

complaint

Mr Q complains that The Royal Bank of Scotland Plc is wrongly pursuing him for repayment of a debt.

background

Mr Q says that, in 2008, a loan of £7,000 was taken out by his late wife and he was the guarantor. He says that unknown to him, Mrs Q consolidated the loan in 2010 but he was unaware of this.

However, after Mrs Q passed away in October 2013, Mr Q has been pursued by the bank for **repayment of the debt**. He feels this is unfair as he cannot even recall signing for the loan as a guarantor and he believes the debt cannot be enforced.

The bank cannot locate a copy of the loan agreement due to the length of time that has passed since the loan was given although the bank's records clearly indicate that the loan was given in Mr Q's sole name and that Mrs Q was never party to it.

Our adjudicator noted that both sets of loan monies were credited to a joint current account of Mr and Mrs Q with all repayments being made from the same account. The bank has said that guarantors would not usually be used for this type of lending but even if Mr Q was only a guarantor, given the financial circumstances of Mr and Mrs Q, in October 2010, Mr Q would still be liable for the debt as a guarantor. The adjudicator also explained to Mr Q that the issue of enforceability of the debt is better suited to consideration by a court.

Mr Q has asked that his complaint be reviewed by an ombudsman.

my findings

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

Having reviewed the evidence and arguments presented, I agree with the findings and conclusions of the adjudicator.

It is unfortunate that the bank cannot now produce a copy of the loan agreement so it can clearly show to Mr Q where he signed documentation and the basis on which he committed to repayment of the debt.

However, where evidence is incomplete, inconclusive, or contradictory, I have to reach a decision on the balance of probabilities; that is, what I consider is most likely to have happened, given the evidence that is available and the wider surrounding circumstances.

And the bank's records clearly show that the loan was recorded as being given in Mr Q's name while the funds were placed in, and repayments were received from, an account that Mr Q was jointly responsible for. I don't think I can therefore safely conclude that Mr Q was not aware of the loan and has no responsibility for it. It is also the case that if Mr Q was only a guarantor for the loan, he would still be responsible for its repayment now.

As regards the enforceability of the loan repayment, even if Mr Q did sign the agreement but the bank cannot produce evidence of the original loan agreement, whether Mr Q is contractually liable for the debt and the debt recoverable in law is ultimately an issue for a court to decide, not me.

And even if an agreement were not legally enforceable, that does not mean that I might say that it is fair and reasonable for a debt to not still be owed or that the bank should be prevented from asking for repayment of outstanding sums, in the particular circumstances. In this case, I am satisfied, on balance, that Mr Q was given the loan and that he benefited from the funds given they were received into his joint account. I cannot therefore appropriately say the bank cannot seek repayment from him.

It remains, however, that Mr Q would of course still be entitled to raise his arguments in court proceedings should he wish to do so, and if such proceedings arise.

Finally, I note that Mr Q says that the bank sent a letter to Mr Q, concerning his late wife, that said “...*the outstanding debt will not be pursued any further...*”. However, the bank has explained that this letter was written concerning Mrs Q’s current account and did not cover this loan which it considers is in the name of Mr Q.

In light of all I have said, I can see no basis on which I might fairly and reasonably say that the bank is not entitled to treat Mr Q as responsible for the debt or say that it ought not do so on the basis that it was given in Mr Q’s late wife’s name. I therefore make no award against, or direction to, the bank.

my final decision

My final decision is that I do not uphold this complaint.

Ray Neighbour
ombudsman