

complaint

Mr S complains that a credit agreement he has with The Royal Bank of Scotland Plc, trading as MINT, ("RBS"), is not enforceable. He also complains about RBS charges and communication in relation to his financial difficulty and debt. Mr S is represented in this complaint by solicitors from a law firm I will refer to as F.

background

Mr S took out a credit card in 1998 with the RBS, with a credit limit of £9,230. In 2011 he started to experience some financial difficulty and soon after was struggling to make payments on his debt. Mr S instructed F to act on his behalf.

F requested that RBS send it a copy of Mr S's credit card agreement, pursuant to s78 of the Consumer Credit Act 1974, together with a signed statement containing information relating to the outstanding debt. It said that failure to comply with this request meant the agreement could not be enforced.

RBS was unable to send a copy of the credit agreement so F made a complaint on Mr S's behalf. F said Mr S had some medical conditions and was now unemployed as a result, so he relied on benefits for his sole income. It said RBS should've known about Mr S's circumstances at the time the agreement was signed. And these should have been taken into account by RBS to ensure it treated Mr S fairly. It said actions taken by RBS, including continuing to ask for payment when it had asked RBS to not contact Mr S, have exacerbated Mr S's already difficult circumstances. It said it believes this is being done to unfairly pressurise Mr S into making payments. F said that as RBS had no means of providing the agreement it cannot prove the debt so it said RBS should write off the debt.

RBS did not dispute that the credit card agreement is currently unenforceable. But it expected Mr S to meet his obligations, bearing in mind the credit card agreement is not void and remains valid. It said requests for payments would continue to be made to Mr S. It also said that if repayments are not paid as they fall due it would report this with Credit Reference Agencies (CRAs), including any default.

With respect to the original application in 1998 it said it was not possible for it to carry out a thorough investigation into F's claims that Mr S's personal circumstances were not taken into consideration at the point of sale or during the application process. But it was satisfied Mr S's application would have passed through its normal appraisal process. It said the account was run in good order until 2011 which gave no indications of any difficulties faced by Mr S prior to that.

F was not satisfied with this response so it brought the complaint to this service. It also asked us to consider whether charges had been applied appropriately to the account. Our investigator said that we were unable to look at the miss-sale of the credit card, as the complaint fell outside of our jurisdiction under the rules concerning the time when a complaint is brought to us. F accepted this. The investigator said the aspect of Mr S's financial difficulties in November 2011 onwards is in our jurisdiction. RBS consented to us looking at charges on Mr S's account for six years from the date the complaint was first raised in October 2018.

In his view the investigator said that as Mr S had had the benefit of the funds RBS was still able to pursue him for the debt. He also noted that RBS are required under regulatory

requirements to notify Mr S about the position of the debt, (and any other information in regards to his account) directly. With respect to Mr S's financial difficulties he believed RBS had behaved in a positive and sympathetic manner. He also said RBS had not applied any charges, interest or fees since 2012.

F asked for a final decision from an ombudsman. It said Mr S continued to dispute the amount of historic debt. It said RBS had so far failed to demonstrate that a sum was payable and said it should write off the debt.

my findings

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

F has said it would like the element of Mr S's complaint relating to what debt (if any) is payable to be referred to the ombudsman. It accepted the investigator's other findings. So it's left for me to look at the current debt and what may be payable.

I'd first like to reassure Mr S and his representative, F, that I've read all the correspondence in the file but if I don't comment on any specific point it's not because I've failed to take it on board and think about it, but because I don't think I need to comment on it in order to reach what I think is the right outcome.

F has said that because RBS cannot produce the original agreement this means, in law, that the debt is not enforceable. And I accept that RBS has said the debt is unenforceable. But I have no power to say whether a credit agreement is enforceable or not, nor can I determine if either F or RBS are correct, this would ultimately be up to the court to decide. It follows then that I am unable to say how much is owed if the debt is unenforceable.

I have taken this into account, along with all the legal points F has raised, but my role is to decide what I think is fair and reasonable in the circumstances of Mr S's complaint. F has said if RBS doesn't write off the alleged debt Mr S may be waiting indefinitely for RBS to provide information about the alleged debt and at the same time this will negatively impact Mr S's finances and credit file.

I've looked at statements since 2008 and I note Mr S told RBS he had taken advice from a debt counselling service and was going on a debt management plan in 2011. RBS responded by offering a long term debt management repayment plan, specific to his credit card account, which Mr S accepted. By this acceptance it seems reasonable to me that Mr S accepted he does have a debt with RBS. In addition Mr S hasn't denied he's had the benefit of the money. So I'm satisfied that Mr S has borrowed money against an agreement. So I think it's reasonable of RBS to ask for it to be paid back.

my final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 1 May 2019.

Maxine Sutton
ombudsman