

complaint

Mr D complains that The Royal Bank of Scotland Plc ("RBS") has instructed a debt collection agency to pursue him for a debt which he says is time-barred under the Limitation Act.

background

In 2008 Mr D owed RBS a three-figure sum. In that year he entered an Individual Voluntary Arrangement ("IVA"). In June 2015 a debt collection agency wrote to him demanding payment of the debt. As he had not been written to about the debt since 2008, he says the debt is now unenforceable. He would like our service to prevent the debt from being pursued.

Our adjudicator did not uphold this complaint. She said – correctly – that it was not for our service to decide whether a debt is enforceable or not, as only a court can do that. But she also pointed out that the debt is unlikely to be time-barred, as in 2012 a licensed insolvency practitioner had written to RBS to ask it to waive some default charges which made up part of the debt. And RBS had written back to that firm to say that it would not remove the charges.

Mr D says he has never heard of that insolvency practitioner firm. He also points out that RBS has lost the letter it sent in reply. So he has asked for an ombudsman's decision.

my findings

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

The insolvency practitioner was instructed by a firm of solicitors; it wasn't acting for Mr D directly. I think that explains why Mr D hadn't heard of them. I have seen the solicitor's letter of instruction. So I'm satisfied that the insolvency practitioner was acting on behalf of Mr D when it wrote to RBS. RBS no longer has the letter in which it said it would not waive the default charges. But I have seen an earlier letter it sent in which it acknowledged receipt of the firm's letter. So there was correspondence about the debt in both directions, less than six years ago.

The letter sent on Mr D's behalf acknowledges the debt he owes to RBS. I accept he wasn't aware of the letter, or the replies, at the time. But I think it is more likely than not that the letter was consistent with the instructions Mr D had given his solicitors when he entered the IVA. The IVA ended in 2012, which RBS learned of in 2015. So I don't think I can say that RBS (or its agent) should not pursue Mr D for the money.

my final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 11 February 2016.

Richard Wood
ombudsman