

## **complaint**

Mr M and Mr N complain that The Royal Bank of Scotland Plc forced them to take personal responsibility for a loan that was for the benefit of another company and should have been transferred to that company. They want the bank to write off that element of their current debts.

## **background**

Mr M and Mr N sold their business to a larger company in the same sector in 2006. As part of the deal they became directors and shareholders in the acquiring company. In 2007 a shortfall was identified in the cash flow of the new combined business. The bankers to the acquiring company agreed to put in place a new facility of £250,000 to refinance the business. A condition of the new loan was that Mr M and Mr N would provide a guarantee of £250,000 supported by a charge over properties which they owned in their own names.

The two properties which were to support the guarantee were already charged to RBS to secure existing personal debts. RBS agreed to release the charge over the properties so that they could be used to support the new guarantee if Mr M and Mr N provided additional security for the existing debts. Because of the urgency of the cash flow problem, RBS agreed to lend £150,000 to Mr M and Mr N on a short term basis, secured against their portfolio of properties. The money was transferred into the company Mr M and Mr N had sold in order to solve its cash flow problem. The intention was that this loan would be repaid by the new £250,000 facility being put in place by the acquiring company.

The new facility for the acquiring company was not finalised and the loan of £150,000 provided to Mr M and Mr N by RBS was not repaid. RBS did not release its charge on the properties used to secure that loan. RBS then asked Mr M and Mr N to provide their proposals for repayment of the loan. Terms for continuation of the loan were agreed and it has since become part of a larger loan that Mr M and Mr N have with RBS.

The acquiring company's bank was National Westminster Bank Plc, which is a part of the RBS group. The relationship manager for Mr M and Mr N and the relationship manager for the acquiring company discussed these borrowing arrangements before they were put in place. Mr M and Mr N say that the understanding was always that the new owner would take over the debt and they should not be held accountable for it. RBS says that it lent the money for Mr M and Mr N to put into the business. But, it was satisfied that they could afford to support the debt themselves based on their assets and liabilities and their income from the business. It provided a copy of the submission to its credit department for the loan.

The adjudicator did not recommend that the complaint should be upheld. She concluded that RBS had made an assessment of the loan application before agreeing to lend and that it was entitled to seek repayment from Mr M and Mr N. They say that this was always intended as a short term facility to support the business and it was never the intention that they would have to repay it directly.

## **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 recognise that the loan of £150,000 provided to Mr M and Mr N was intended to be a short term facility, which would be repaid by money lent to another company of which they were directors. But I am satisfied that, before lending the money, RBS carried out a reasonable assessment of the request - of their ability to service the debt and the security behind it. I find that Mr M and Mr N were both actively involved with the arrangements of the other company to borrow the money which would repay their debt. I conclude that Mr M and Mr N were aware of the pre-conditions of the loan which would repay them and of the risks they were taking on.

I find that, when the initial source of repayment was not available, RBS was entitled to ask Mr M and Mr N to propose alternative repayment plans. As the loan was secured, I do not find it unreasonable that the bank would consider using that security to repay the debt. I understand that the loan repayment did not work out as was intended. But, I find no evidence that the bank forced Mr M and Mr N to take on the loan, or that it has acted unreasonably in seeking a suitable repayment plan. I do not find that I can fairly require the bank to write off any of their debt.

### **my final decision**

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

John Thornton  
**ombudsman**