

complaint

Mr T complains that The Royal Bank of Scotland Plc (RBS) has set off a debt using funds from another account, which has left him in difficulties.

background

Mr T had a Mint branded credit card with RBS. This credit card account had a repayment in March 2017 and was last used in April 2017. No further payments were received to the account after that.

Arrears notices were sent to Mr T in June 2017. RBS also called Mr T but he refused to continue the call. And in a following call Mr T said he was unable to continue as he was due to board a plane. As RBS received no payments or payment proposals from Mr T it sent a default notice on 31 July 2017. And because there was still no further payment or proposals, the account was terminated on 22 August 2017 and Mr T written to and informed.

RBS employed a collection agent, who also contacted Mr T about the arrears on the account. But as Mr T didn't recognise the debt, as the debt didn't appear to be in his name, payments weren't made. Mr T says he made enquires of both the collection agent and RBS but received no further information.

In January 2018 and March 2018 RBS wrote to Mr T to warn him that it might use its right of set off. And it used this right on 9 April 2018 moving over £6,000 from Mr T's account to repay the balance of the card. During this time the account and its debt was also sold a third party. Mr T was written to and notified of this.

Unhappy with the set off as he couldn't now complete renovations on his house, Mr T complained to RBS. But as he didn't get a response he asked us to look into the matter.

Our investigator didn't uphold Mr T's complaint. She was satisfied Mr T ought to have recognised the debt was his – although there had been a typing error in the spelling of Mr T's first name, it had always been like this, even when the account was being used and repayments made. She was also satisfied RBS had followed the correct process to notify Mr T of the debt and of the subsequent default and termination of the account – although these had been sent to Mr T's old address this was because he hadn't updated his address with the bank. And she found the right of set off notification had been sent to the right address and the bank had followed the required process correctly.

Mr T didn't accept the outcome. He sent us a copy of correspondence sent in June 2018 which said there was an amount still outstanding on the account. He also said he had become unwell and couldn't provide any further information.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I'm not upholding this complaint. I explain why below.

I'm sorry to hear Mr T is unwell. I hope he is recovering.

I'm satisfied Mr T ought to have recognised the debt was his. I accept his first name was spelt incorrectly, but it had always been spelt this way on this account. I understand Mr T now accepts the debt is something he has to repay, but would like the set off refunded and a payment arrangement agreed.

I would only ask the bank to refund the set off if I found it hadn't followed the correct process or if the funds removed were for essential living expenses – such as food, bills etc. I appreciate the money removed was to be used for renovations but there was still over £9,000 in the account after the right of set off had been used. I'm not persuaded Mr T was left without funds for essential living expenses.

Mr T was sent arrears notices, a default notice and informed of the account termination. I can see from the records provided they were sent to Mr T's old address. But that was because he hadn't updated the account address. And although he had other accounts with the bank, these weren't linked such that any address updating would have been automatic.

RBS employed a tracing agent to locate Mr T and when he was contacted by them he continued to argue he didn't recognise the debt. I've already found he ought to have known the debt was his. And I can see RBS wrote to him twice to warn him that it was going to exercise its right of set off. These letters were sent to Mr T's correct address. The vast majority of correctly addressed mail is correctly delivered, and I'm satisfied it's most likely they were received.

RBS has followed the requirements set out by the regulator to use its right of set off, a right which is also a general legal principle. And as Mr T was provided fair warning the bank was going to use that right and was given a chance to make alternative arrangements to pay the debt, I find no basis on which to ask it to refund that money now.

Mr T was sent information in June 2018 that said the debt was outstanding. But that letter gave the position as at January 2018 and the set off was used after that. And I know Mr T has received letters notifying him the debt is clear, as he sent us a copy of these. So the letter makes no difference to my findings.

my final decision

For the reasons given above, I don't uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 25 February 2019.

Claire Hopkins
ombudsman