

The complaint

Mr and Mrs E have complained about a mortgage they held with the Royal Bank of Scotland Plc (“RBS”). The account was a NatWest-branded One account. The complaint falls into three broad categories which are;

- how the mortgage was set up in 2004,
- why RBS charged unsecured debt interest rates on Mr and Mrs E’s other debts, and
- what happened after the five-year term extension Mr and Mrs E had arranged in 2014 was coming – and had come – to an end in 2019.

What happened

The details of this complaint are well known to both parties, so I won’t repeat them again here. The facts are not in dispute, so I’ll focus on giving my reasons for my decision.

Although I’ve read and considered the whole file I’ll keep my comments to what I think is relevant. If I don’t comment on any specific point it’s not because I’ve not considered it but because I don’t think I need to comment on it in order to reach the right outcome.

This service is impartial between, and independent from, consumers and businesses. What this means is that we don’t represent either party, and I don’t act under either’s instructions or take directions on how a complaint will be looked at or what questions should be asked or answered.

What I’ve decided – and why

I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

How the mortgage was set up in 2004

Mr and Mrs E have made various allegations about what happened in 2004 but none of them are supported by the contemporaneous evidence. They’ve said, at various times:

- *“In your letter you say that I applied for The One Account on 11 December, 2003. I believe this is incorrect. I applied for The One Account in 1993...”*
- *“In 1993 we refinanced our RBS mortgage arrangements with National Westminster Bank pic (“Natwest”) and took out a ‘current account mortgage’ called a “Natwest One Account”. In 2000, RBS acquired National Westminster Bank, and thereby inherited our Natwest One Account.”*
- *In early 2004, I [Mr E] met with [staff member], who was at that time our relationship manager with RBS, for a routine annual meeting to review my financial affairs. During that meeting [staff member] told me that the Bank (ie RBS) had been undertaking a*

review of accounts that they had inherited through the purchase of Natwest. He said that there were deficiencies in the charge which Natwest had over my property, and that the bank would like to remedy the situation by taking a charge themselves. He represented to me that the new charge was to replace the Natwest One Account charge, and was a housekeeping matter, as I was a customer of RBS, rather than Natwest.”

- *“We have now established, many years later, that there was in fact no charge registered by National Westminster bank at the Land Registry prior to 2004. The effect of the RBS charge was to create an entirely new charge, where none previously existed.”*
- *“In 2004, **RBS** (please note, not Natwest) asked us to put in place a charge to secure the Natwest One Account loan. At the time, it was explained to us that it was to correct deficiencies which RBS had uncovered in the security for the Natwest One Account. We had, as you have rightly pointed out, some months earlier arranged to remortgage our property by taking out a new mortgage with Natwest in the form of a new account: the Natwest One Account. The Natwest One Account was to refinance an older mortgage that we had had with RBS, which predated the takeover of Natwest by RBS.*

I believe that the “deficiency” which RBS were referring to when they said they needed a charge to be put in place to secure the Natwest One Account was because Natwest had in fact forgotten to register a charge at the Land Registry when we opened the Natwest One Account and therefore had no security.”

- *“I cannot now recall whether I signed a mortgage agreement with Natwest at the time the account was opened but I believe it is highly likely that I did. But as I have said above, if I did, Natwest forgot to register it. Natwest may even have a copy of the document, but as it did not register the charge when the account was opened, it may have been disposed of. So, when RBS asked us to sign a new mortgage agreement a few months later, we thought we were putting in place something we had agreed to do already. There was no reason to think we needed to take independent advice a second time.”*
- *“You have suggested that the bank advised us to seek independent advice. As I have explained already we did take advice when we took the mortgage out and we were happy that the product was suitable for our needs. But we were asked to sign a mortgage deed several months later, well after we had started drawing down the account, with the explanation that it was to secure our Natwest One Account, and nothing more. We did not seek independent advice on a second occasion, because we did not imagine that RBS would slip in such a feature, let alone without drawing it to our attention.”*
- *“I have now established that National Westminster failed to register its charge for the Natwest One Account, when it was opened and I have verified this by a conducting a search at the Land Registry. That is why [staff member] asked me, several months after the mortgage had been opened and the account already drawn down to sign the new mortgage deed”*

It is understandable that Mr and Mrs E’s recollections have become confused due to the passage of time, but I can reassure them that the evidence from the time doesn’t indicate any of these things happened in the way they recall.

Mr and Mrs couldn’t have taken out a One Account in 1993 as they weren’t “invented” until 1998, and at that time were branded as a Virgin One account. The account style moved to RBS in 2003.

In 1991 Mr and Mrs E took out a standard mortgage with RBS on their current property. The charge was registered with the Land Registry on 30 July 1991 and that entry showed that the charge (that is, the mortgage deed) was dated 11 July 1991. It's not clear what Mr and Mrs E have been looking at that led them to believe there was no RBS charge before 2004 but it isn't right. They took out an RBS mortgage on 11 July 1991 and that was correctly registered a few weeks later, as I would normally expect.

That charge then remained in place until they actively applied for a One Account which they used to repay their existing RBS mortgage, plus raise additional funds.

We've got a copy of the application form and the contact notes from the time. The notes show the application was made in December 2003, a valuation of the property was undertaken in February 2004 and the mortgage offer was produced later that month. It was accepted by Mr and Mrs E and the mortgage completed on 8 March 2004.

We've got a copy of the signed mortgage deed for the One account mortgage and can see the charge was registered with the Land Registry on 1 April 2004 and that entry showed that the charge (that is, the mortgage deed) was dated 8 March 2004.

