled to show this on Mrs O's credit file.

I note RBS paid Mrs O £286.60 for its handling of her SAR. As I said above, I'm not going to comment further on that issue, as Mrs O has referred it to the ICO. But in relation to the other issues in this complaint, as I'm satisfied RBS hasn't done anything wrong, I won't be ordering the bank to pay anything further.

I don't underestimate the shock it must have been for Mrs O to find she was still liable for this debt, many years after her marriage to Mr O had ended. I am sorry if my decision adds to her distress. But the unfortunate fact is that Mrs O was never removed from the mortgage. This means that, legally, RBS is entitled to pursue her for the shortfall debt.

**my final decision**

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs O to accept or reject my decision before 25 July 2019.

Jan O'Leary  
**ombudsman**