

complaint

Mr and Mrs C complain that The Royal Bank of Scotland Plc (RBS) is acting unfairly in holding them liable for money withdrawn from their accounts, and for repayment of a secured loan in their name. They say they have no recollection of being party to the withdrawals or loan, and that they've been victims of fraud.

background

The background to this complaint has been set out in correspondence between the parties, and by our adjudicator. With that in mind, I'll simply provide a summary here.

For many years, Mr and Mrs C have banked with RBS. In 2014, Mrs C approached RBS with the intention of borrowing money. She says that during the meeting, the bank told her of an outstanding debt of around £14,000, in addition to the £9,000 mortgage shortfall she knew about. RBS said the debt related to loans taken out some years earlier.

Mrs C has questioned the validity of the debt, saying neither she nor her former husband had any recollection of taking out the borrowing. She doesn't feel she's received a satisfactory explanation from the bank, and that it's given her conflicting information about whether any money's owed.

Mrs C has made a similar assertion over cash machine and counter withdrawals made from the RBS current account dating back to 2007. Some of those withdrawals follow money deposited to the account. Mrs C also says neither she nor Mr C participated in those transactions.

RBS acknowledges it previously told Mrs C there were no loans in her name. But it says it's met with Mrs C on several occasions since, and corrected that. The bank asserts that the £14,000 is a further loan taken on Mr and Mrs C's mortgage account, with the proceeds having been used in part to settle previous loans they'd held. RBS has further noted that it has received – and settled, by credit to the current account – payment protection insurance (PPI) mis-sale claims relating to the earlier loans.

In respect of the current account transactions, RBS doesn't consider Mr and Mrs C have been victims of account takeover or fraud. The bank's records are limited due to the passage of time. However, it says that at least some of the withdrawals were made in Mr and Mrs C's local area, using cards and personal identification numbers (PINs) issued to them.

Our adjudicator felt RBS had done enough to investigate the disputes. She felt the bank had sufficient evidence to support its position, in relation to the original loans, the further advance, and the current account transactions. She didn't recommend that the complaint should be upheld.

Mrs C remains unhappy with the situation. She believes the bank's response isn't good enough, and maintains that she and her husband have suffered fraud. The matter's now been passed to me for review and determination.

my findings

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

happened, I've based my decision on what I think's most likely to have happened in light of the available evidence.

Having reviewed matters carefully, I'm not going to require RBS to take any further action to resolve this complaint. I'll explain why.

I've seen copies of current account statements sent to Mr and Mrs C going back to 2007. The withdrawals and deposits they've since questioned are clearly shown on the statements. I see no particular reason why, if Mr and Mrs C didn't recognise the transactions, they wouldn't have said so at the time. The delay in querying them means the bank doesn't have information that might have been available to it nearer the time. With this in mind, I don't believe I can fairly say that the bank's current inability to show Mr or Mrs C participated in the transactions means they didn't do so.

The information that is available shows many of the disputed withdrawals were made using cards issued to Mr and Mrs C, on days when they used their cards to make undisputed point of sale payments. I've not seen anything to suggest someone else was in a position to know Mr and Mrs C's PINs, and was able to take – and quickly replace – the cards on so many separate occasions.

RBS has provided records that satisfy me Mr and Mrs C took a number of personal loans from it over the years in question. That the bank no longer holds the applications or credit agreements isn't surprising. All of the loans were repaid by 2009, and there would have been little purpose in retaining such records for such a lengthy period after that point. However, the current account statements show loan money being credited, and repayments being made over a number of years. In addition, the bank has provided settlement forms relating to the reclaiming of PPI premiums relating to those same loans that bear what appear to be Mr and Mrs C's signatures. The redress payments were also credited to the current account.

I've mentioned that the loans were repaid by 2009. RBS has shown that those loans that were outstanding at that time were repaid from the proceeds of the mortgage further advance. This information was contained in the current account statements sent to Mr and Mrs C in August 2009, including the credit of £14,240. And I've seen the further advance documents, which also bear what look like Mr and Mrs C's signatures.

I don't think it's plausible that all of this activity was undertaken by an unknown third party fraudster, who'd successfully impersonated Mr and Mrs C over a period of several years, and had the means to access – and return – their cards on many occasions when they were themselves using them the same day, all without Mr and Mrs C knowing. It's possible some of the transactions – and possibly some of the borrowing – might have been made by Mr or Mrs C without the other knowing. But I don't believe I could fairly conclude that's the most likely explanation.

I appreciate Mrs C takes a different view. But overall, I think RBS has done enough to demonstrate it's entitled to seek recovery of the further advance from Mr and Mrs C. It wouldn't be right for me to stand in the way of that. And I think the bank's also done enough to persuade me that it doesn't need to refund any of the disputed transactions.

my final decision

My final decision is that I don't uphold Mr and Mrs C's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs C to accept or reject my decision before 12 October 2016.

Niall F Taylor
ombudsman