

complaint

Mrs R complains that The Royal Bank of Scotland plc ("RBS") refuses to acknowledge her status as a party to a joint mortgage account and co-mortgagor.

background

Mrs R brings this complaint through her daughter who has a lasting power of attorney.

Mrs R and her former partner jointly own the house she lives in and they both signed a legal charge which secures their mortgage loan and all their liabilities to RBS. The former partner left nearly fifteen years ago, their relationship ended, and RBS was informed of this. Mrs R complains that RBS has nevertheless:

1. failed to send her annual mortgage statements and to correspond with her;
2. obtained a charging order on the house to secure other liabilities but won't tell her anything about them;
3. refused to negotiate payment terms with her.

She seeks compensation and removal of the charging order.

The adjudicator considered that the complaint should succeed. Taking the three points of complaint in the same order she said:

1. This was poor customer service. RBS had apologised for it and had sent a cheque for £220 compensation to include £20 for call costs and postage. The adjudicator thought this was reasonable.
2. RBS had supplied a copy of the charging order which it obtained. It charges the former partner's interest in the house with payment of a judgment made against him in favour of RBS. RBS had written to Mrs R confirming it would rely on the legal charge to cover the mortgage only. It had further confirmed that if the house were sold for more than was due on the mortgage, it would return the surplus to the acting solicitor and pursue other liabilities separately. This service could not comment on the making of the charging order as that was a matter for the courts.
3. RBS knew about the power of attorney and all contact should have been with the attorney, Mrs R's daughter. RBS had failed in its responsibility. The adjudicator thought RBS should pay a further £250 compensation for the unnecessary distress and inconvenience it had caused, and RBS had agreed to do this.

Mrs R did not accept these findings. She said the adjudicator had interpreted the complaint more narrowly than indicated in the complaint form. In particular:

- a) there was no mention of RBS' taking a charging order over the partner's business debts without reference to Mrs R, in breach of its agreement. The promise not to use any surplus for other debts was only a statement of intention given to this service. It needed formal status as a court order;
- b) the original all-monies security for the partner's business debts was not advised to Mrs R or her solicitor at the time. This matter must be addressed by this service, not left to the

courts, as Mrs R cannot afford to go to court. There should be compensation for the time and effort required to overturn the charging order. This service should clarify its role in addressing RBS' failure to honour the agreement not to rely on the house as security for other debts, and its use of a subsidiary to obtain a charging order in the group's favour;

- c) the lack of annual statements meant Mrs R did not know the interest rate, the arrears status, or that the partner was making no payments. £220 was not appropriate compensation;
- d) RBS' unwillingness to discuss the position or correspond with Mrs R was more than mere procedural or administrative failure. It was a wilful refusal. Two offices were involved in the refusal to respond to Mrs R's correspondence. RBS' failure to engage with Mrs R's attorney in the management of the account had long-term consequences to Mrs R's financial, mental and physical health. There was no correspondence from 2005 to 2012. Mrs R was in need of legal protection and RBS had tried to seek control of her sole asset to her material disadvantage.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

Dealing with the points made in relation to the adjudicator's recommendation:

- a) RBS' agreement was to rely on the legal charge to cover the mortgage account only. Obtaining a charging order over the partner's interest was not a breach of that agreement, because it did not involve reliance on the legal charge. Arguably, it was a recognition that his business debts were not already secured by that charge. But this is a technical point and RBS has fairly and reasonably confirmed to this service that if the house is sold for more than is due on the mortgage, it will return the surplus to the acting solicitor and pursue other liabilities separately. This does not need the status of a court order and there are currently no proceedings in which such an order can be applied for. But I will make a direction to alleviate Mrs R's concern that the promise not to use any surplus for other debts is only a statement of intention given to this service;
- b) the nature of the security did not need to be explained by RBS to the solicitor, and the solicitor certified that he had explained the effect of the legal charge to Mrs R. If in fact he did not, that is not the fault of RBS.

In view of RBS' agreement it is not necessary to overturn the charging order, and because of the technical point mentioned above I do not consider that an application to overturn it would succeed.

As to the use of a subsidiary to obtain a charging order in the group's favour, although the letter from the bank's solicitors sending the interim order to Mrs R does mention the subsidiary, the final order is in favour of RBS;

- c) I am not persuaded that these matters caused Mrs R to act to her detriment in any way, and I believe the compensation figure is fair and reasonable for the poor service;
- d) I am not persuaded that there was any wilful refusal by RBS to deal with Mrs R or her attorney, or that RBS tried to seek control of Mrs R's house to her disadvantage. It was

indeed very poor customer service, as RBS has acknowledged, and I agree with the adjudicator that RBS failed in its responsibility. But I also agree that the additional compensation offered is fair and reasonable.

my final decision

My decision is that I uphold this complaint. In full and final settlement, I order The Royal Bank of Scotland plc to:

- pay Mrs R £250 compensation and a further £220 if the cheque it sent in February 2013 has not been paid; and
- write to Mrs R's attorney confirming, as already confirmed to this service, that if the house is sold for more than is due on the mortgage account, it will return the surplus to the acting solicitor (or permit him to retain it), discharge the legal charge and pursue other liabilities separately, removing any registration of the charging order which would impede the sale.

Edward Callaghan
ombudsman