

The complaint

Mr C has complained about a secured commercial loan he took out with The Royal Bank of Scotland Plc in 2014. He's unhappy about the amount RBS says he still owes following the sale in possession of the security properties, and the service RBS has provided.

What happened

I understand that Mr C started his business relationship with RBS in 2008. Mr C took out various loan facilities over the years, with each often repaying the one before.

In November 2013 he applied for the loan in question, and in May 2014 around £221,000 was advanced to repay his existing loan. The new loan was secured against two titles; the first title related to a single property I'll refer to as property 66F, and the second title contained a pair of properties that I'll refer to as properties 1-3B.

The interest rate was shown in the loan agreement to be 1.5% over base rate, with it noting that base rate at the time was 0.5%. No payments were due over the life of the loan, with the total amount borrowed plus accrued interest due when the loan was repaid. The agreement was signed by RBS on 7 March, and by Mr C on 14 May 2014.

The loan term ended, and the debt was passed to RBS's debt management team in April 2015, from where it was later passed to RBS's solicitors. A letter from RBS in April 2015 said the balance at that time was around £224,700

Following a hearing in June 2017, possession orders were granted for the properties.

Property 66F was sold in March 2018, and the proceeds (after sale costs) of around £68,100 were credited to the loan account.

I understand that when RBS was looking to sell properties 1-3B it was found the properties had been built contrary to a covenant in the title deed as only one property was allowed to be built on the land. After some communication with the local council, it was agreed the council would grant a deed of variation to amend the title deed, so the properties were no longer in breach of the covenant.

As part of this the council required the following fees be paid:

- £750 surveyor fees,
- £500 legal fees, and
- £6,000 for the deed of variation to be agreed.

The £750 and £500 were paid in May 2018 and charged to Mr C's account accordingly, and the £6,000 was paid in September 2019 when all the work for the deed of variation had been completed; again that fee was then charged to Mr C's account accordingly.

Properties 1-3B were sold in July 2020, and the proceeds (after sale costs) of around £99,200 were credited to the loan account.

In January 2022 RBS contacted Mr C about the outstanding debt, which was standing at just over £95,000.

There was correspondence between the parties throughout 2022, and then on 16 August Mr C wrote to RBS upon receipt of a statement. He said he'd requested information about the account in February, following receipt of an earlier letter, and he now had some questions about the statement he'd received. He asked for copies of the solicitor's invoices for fees that had been charged to the account, information to support certain transactions he highlighted and details of the interest that had been charged to the account. He asked that it be raised as a formal complaint.

RBS responded on 28 September setting out the information about the individual transactions Mr C had highlighted and provided Mr C with a number he should call if he had any further queries. It apologised for the delay and offered him £100 in vouchers as compensation for that.

Mr C referred the complaint to our service in October 2022. He said he hadn't received the information he'd asked for from RBS and to resolve the complaint he wanted copies of all the original agreements and supporting documentation, as well as compensation for the stress and worry that he'd been caused due to RBS asking for such a large sum of money.

Our Investigator said RBS should provide a copy of the loan documents and legal invoices to Mr C, and that it should pay £250 compensation for not providing the information sooner.

Mr C raised various points in response saying, in summary, he disputes the amount RBS says he owes with no clear justification or communication about the transactions and charges. He said he wanted an Ombudsman to decide the complaint.

RBS also didn't agree, saying the first time Mr C had asked for a copy of his loan documents was when he referred his complaint to the Financial Ombudsman Service and it was happy for a copy of those to be provided to Mr C. It also said Mr C hadn't previously asked for a breakdown of the costs and again that can be provided, albeit it couldn't provide the actual invoices to Mr C as those contain sensitive information.

As an agreement couldn't be reached the case was passed to me to decide.

What I've decided – and why

I issued a provisional decision in December 2023, the findings of which said:

“Mr C has said that RBS can't prove the amount owed but hasn't explained why he believes that. RBS has provided our service with a loan transaction history and copies of the legal cost breakdown and notes from its solicitors.

We're unable to provide Mr C with copies of anything relating to the legal costs or the correspondence between RBS and its solicitor, however I can reassure him that I've reviewed it all in full and I'm satisfied RBS hasn't added any legal (or other costs) of a higher amount than its solicitor invoiced RBS for.

