

complaint

Mrs G complains that The Royal Bank of Scotland Plc (RBS) sold her credit card account to another business which she thinks it shouldn't have done because of her ongoing mental health issues.

background

The background to this complaint, and my initial conclusions, were set out in my provisional decision dated 14 May 2019 – a copy of which is attached and forms part of this final decision.

In my provisional decision I explained why I thought this complaint should be upheld and invited both parties to send any additional comments or evidence they wished to make. I said that Mrs G had suffered some distress and inconvenience as a result of RBS' decision to sell her credit card debt to another business. I thought that – because it was clear that Mrs G had some mental health issues, RBS shouldn't have sold the debt. My provisional decision was that RBS should pay Mrs G £200 compensation for the impact its actions had on her but I didn't think it would be the correct outcome for RBS to buy the debt back.

RBS acknowledged receipt of the provisional decision but didn't provide any response or make any further submissions.

Mrs G acknowledged the compensation payment that was proposed but wasn't happy that I didn't ask RBS to buy back the debt. She wanted us to confirm that the other business couldn't pursue her for the debt as she was "*terrified*" of it forcing her to repay. She said this was affecting her health and she wanted RBS to buy the debt back. She also provided a recent GP's report about the current state of her health.

Mrs G subsequently told us she's received texts from the business now responsible for her debt, asking her to contact it to discuss payments towards her account – which were causing her a great deal of distress and affecting her health.

We asked the business to put a hold on Mrs G's account until a decision had been made, which it agreed to do.

my findings

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. And having carefully reviewed Mrs G's further submissions I see no reason to change the conclusions I came to in my provisional decision.

I can see how much this situation is affecting Mrs G. I'm aware of her concern that the business that now holds her debt will try to pursue her for the outstanding amount owed, and won't act in the same way that RBS did when agreeing a repayment structure with her. I've also seen the report Mrs G's GP sent about her ongoing health problems and I have sympathy for the position she's in, and I don't wish to add to the stress that Mrs G is clearly experiencing here.

But, having decided that RBS did make an error by selling her debt here, I have to think very carefully about how to put things right.

Mrs G is concerned that the new firm has a “*reputation*” for being more forceful than RBS was in pursuing the debt. But there’s no evidence to show that’s the case. To date the new business hasn’t altered the existing repayments and has asked Mrs G to supply some financial information so that it can consider if the payments remain affordable. So Mrs G isn’t any worse off financially at this point. The third party business has experience in ‘recovering debts’ and this type of business tends to be more flexible about what it can accept as payments and what other help it can provide.

So, as there’s no evidence to show that this third party has treated Mrs G any differently up to now, I would urge Mrs G to engage with it to try to come to some agreement going forward. Mrs G now has an updated health report – which wasn’t previously available to RBS, so I would expect the third party to consider how this affects her ability to repay the debt.

Ultimately if I were to tell RBS to buy back the debt it would find itself in exactly the same position of having to ask Mrs G to confirm her financial and medical position before deciding what level of repayment to set (or consider alternative options). It would then remain entitled to sell the debt if Mrs G couldn’t make sufficient payments to it. So I don’t believe Mrs G would be in any better position if I were to do this. In fact, if I were to say that RBS should buy the debt back, Mrs G could just end up in this position again.

I know Mrs G wants me to go further and tell RBS to buy back the debt but I don’t think that’s the right outcome here. If Mrs G can discuss the matter with the third party – using the new information she now has – I would expect the third party to agree a fair and reasonable solution going forward and to treat any financial difficulties she may be experiencing positively and sympathetically.

But I did decide that RBS made a mistake here which caused Mrs G to suffer considerable distress and inconvenience. I’m aware of the affect this has had on her and I think RBS should make a compensatory payment to Mrs G for the impact of its decision to sell her credit card debt.

my final decision

For the same reasons I’ve already given in my provisional decision, I uphold Mrs G’s complaint against The Royal Bank of Scotland Plc.

The Royal Bank of Scotland Plc should pay Mrs G £200 for the distress and inconvenience caused by selling her credit card debt to another firm. I make no further award against it.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs G to accept or reject my decision before 2 November 2019.

Keith Lawrence
ombudsman

copy of provisional decision

complaint

Mrs G complains that The Royal Bank of Scotland Plc (RBS) sold her credit card debt to another business, which she thinks it shouldn't have done because of her ongoing mental health issues.

background

Mrs G took out a Mint credit card through RBS in 2008. In 2010 a debt management company (DMC) applied to RBS, on Mrs G's behalf, to accept a reduced payment on her account because of her financial difficulties. In July 2010 the account was defaulted with interest and charges suspended, and the repayment plan was accepted. In 2011 the DMC advised RBS that Mrs G had suffered serious ill health and would be unable to make any repayments. It was agreed the account should be put on hold for six months. RBS was then unable to review the account – as Mrs G had changed her address – until agreement was reached in December 2012 that she would make repayments of £5 per month.

This arrangement continued, with periodic reviews of Mrs G's financial situation, until 2017 when RBS made a decision to sell some long term repayment plan accounts to another business which included Mrs G's card account.

But that caused Mrs G to complain. She said that RBS shouldn't have sold her account to another company as she had a long standing repayment plan with RBS and it was aware of the mental health issues she was suffering from. She said she'd received letters from the company about a new repayment plan and the stress involved was adding to the depression and anxiety she was suffering from. She wanted RBS to buy back the debt.

