

complaint

Mr M complains about how The Royal Bank of Scotland Plc ("RBS") has managed his credit card account.

background

Mr M told us that he wasn't happy with how RBS had managed his account. He said that he suffers with depression and anxiety which at times impacts on his ability to manage his personal affairs. He said that he believed he had told RBS about this.

Mr M said that RBS had first cancelled the direct debit that he used to pay the account. Then the account had dropped off his mobile phone app. He said that the account slipped into arrears, partly due to his mental health, but he said that he felt that the situation was compounded by RBS' handling of the account.

Mr M said that he had now received debt collection letters from two different third party debt collection agencies, and was confused about who he should be dealing with. He said that he was hoping to get a mortgage in the near future, but he thought that this account would hinder his ability to do so. He wanted RBS to take back control of his account from a third party, to apologise, to refund all charges with interest and to amend his credit file to remove all the blemishes relating to this account.

RBS said that it had written in reply to a complaint from Mr M in 2017. It said then that it had removed the direct debit from his account after it was returned unpaid in early 2016, and it had written to him then to tell him that.

It said that his credit card account had stopped showing on his mobile app because it was closed. It said that it had applied charges and fees correctly to his account, although it refunded some of those at that time as a gesture of goodwill.

RBS also said then that it wasn't its fault that there was no branch of the bank near Mr M. It said that there were other ways to pay.

RBS said that it had correctly reported the position on Mr M's credit card to credit reference agencies. It wouldn't change the information that they held. RBS also told us that a default had been correctly applied to Mr M's credit file on 1 March 2017, and it said that it had discussed this on the phone with Mr M before the default was applied, so it thought that Mr M understood what was happening.

RBS said that Mr M's account wasn't being managed by a third party agency. It had been sold to a debt collection agency. That agency had then sold the debt on to another agency. RBS said that it wouldn't take the debt back.

RBS said it didn't think that it had been told about Mr M's mental health.

Our investigator didn't uphold this complaint. She said that it was in Mr M's interest for RBS to cancel the direct debit after it had failed twice, as returned direct debits often incur a charge. And she thought that Mr M knew it had been cancelled, because he made manual payments after this.

Our investigator said that RBS had defaulted Mr M's account in March 2017, but he hadn't paid into the account since late 2016, and RBS had written to him to tell him it was going to do this. So she didn't think that this was unfair.

Our investigator said that Mr M had offered to make a payment onto the account early in 2017. RBS had agreed that if he did this, it wouldn't pass the debt to a collection agent, but that payment wasn't received, so she thought it was reasonable for RBS to pass this debt over to an agent.

Our investigator said that she thought that it wouldn't be unusual for a credit card account to disappear from a mobile app when it was heavily in arrears or being defaulted. And she thought that Mr M had other ways to pay. She said that it was unfortunate Mr M didn't live near a branch, but again, there were other ways to contact the bank and to make payments. And she said that fees were applied correctly to Mr M's account.

Our investigator said that she couldn't see anything to suggest that Mr M had told RBS about his medical condition. She said she didn't think the default, or passing the account to agents, was unfair, and she couldn't ask RBS to take the debt back or to remove the adverse marks from Mr M's credit file.

Mr M said he had definitely told RBS about his mental health difficulties. He wanted us to listen to calls when he'd said this to RBS. So our investigator asked RBS about that, but it said that it didn't have any records of calls where he had said this.

Mr M said that he remembered the call. He gave us details of the conversation. And he said he remembered that there were two calls with RBS on the same day. Mr M wanted an ombudsman to consider this case, and how RBS had failed to take account of his mental health when dealing with his account. So Mr M's case was passed through to me for a final decision.

my provisional decision

I issued a provisional decision on this complaint and explained why I didn't propose to uphold it. This is what I said then:

- Mr M had drawn our attention to a previous decision of this service involving a complainant with mental health issues. I started my provisional decision by saying that I had looked at this previous case, but I'd also reviewed this case on the basis of its own facts.
- Mr M told us that he didn't think that RBS took account of his mental health when it managed his account. And Mr M told us that he remembers telling RBS about his mental health, on the same day that he had two calls with RBS about this debt. He rang RBS, then it called him back.
- RBS sent us two call recordings from 23 February 2017, one where Mr M rang RBS and one where it rang him back, so that seemed to fit with Mr M's recollection of when this was discussed. Mr M's mental health isn't mentioned on either of the recordings that RBS has sent us. But it sounded to me, from what I could hear on the first recording, as if what we had wasn't the full call. The start of the recording we had indicated that Mr M has been passed to another person.