There are three costs that have been charged to Mr C's account that RBS has been unable to provide the evidence for, however those are more than cancelled out by the five costs charged by RBS's solicitors that it doesn't appear to have passed onto Mr C as they don't show on his transaction history. The costs not showing on his loan account far exceed the total of the three amounts RBS hasn't evidenced and so it would be entirely inappropriate for me to order RBS to refund those three costs, without also allowing it to add the 'missing'

amounts. I think it is fair, in the circumstances, that neither the missing amounts are added nor are the three additional amounts removed.

Mr C says that RBS hasn't been in contact with him (before January 2022) since June 2015 about the amount owed. But properties 1-3B weren't able to be sold until June 2020 once the legal issues had been resolved. I wouldn't have expected RBS to be in contact about the amount owed until the amount was finalised, which wasn't until June 2020, and unfortunately that was during the pandemic and so everything was put on hold. It also appears from the contact notes that Mr C had moved and so RBS instructed an agent to trace his whereabouts. A letter was sent to the address that had been traced in October 2021, and calls were made to the number RBS had for Mr C, neither of which received a response. A further trace was carried out in January 2022 which led to Mr C's current address (at that time) being found and so RBS was able to make contact with him. Mr C was also able to contact RBS himself to ask if he wanted to do so.

It isn't entirely clear what went wrong with the statements that were ordered. It appears from the notes that the statements were first ordered in February 2022 and then again in June 2022. It seems from the notes that the June 2022 statements were sent to the address that had been found in January 2022 and that Mr C may have moved again by then. In any event, I don't think I need to make a finding on what went wrong as Mr C received the statements in August 2022 and nothing had changed in that time, so he wasn't disadvantaged by the delay.

Mr C has made reference to an email from RBS mentioning bankruptcy, saying he hadn't been served any notice of bankruptcy. I can see the word bankruptcy was used in RBS's response to the complaint "The 'SOL FEE' on the account. These are solicitors fees are applied as part of the bankruptcy process and the and you are liable for these." This appears to just be a typographical error where the words "repossession" or "legal" should have been used instead of "bankruptcy" as the fees in question were applied as part of the legal and repossession process.

The other mention of bankruptcy is in the contact notes, where RBS's solicitor contacted RBS about a settlement offer it had received from Mr C in March 2022. The note says that Mr C would like to offer £10,000 in full and final settlement of the debt, and the solicitor was to go back to Mr C to decline the offer and it said "noting that his next course of action has been stated as bankruptcy." RBS has confirmed it hasn't taken any bankruptcy action against Mr C.

Mr C has said the level of customer service has been appalling and would like compensation for the mental stress and anxiety caused. Other than the issues relating to Mr C not receiving a timely response in 2022 to his correspondence I don't think RBS has done anything wrong. RBS has apologised for that delay and offered a £100 voucher in compensation. Having considered everything very carefully I think that goes far enough, albeit I think that sum should be paid to Mr C as cash, rather than a shopping voucher being issued.

If Mr C would like a copy of the loan agreement, then he can obtain that by contacting our Investigator as we hold a copy on file. But as I've already explained we can't provide Mr C with copies of the legal invoices and other paperwork as they're commercially sensitive.

Finally, Mr C has said that there was no due diligence on any of the loans, and affordability checks were never carried out. That didn't form part of the original complaint that was made to RBS and so I can't consider it here as part of this complaint. Mr C can raise that as a new complaint with RBS if he wishes to do so, however he should keep in mind this was a commercial loan where no monthly repayments were required so there wouldn't

have been an affordability check such as you'd see with a regulated residential mortgage contract."

To put things right I said the £100 RBS had already offered to pay to settle the complaint was fair in all the circumstances, albeit I thought that sum should be paid to Mr C rather than being in the form of a shopping voucher.

RBS accepted my provisional decision and said it would pay the £100 to Mr C as a cash payment rather than as a shopping voucher. Mr C said he had nothing further to add.

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, and in the absence of any further submissions by the parties, I see no reason to depart from the findings I reached in my provisional decision.

My final decision

The Royal Bank of Scotland Plc has already made an offer to pay £100 to settle the complaint and I think this offer is fair in all the circumstances, albeit I think that sum should be paid to Mr C rather than being in the form of a shopping voucher.

So my decision is that The Royal Bank of Scotland Plc should pay £100.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 30 January 2024.

Julia Meadows
Ombudsman