

complaint

Mr and Mrs G complain that The Royal Bank of Scotland Plc ("RBS") is pursuing them for a liability that they believed had been dealt with in their bankruptcy.

background

Mr and Mrs G became bankrupt in 2010 and were discharged from bankruptcy in 2011.

In 2012, RBS made demand on Mr and Mrs G in relation to a debt owed by their former limited company, under a personal guarantee which they had given and which was secured by a legal charge over their home. Mr and Mrs G say they had provided their trustee in bankruptcy with details of the company debt, and so believed that it was included in their bankruptcy and RBS could not ask them to pay.

Mr and Mrs G have been told by their trustee that RBS did not provide details of this debt, and so they consider that RBS has prevented them from exercising their right to deal with the debt within their bankruptcy. Mr and Mrs G say they paid £10,000 to their trustee in bankruptcy in order to buy the trustee's interest in their home, believing that all their debts – including the liability under their personal guarantee – had been included in the bankruptcy.

They say that, had they realised that the debt was not included in the bankruptcy, they would not have continued to make mortgage repayments since those will essentially go towards repaying the debt rather than building their equity.

RBS demanded payment of over £97,500, whereas Mr and Mrs G say that their personal guarantee was limited to £62,000 and so RBS should not have asked them to pay more than that. Mr and Mrs G also argue that, since the company's debt was backed by a Government guarantee scheme, RBS should receive repayment from that source before trying to recover any remaining balance.

Mr and Mrs G asked RBS to write off the debt and pay them compensation for the distress and inconvenience caused to them. As RBS did not consider it had acted wrongly, Mr and Mrs G brought their complaint to this service.

An adjudicator investigated the complaint. She was satisfied that Mr and Mrs G had signed a personal guarantee of £86,000 plus interest and, because Mr and Mrs G's personal guarantee was secured by an "all monies" charge on their home, the liability survived their bankruptcy. She could not see that RBS had misled Mr and Mrs G that the liability was included within the bankruptcy, and noted that the demand made by RBS did not include that part of the company's indebtedness which had been partly covered by a Government guarantee.

However, the adjudicator also noted that RBS had not told the trustee about the liability secured on Mr and Mrs G's property. That meant the trustee asked them to pay £10,000 to buy out the beneficial interest in the property. The money had been distributed to Mr and Mrs G's creditors, but – in all the circumstances – the adjudicator did not consider it fair that Mr and Mrs G should have to pay that same amount again under their liability to RBS.

The adjudicator also noted that RBS had offered Mr and Mrs G £200 in respect of poor service, which she considered was a fair amount.

Mr and Mrs G did not agree with the adjudicator's conclusions and said, in summary:

- The guarantee liability is secured by the same legal charge that secures their mortgage. Their house is worth about £110,000 and, after deducting the mortgage debt of £81,000, there is only equity of £29,000. So only £29,000 of the guarantee liability can be secured.
- They understood that, by entering into bankruptcy, the unsecured portion of the guarantee liability would be written off. It was important for them that the bankruptcy covered everything.
- RBS could either have accepted a full and final offer from them in respect of the guarantee liability, or they could have stopped paying the mortgage and waited to be evicted and, hopefully, re-housed. In that case, RBS would have had to write off any debt that was left after the sale proceeds had been applied.
- They borrowed £10,000 from family in order to buy the beneficial interest in the property. They should be given back that money, rather than just having it taken of the guarantee liability.

my findings

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

RBS has already accepted that its communication with Mr and Mrs G about the liability could have been better than it was. It seems clear that Mr and Mrs G did not fully appreciate the nature of the liability, how it was secured and that it was not included in their bankruptcy because RBS relied on its security. I accept that, if RBS had been clearer about the liability, Mr and Mrs G would have been better informed to make their financial choices about how they would proceed.

I realise that Mr and Mrs G have reasoned that only a small part of their guarantee liability could actually be secured by the legal charge on their property. But both the mortgage debt and the guarantee liability are secured. RBS was not obliged to accept a full and final settlement offer from Mr and Mrs G, or to include the debt within the bankruptcy.

It was always open to Mr and Mrs G to force RBS to take possession of their property and realise whatever price was available in the market in settlement of their secured liabilities. But I am not clear how that would have left Mr and Mrs G in a better position – in particular, they have been able to remain in their home, which they say has appreciated significantly in value since then. And I do not see that their trustee would have allowed them to accumulate the money that they paid each month for the mortgage; that would have been available income for their creditors.

I accept that Mr and Mrs G paid £10,000 for the beneficial interest in their property, thinking that their guarantee liability was primarily covered by the bankruptcy. That money was then distributed to their other creditors and the transaction cannot be reversed. I am not persuaded that RBS should pay Mr and Mrs G £10,000 but agree with the adjudicator that, in the particular circumstances of this complaint, the fairest solution is that RBS should

reduce their guarantee liability in a way that reflects the payment they made for the interest in the property.

my final decision

I have reached broadly the same conclusions as the adjudicator. My final decision is that I uphold this complaint in part and I direct The Royal Bank of Scotland Plc to:

- reduce Mr and Mrs G's liability under their personal guarantee by a total of £10,000 plus simple interest on that figure at 8% per annum from the date Mr and Mrs G bought the beneficial interest in their property to the date of settlement; and
- pay Mr and Mrs G £200.

Jane Hingston
ombudsman