RBS said it hadn't received any information relating to Mrs G's mental health issues and had always worked with her directly according to the information it had received. It said Mrs G had been able to manage her account and agree repayment plans herself and she showed no signs of needing help to do so. It said it made a commercial decision to sell a number of accounts in 2017 and Mrs G's account would continue to be managed in the same way as before.

Unhappy with this response Mrs G brought her complaint to us.

One of our adjudicators looked into the complaint and said it shouldn't be upheld. He said he couldn't see that RBS had been advised of any mental health issues and didn't think it was RBS' responsibility to have been aware of any issues based on Mrs G's management of her account. He said he thought transferring the account had been fair and reasonable and that RBS had followed its terms and conditions in doing so.

Mrs G still believed that RBS should have realised that her injury from 2011 meant she was suffering from some kind of mental health issues. So, as no resolution could be found the complaint's been passed to make a decision.

my findings

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

There's no dispute here that RBS hasn't acted positively and sympathetically towards Mrs G's financial difficulties since 2012. Mrs G's complaint is that she doesn't believe RBS should have sold her debt onto a third party bearing in mind her health issues.

And I've seen evidence of Mrs G's anxiety over this matter, as it seems she had a credit card with RBS for which her reduced payments were collected on behalf of RBS by firm W, and the account has now been sold to firm C.

So Mrs G is concerned that, having agreed a long term repayment plan with the RBS, another firm might put pressure on her to change that repayment plan to an amount she feels she can't afford.

So I've looked at whether I think RBS did act fairly in selling Mrs G's account to a third party. And I've considered the following extract from the Lending Standards Board which explains its guidelines for a business selling debts for personal customers:

"Firms should follow a robust due diligence process when selecting third parties for debt collection or when selling a debt.

a. Firms should ensure that when a customer's debt is sold, the purchaser continues to apply the relevant protections provided by the Standards of Lending Practice. Monitoring should be undertaken at least annually where a Firm continues to sell debt to a purchaser, and for a further two years after a Firm has stopped selling debt to that purchaser.

b. If a customer has provided appropriate and relevant evidence of an ongoing mental health or critical illness that affects the customer's ability to repay their debts, the debt(s) should not be sold.

c. Where a Firm is aware that a customer is terminally ill, the debt(s) should not be sold".

I've also looked at the clinical report that Mrs G provided RBS when she made it aware of her health issues in 2012.

I think the information available – probably in 2011, but certainly no later than 2012 – did suggest Mrs G had some mental health issues, and – looking at the guidance above I don't think RBS therefore should have sold her credit card debt at the time it did.

I know RBS has said that it didn't do anything wrong by selling some longer terms debts onto a third party in 2017. And I agree its terms and conditions under "*disclosure of information and transferring right*" confirmed "*We may give to anyone any information about you or this Agreement in connection with any proposed transfer of, or financial arrangement by reference to, this Agreement. We may allow any person to take over any of our rights and duties under this Agreement.*" So I think overall it was entitled to transfer the accounts.

But I think RBS should have realised the letter from Mrs G's consultant in 2011 could have indicated mental health issues – at least to the extent RBS should have asked more about Mrs G's personal situation before selling the loan. So I think RBS has made an error there which I think has had an impact on Mrs G's current circumstances and mental health issues.

So I've gone onto consider what I think RBS should do to put things right here. Usually I would have said it should put Mrs G back into the position she would be in now, if it hadn't made the mistake I think it's made. But I'm not sure that would benefit Mrs G and I think it could be equally traumatic for her. I say that for the following reasons.

As it stands there's no evidence that Mrs G's repayments have been changed – albeit she has been asked to provide financial information for firm C so that it can review her financial situation. It's quite likely RBS would ask for this information (on a reasonably regular basis) if it still held the debt.

But I haven't seen anything to suggest Mrs G has suffered a financial detriment as a result of her debt being sold. In other words she's still paying the same amount and there's no indication she's been asked to pay more. But if I asked RBS to buy the debt back it's still entitled to review Mrs G's circumstances to ensure the repayment plan remains suitable, which could lead to the repayments being changed. And if Mrs G is unable to demonstrate she's suffering from the same health issues – to the same degree, RBS could sell the debt on again and Mrs G will be in the same situation.

So, as it's not clear to me that Mrs G would benefit from RBS buying back the debt – because of the further problems this might cause her, I think RBS hasn't acted as I'd expect it to in line with best industry practice and should pay Mrs G £200 for the trouble and upset that this matter has caused her. I think Mrs G would have worried constantly about the debt being sold to a new firm she had no experience of and would have been concerned about how this might affect her repayments. On top of her mental health issues I think this would have caused Mrs G some degree of distress, the impact of which warrants the award of a compensatory payment.

I previously asked RBS for its comments on my thoughts on this complaint – but it hasn't yet responded. I'll take into consideration any views it now has on my award and any comments about possibly buying the debt back. I'll also consider any comments from Mrs G on my decision not to tell RBS to buy back her debt.

my provisional decision

For the reasons I've given I'm minded to uphold Mrs G's complaint and tell RBS to pay her £200.

Keith Lawrence
ombudsman