

## **complaint**

Mr and Mrs F are unhappy that The Royal Bank of Scotland plc (RBS) used proceeds from the sale of their home to repay other unsecured debts with RBS. To resolve this complaint Mr and Mrs F want RBS to pay the balance of the sale proceeds to them.

## **background**

It's Mr and Mrs F's view that RBS had no legal right to demand all the sale proceeds and it acted unlawfully. Mrs F is particularly concerned that RBS used the sale proceeds to pay a number of unsecured loans and an unsecured overdraft her husband took out with RBS – even though these weren't secured on their property and weren't her debt.

RBS told Mr and Mrs F it had been entitled to do this under its terms and conditions. After looking into the case, our adjudicator agreed and didn't recommend upholding Mr and Mrs F's complaint.

Mr and Mrs F disagree with our adjudicator's interpretation of the wording on the deed of legal charge which RBS relies on. They believe it just refers to the borrowing of the mortgage when the deed was signed.

Mr and Mrs F feel our adjudicator's view is neither fair nor reasonable. They've asked for an ombudsman to review what's happened, so this complaint has been passed to me.

## **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Mr and Mrs F have had some money problems and I sympathise with their situation. But, like the adjudicator, I'm not persuaded this is a complaint I can fairly and reasonably uphold. That's because I don't believe RBS has done anything wrong – or that it's acted in a way that isn't fair and reasonable. Here's why I say this.

We look at things differently to the way a court would and it isn't up to me to decide issues of legal liability – that would be a matter for a court.

My role is to look at all the circumstances and consider whether RBS has acted fairly and reasonably overall towards Mr and Mrs F.

I think this complaint turns on the wording in the deed of legal charge that Mr and Mrs F signed. So I've looked at this very carefully. Having done so, it seems to me fair and reasonable to say it did entitle RBS to use sale proceeds to pay off any debt Mr and Mrs F had at the bank.

The wording makes clear in my view that the bank's right to do this didn't just cover secured debt, and it wasn't limited only to borrowing outstanding at the time the deed was signed. It also says (I'm summarising here) that it doesn't matter which of the borrowers the debt belongs to – RBS can use the sale proceeds to pay debt in either borrower's sole name, as well as joint debts.

In block capitals across the top of the deed of legal charge there's a notice warning customers it's an important document. It advises customers to take legal advice before

signing - and to sign only if they want to be legally bound. So I think RBS took reasonable steps to draw Mr and Mrs F's attention to the need to be sure they understood what they were agreeing to when they signed the document.

It's been established that the bank *didn't* think about Mr and Mrs F's particular circumstances before deciding to apply the sale proceeds wholly towards paying debt owing to the bank. I've given a lot of thought to whether it ought to have done and if this makes a difference to the outcome of my decision. I can appreciate that not being able to afford to pay removal men must have made things very difficult for Mr and Mrs F on moving day. And that they'd made other plans for the net sale proceeds they'd expected to get. But, on balance, I don't think it's likely that RBS would have decided to do things any differently had it first considered Mr and Mrs F's financial circumstances. And I don't feel I can say RBS ought fairly and reasonably to have allowed Mr and Mrs F to decide how they wanted to spend the net sale proceeds in this situation. So it doesn't affect the outcome as far as Mr and Mrs F are concerned. And I can't in all fairness say this would be a reason to uphold their complaint.

Overall, I don't find that RBS acted wrongly, unfairly or unreasonably when it used all of Mr and Mrs F's sale proceeds towards paying off debt at the bank.

Mr and Mrs F have mentioned a number of points in reply to the adjudicator's assessment and I can see they've had some justifiable complaints about how RBS has dealt with their complaint. It's taken some time to obtain all the information needed from RBS in order to come to a final decision, and some of the things it told us weren't always helpful. But, the end result is that I've come to the same overall conclusion RBS reached when it first looked at this complaint some years ago. The fact that RBS hasn't always provided the level of service Mr and Mrs F might reasonably have expected isn't a reason for me to uphold this complaint about what happened to their sale proceeds. And, although I understand how stressful the complaint process has been for Mr and Mrs F, I don't feel I can fairly say RBS should pay them compensation in these circumstances.

### **my final decision**

For these reasons, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs F to accept or reject my decision before 6 November 2015.

Susan Webb  
**ombudsman**