- We asked RBS if there was another recording, and it checked, but it said that it doesn't have the relevant section of that call. It also told us that not all of its calls are recorded. So it seemed likely that there isn't a recording of the relevant part of this call. That means that I had to decide what is most likely to have happened on that part of the call.
- Mr M remembers discussing his mental health with RBS on this day. And RBS's notes made on that day say that Mr M had told it he had missed payments due to ill health. So I thought this probably was discussed on the part of the call we don't have.
- But those notes also say "*no permission to note further.*" If Mr M told RBS about the mental health issues that he's alerted us to, then I would expect RBS to ask Mr M for his permission to note those issues on his file. RBS can't note those issues without Mr M's permission.
- The notes we have suggested to me that RBS did discuss Mr M's health with him. But on the basis of the notes I'd seen, I thought it was likely that RBS asked Mr M for permission to make a note of his mental health issues, and that Mr M didn't give RBS that permission.
- I had considered carefully all of the evidence that Mr M supplied about how his mental health affects him. And I could understand why Mr M thinks that RBS should've taken this into account when it was dealing with him. But I'd explained that I thought it was more likely that Mr M told RBS not to make any detailed record of his ill health. And that would mean RBS wouldn't have any permanent records of this problem. So it wouldn't be able to take this into account each time it dealt with him.
- Because I thought that was most likely to be what happened in this case, I didn't think that I could say that RBS should've acted differently because it knew about Mr M's mental health.
- I then turned to considering how RBS dealt with Mr M's credit card account.
- RBS did cancel the direct debit Mr M had been using to pay off his card. If RBS hadn't cancelled Mr M's direct debit after it was twice returned unpaid, then Mr M would have kept paying bank charges for the failed payments month after month. So I didn't think that RBS did anything wrong when it responded to Mr M's second failed direct debit payment by cancelling his direct debit arrangement.
- RBS said it wrote to Mr M to tell him the direct debit had been cancelled. And, like our investigator, I thought that Mr M realised this had happened, because he made a manual payment in the following month.
- RBS explained to Mr M that the mobile phone app won't work properly when a credit card is seriously in arrears, or when a card account has been closed. Mr M's account was in arrears from around April 2016, but, again, like our investigator, I thought that Mr M could've made a payment in other ways. I also realised that Mr M told RBS that there's no branch near him, but again, I thought that there were other ways to pay this debt.
- RBS also told Mr M that the account would be managed by a collections agent, and interest wouldn't be charged after that. A default would be registered on his credit file at this time. I could hear that it also explained that if he paid the account in full that there

wouldn't be any default. Mr M said he was going to try to chip away at the debt, so I didn't think he was intending to clear the account in full after this call. But I did think that RBS had explained what that would mean. So I didn't think that RBS did anything wrong when it registered a default for this account on his credit file, or when it passed the debt to collection agents.

- I didn't think that RBS had to remove that information from Mr M's credit file, or to take this debt back from agents now.
- I knew that Mr M would be disappointed, but I said that I didn't think his complaint should be upheld.

I invited the parties to make any final points, if they wanted, before issuing my final decision. RBS said it had no further information to add. Mr M sent a detailed reply.

my findings

I've reconsidered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. I haven't changed my mind.

Mr M said that he thought that the procedures for cancelling a direct debit and removing a closed credit card account from the mobile app should be fully detailed in RBS's terms and conditions. And he didn't think it was necessary to remove the account from the app entirely. But not every possible issue on someone's account can be covered in terms and conditions. And in this case, RBS did what I would expect. I don't think it acted unfairly or unreasonably when it cancelled Mr M's direct debit, or when it removed the closed account from its banking app.

