

## **complaint**

Mr and Mrs H complain that The Royal Bank of Scotland Plc ("RBS") acted unfairly and unreasonably by declining their mortgage application and then charging an early repayment charge ("ERC") when they moved to another lender. They want the ERC refunded and confirmation that a particular debt isn't anything to do with them.

## **background**

Mr and Mrs H had a mortgage product with RBS, which if repaid early would mean they'd be charged an ERC. Mr and Mrs H applied for a new mortgage in order to borrow significantly more money and to transfer ("port") their current product with RBS to order to move home. The application was unsuccessful. Mr and Mrs H believed this was because a debt was written off for an individual with a similar name to Mr H, but they said that it wasn't his debt as Mr H was abroad when it was written off (but not when it was taken out). Mr and Mrs H went to another lender and paid off the RBS mortgage early; they were required to pay the ERC as a result.

Mr and Mrs H complained to RBS. It said Mr and Mrs H chose to repay the mortgage product, knowing of the ERC, after their application had been declined. RBS said that the ERC was part of the terms and conditions of the mortgage offer Mr and Mrs H accepted and they did repay the mortgage early. RBS said that it declined the application due to adverse information on its systems, and apologised that using the term "*commercial decision*" previously. It explained that it was unable to release more information, but it had checked the information against that from Mr H, and was satisfied that it was fair to rely on the information it held. RBS apologised for service issues and sent wine and flowers to apologise.

Mr and Mrs H complained to us, saying the debt wasn't Mr H's and that RBS and other lenders had given them credit since the debt had been written off in 2008. They also said the written off debt wasn't on Mr H's credit records. The investigator's view was that despite RBS previously giving loans to Mr and Mrs H, it wasn't unfair or unreasonable to review new applications and carry out extra checks, particularly when more money is being borrowed. Lenders were able to use their commercial judgement in her view. The investigator thought that there was enough information to enable RBS to believe the debt was connected to Mr H, and noted that debts were only on credit records for six years (which may be why the debt wasn't recorded there). She didn't uphold the complaint.

Mr and Mrs H disagreed. They said RBS hadn't taken reasonable steps to prove the debt was Mr H's and conflicting information had been ignored.

## **my findings**

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

The ERC is part of the terms and conditions of the mortgage as a matter of law; this means if the ERC is clearly set out (and Mr and Mrs H don't dispute that they were aware of it), and the mortgage is repaid early, legally RBS is entitled to the ERC.

The core of Mr and Mrs H's complaint is that RBS unfairly and unreasonably declined their application to borrow more money, which then led them to repay the mortgage early and the ERC. I've looked carefully at the evidence available to me. Given Mr and Mrs H were applying to borrow significantly more money than previously, it isn't unfair or unreasonable for RBS to have carried out extra checks not carried out before. The fact that the debt wasn't shown in Mr H's credit records is irrelevant as such records only note written off debts for about six years; RBS held information about the written off debt within its records.

Mr H says that the debt isn't his and points out information that isn't consistent with him being the debtor. But the information held by RBS also contains information consistent with Mr H being the debtor, such as the name and previous address. There's sufficient evidence to mean that it was fair and reasonable for RBS to conclude that, despite the conflicting information, the debt was connected to Mr H. I also note that the application didn't just fail due to this debt; RBS was uncomfortable with the overall amount applied for and the risk profile. The final decision is the underwriter's, and I can't say the reasoning was so unfair and unreasonable that RBS isn't able to rely on its commercial judgement.

Mr and Mrs H were aware that if they repaid the mortgage early, they would be charged an ERC. I can't say therefore it was unfair or unreasonable for the legally due ERC to be claimed.

### **my final decision**

My final decision is that I don't uphold the complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs H to accept or reject my decision before 25 October 2019.

Claire Sharp  
**ombudsman**