

complaint

This complaint is about some debts Mr and Mrs F used to have with The Royal Bank of Scotland Plc ("RBS"). Mr and Mrs F are unhappy that RBS won't refund to them directly the sum due under a remediation exercise. Instead, it has set off that amount against the shortfall that arose when Mr and Mrs F and RBS agreed a short settlement.

background

I issued my provisional decision on 10 January 2020, a copy of which is attached and forms part of this final decision. In my provisional decision I explained why I wasn't minded to uphold Mr and Mrs F's complaint. I invited both parties to let me have any further submissions before I reached a final decision.

Neither party made any new submissions. I've reviewed everything carefully and considered the case afresh, but my opinion hasn't changed. I've reached the same findings and for the same reasons as I set out in my provisional decision.

my final decision

I don't uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs F to accept or reject my decision before 3 March 2020.

Julia Meadows
Ombudsman

COPY OF PROVISIONAL DECISION

complaint

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background

In 2008 Mr and Mrs F entered into a payment plan in respect of their debts. Amongst these were two debts with RBS, which at that time - I understand - totalled around £27,000.

In January 2017 RBS agreed to accept £15,000 in settlement of the debts, said it would mark them as "*partially satisfied*" and said that it wouldn't pursue Mr and Mrs F for the outstanding amount. In the letter sent to Mr and Mrs F about the settlement the outstanding debt was said to be £21,832.56, so the amount Mr and Mrs F owed but didn't pay back was £6,832.56.

In July 2018 RBS carried out a remediation exercise and as part of that it identified it hadn't met the requirements of the Consumer Credit Act 1974 ("CCA") for Mr and Mrs F's account between 14 January 2009 and 30 March 2017. Due to that it said it would refund the interest charged for that period. This came to £6,422.52. On top of that there was £340.48 interest due. However, rather than refund the full amount to Mr and Mrs F directly, RBS set off the £6,422.52 against the shortfall (just sending them the £340.48 interest). Mr and Mrs F think that's wrong, because RBS agreed to accept £15,000 in full and final settlement of the debts.

Our investigator wasn't satisfied with the information RBS provided and so upheld the complaint. RBS didn't agree and so it's been passed to me to decide.

my provisional findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I trust Mr and Mrs F won't take it as a discourtesy that I've condensed their complaint in the way that I have. Although I've read and considered the whole file I'll keep my comments to what I think is relevant. If I don't comment on any specific point it's not because I've not considered it but because I don't think I need to comment on it in order to reach the right outcome.

The Financial Ombudsman Service is independent and impartial. My role's to look at what's fair and reasonable. We're not the regulator, and I've no power under our terms of reference to comment on, or otherwise determine, how financial businesses operate in general terms.

If a business makes a mistake, we expect it to put the customer back in the position they'd have been in if it hadn't made the mistake. Here, RBS's mistake was charging interest on the loan for the period it hadn't met its obligations under the CCA as identified by the remediation exercise. If it hadn't done that, Mr and Mrs F's loan account wouldn't have been charged that interest, and the outstanding balance (when RBS accepted the short settlement from Mr and Mrs F) would have been correspondingly smaller.

That's the position Mr and Mrs F now find themselves in as a result of the remediation exercise. The fact that RBS agreed to accept a short settlement doesn't change that. That's because accepting a lower amount in full and final settlement on the understanding the remainder of the debt would still be owed (hence "partially satisfied") but won't be actively chased doesn't mean what Mr and Mrs F seem to think it does. It doesn't mean the debt ceases to exist; it just means a lender has taken a commercial decision not to pursue the debtor for it.

RBS hasn't tried to recover any of the shortfall debt from Mr and Mrs F; all it's done is acknowledge that, as a result of historic errors, the shortfall should have been crystallised at a lower amount than it was, and taken the necessary action to correct the recorded position. Mr and Mrs F might find that unwelcome, but it's not unfair. What would be unfair would be for me to order RBS to "refund" over £6,400 to Mr and Mrs F that they hadn't actually paid.

It may be Mr and Mrs F will argue they would have offered a lower settlement amount to RBS in 2017 if the debt had been lower at that time, but that's not something I would consider reasonable as they clearly had the means to pay the £15,000 (as they paid it) so it would be entirely inappropriate for me to now find that RBS should have accepted a lower amount.

my provisional decision

For all of the reasons I've set out above, but subject to the further submissions of the parties by the due date, my provisional decision is I don't uphold this complaint.

Julia Meadows
ombudsman