Mr M said he'd spoken to RBS before the default was applied to his credit file. He said he had informed RBS of his depression and anxiety and wanted it noted but he didn't want it to be 'splashed' across his notes. He said that he wanted RBS's staff to be made aware of his illness but he didn't want notes to be applied to his current account. He said he was certain that he had made this clear, and that might be in the missing section of his call with RBS.

Mr M hadn't previously mentioned that he'd asked RBS to place restrictions on noting his illness. I appreciate that Mr M has told us he remembers this clearly, but I have to bear in mind that this call happened over a year ago. And we don't have the call recording, so I can't use that to verify what was said. We do have the notes that RBS made at the time, and those seem to me to suggest that RBS had asked for permission to record Mr M's mental health on its files, and he had refused. That, taken with Mr M's statement that he was reluctant to have this information shared across the whole of the business, makes me think it is more likely than not that Mr M did refuse permission for RBS to note his illness on his file.

Mr M said that even though he had told RBS about his illness, he said that he was still told on that call that a default would be applied to his credit file and that unless he settled his account in full within 6 days, there wasn't anything that he could do to prevent this from happening.

Mr M said that this made his illness worse. He said that RBS didn't appear to want to compromise or come to any form of mutually agreed payment plan. He said he expected RBS to have dealt with him more leniently given his disclosure about his illness, and that he was at that time working very part time hours.

I'm sorry to hear that this made Mr M unwell. Perhaps it would help if I explain what our service would expect of a business in this situation.

This service would expect a business to deal positively and sympathetically with someone who is experiencing financial difficulties, and that certainly is also the case for customers whose financial difficulties are either caused or exacerbated by their mental health. So we would expect RBS to work towards agreeing a mutually acceptable payment plan with Mr M to repay his debt. But that doesn't necessarily mean that RBS made a mistake by defaulting Mr M's account at this time.

Mr M says that RBS didn't want to reach any payment agreement on this call. He says RBS told him it wanted all the money, or it was going to apply a default. Unfortunately, we only have Mr M's recollection of this call, as RBS hasn't been able to find the call recording. So I can't be sure what Mr M may have offered to pay RBS. But the circumstances that Mr M has described suggest to me that he wouldn't have been able, at that time, to make any sizeable payments towards this debt. I understand that the debt hasn't yet been paid.

A default is a way of noting on someone's credit file that they haven't been able to repay a debt in line with the original agreement between the business and the customer. Whilst we do expect businesses to deal positively and sympathetically with people who are having financial difficulties, in a case like this one, where someone's account is heavily in arrears, and regular payments have not been made for some time, so that the customer is clearly outside of their original agreement, then we wouldn't necessarily say that a business should not record a default on that person's credit file because of the circumstances which have caused or exacerbated that problem.

I've considered this case carefully, and I don't think that RBS was acting unreasonably when it applied this default.

Mr M also wanted to comment on the debt being sold. Mr M said he'd spoken to two separate collection agencies. The conversations that he had with RBS when the second agency started to contact him had led him to believe that RBS hadn't sold his account, because it had been returned to RBS by the first collection agency before it was passed to the second.

I understand that RBS may initially have had debt collection agencies working on its behalf, but RBS has told us that it has now sold this debt. I understand that RBS's agents weren't able to come to any agreement with Mr M to repay this debt before it was sold. I don't think that RBS had to continue to manage this debt in house, or that it couldn't sell this debt.

Mr M said he'd tried to get details of when he made calls to RBS, but his phone provider didn't have any way of filtering those for him.

Mr M also said that RBS was supposed to have a support team which had been trained to help those who are facing mental health challenges. He said that he wasn't offered this support, or made aware of it at the time. But the same note that says that Mr M discussed his mental health on a phone call with RBS also says that RBS offered to put him in touch with its specialist support team, and he declined that offer. As this note was made at the time, I think it's more likely that RBS did make this offer to Mr M.

Mr M said that he thought that RBS would take a more lenient approach on someone with a physical ailment over someone with a mental one. But I haven't seen anything that makes me think that. I've explained that I do think that RBS tried to help Mr M.

I know that Mr M will be disappointed, but I still don't think this complaint should be upheld.

my final decision

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 October 2018.

Esther Absalom-Gough
ombudsman