

complaint

Mr and Mrs W complain about errors and poor service from The Royal Bank of Scotland Plc (RBS) in relation to its handling of their accounts.

background

I will briefly summarise the background to this complaint. Mr W ran a business which unfortunately ran into financial difficulty in about 2009. Personal guarantees were signed giving the bank security over Mr and Mrs W's home. They also owned another property which was mortgaged to RBS.

Some weeks after Mrs W signed a personal guarantee, the bank called them in due to the liquidation of Mr W's business.

Mr and Mrs W were no longer living in their main home. But they were living in the other property over which RBS had a mortgage. Despite RBS having the address of this other property, the bank's solicitors put a notice in the local paper saying that Mr and Mrs W's last known address had been their previous property. Neighbours saw this notice.

Mr and Mrs W complained to RBS. In summary their complaint is as follows:

- It was unfair to take a personal guarantee from Mrs W when the bank knew it was going to put Mr W's company into administration and call upon the guarantee.
- The bank's actions forced them into bankruptcy.
- Despite the bankruptcy, RBS continued to insist that Mr and Mrs W were responsible for the shortfall debt following the sale of the property, until it eventually wrote to them saying it was wrong.

An adjudicator considered Mr and Mrs W's complaint. She was satisfied that RBS shouldn't have put the notice in the local paper and that in doing so, RBS caused Mr and Mrs W distress. The adjudicator asked RBS to pay £300 compensation for this, which it agreed to do.

The adjudicator was also satisfied RBS shouldn't have continued to write to Mr and Mrs W about the shortfall debt when this had been included in their bankruptcy. The adjudicator asked RBS to pay £100 compensation for this.

Mr and Mrs W didn't accept the adjudicator's findings. Mrs W has explained that they have recently received a letter from RBS saying that the shortfall debt would continue to show on their credit file as partially satisfied.

my findings

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

I see that, in addition to the complaint about their personal debt to the bank, Mr and Mrs W have also raised their concerns about RBS's handling of Mr W's company's accounts. I have no power to consider a complaint about a company that has been dissolved. That is because

a limited company that has been dissolved no longer has any legal identity. This decision concerns only the personal debt.

I'm satisfied RBS was entitled to take security over Mr and Mrs W's property for the debts of Mr W's business. This is normal business practice. As stated above, I can't comment on any aspect of the bank's handling of the Mr W's company's banking, including RBS's decision to call in the company's debts. I do acknowledge that this action has led to the complaint about Mr and Mrs W's personal liability.

RBS has acknowledged its error in posting a notice in the local paper. The bank has explained that, according to the information it received, the property was occupied by tenants. But RBS should have taken further steps to establish Mr and Mrs W's whereabouts before posting the notice in the local paper.

I'm satisfied that the bank's actions caused Mr and Mrs W some distress. But our awards for distress are generally modest – we do not award damages in the way that a court might. So overall I'm satisfied that £300 for the distress caused is fair.

RBS also shouldn't have continued to write to Mr and Mrs W to say they were to be held liable for the shortfall debt when this had already been included in their bankruptcy. I'm satisfied the £100 already offered by RBS for any distress its letters caused is fair.

The shortfall debt is recorded on Mr and Mrs W's credit files as 'partially satisfied'. Mr and Mrs W did not repay the debt to RBS in full, notwithstanding that it is unrecoverable due to their bankruptcy. So recording it as 'partially satisfied' is correct.

I am sorry Mr and Mrs W have had such a difficult time in recent years. I have no doubt that the failure of the company has been very upsetting for them, particularly given the scale of the business. But in relation to the issues I have considered as part of this complaint, I'm satisfied that the redress offered by the bank is fair in all the circumstances.

my final decision

My final decision is that in settlement of this complaint The Royal Bank of Scotland Plc must pay Mr and Mrs W a total of £400 compensation for distress. I make no other order or award.

Jan O'Leary
ombudsman