The new mortgage deed wasn't signed to correct any deficiencies in the 1991 mortgage. Nor was the mortgage deed signed months after the One account had gone live. The mortgage deed was signed at the normal stage of the process – that is, between the mortgage offer being produced and the mortgage completing – and was registered at the Land Registry within weeks (again, as I would expect).

When our investigator provided a copy of the mortgage offer to Mr and Mrs E to show the lender for their One account was always RBS, it was just branded as NatWest, Mr and Mrs E said:

"I note that the document you have attached - 'the offer letter' - is not signed by either me or my wife.

We have never seen it before"

But that's not true. At my request RBS obtained the signed copy from its archive, and that shows Mr and Mrs E signed that offer on 24 February 2004.

The mortgage offer states:

- *"We invite you to open a NatWest One account with The Royal Bank of Scotland plc..."*
- *"By signing and returning a master copy of this letter to us you create a contract with The Royal Bank of Scotland plc..."*
- *"The account is a personal, secured current account with The Royal Bank of Scotland plc."*
- *"Please open a NatWest One account in our names with The Royal Bank of Scotland plc..."*

The mortgage application form declaration that Mr and Mrs E signed on 10 November 2003 stated:

"I apply for a NatWest One account with The Royal Bank of Scotland plc."

And the mortgage deed that Mr and Mrs E signed before completion on 8 March 2004 stated:

"Bank: The Royal Bank of Scotland plc..."

Having considered all these documents, it seems the fact the lender was RBS, with the account just being branded as NatWest, was made clear to Mr and Mrs E at the time. I can't hold RBS liable if they didn't read any of those documents or seek independent legal advice if they didn't understand them.

Mr and Mrs E have said they weren't told that RBS was taking an 'all monies' charge but again this was set out on the mortgage deed they signed to enter into this mortgage contract. It said that it secured:

"All the customer's liabilities to the Bank of any kind (whether present or future, actual or contingent and whether incurred alone or jointly with another) together with the Bank's charges and commission, Interest and Expenses."

At the top of that document it said:

"THIS IS AN IMPORTANT DOCUMENT, YOU ARE STRONGLY ADVISED TO TAKE INDEPENDENT LEGAL ADVICE FROM A SOLICITOR, LICENSED CONVEYANCER OR LEGAL EXECUTIVE BEFORE SIGNING. SIGN ONLY IF YOU WANT TO BE LEGALLY BOUND."

Again, I can't hold RBS liable if Mr and Mrs E didn't seek independent legal advice before they signed the deed, or if the legal advice they did take didn't make the nature of the charge clear to them.

Having considered everything, I don't uphold the first part of Mr and Mrs E's complaint.

why RBS charged unsecured debt interest rates on Mr and Mrs E's other debts

RBS had an 'all monies' charge as part of the One account. It isn't at all unusual for a mortgage lender to have an 'all monies' charge as it makes things easier – and cheaper in terms of legal costs – if a customer wants to apply for some further *secured* lending in the future as the existing charge can be used. Mr and Mrs E's position isn't at all unusual here, there will be a lot of people within the UK that have 'all monies' charges and other (non-mortgage) debts with the same lender.

Whilst the 'all monies' charge gave RBS the right to enforce its security over Mr and Mrs E's home for all the debts they held with the bank, the reality is that didn't happen. RBS made no attempt to use that charge for anything other than the One account mortgage debt.

I understand Mr and Mrs E feel RBS should have charged them lower interest rates on their other debts because they were secured under the 'all monies' charge. I understand their point, but I don't agree.

RBS is entitled to offer financing (such as loans, credit card and overdrafts) to Mr and Mrs E at whatever rates it chooses. Mr and Mrs E can then choose to either accept or reject those offers. Just because a debt is secured doesn't mean a lender has to offer an interest rate below a certain amount, just as unsecured debts don't have to be above a certain rate. RBS was willing to lend Mr and Mrs E money (outside of the One account) at certain rates and

they were willing to borrow it. It's not my place to interfere with that. We're not the regulator of financial businesses, and we don't "police" how they operate generally. That's the job of the Financial Conduct Authority.

I'm satisfied RBS did nothing wrong in only being willing to allow Mr and Mrs E to borrow money outside of the One account at the interest rates it offered at the time, the fact there was an 'all monies' charge doesn't change that. If Mr and Mrs E have any wider concerns about this practice – which is entirely normal in the industry – then that would be a matter for the regulator.

what happened after the five-year term extension Mr and Mrs E had arranged in 2014 was coming – and had come – to an end in 2019

In 2014 RBS agreed to a five-year term extension. At that time Mr and Mrs E owed over £600,000.

Mr and Mrs E say they weren't given the support they needed by RBS when the revised term was coming to an end in 2019.

NatWest had been trying to contact Mr and Mrs E since 2016 to review matters with them, with no response. In February 2019 Mr and Mrs E asked for a further term extension, but as they were over the £700,000 account limit RBS said the debt needed to be reduced back under £700,000 before that could be considered. A term extension request was then considered but it was turned down as a £700,000 debt was no longer deemed affordable for Mr and Mrs E. Instead RBS gave a 12-month extension to allow time for the debt to be repaid as Mr and Mrs E said they were selling the property.

Unfortunately, Mr and Mrs E almost immediately exceeded their agreed facility again, and despite requests to reduce the debt back under £700,000 they failed to do so. Because of this RBS issued a formal demand in August 2019. As the debt continued to increase RBS started legal action to recover the debt.

Mr and Mrs E have said

"I include below an extract from the Financial Ombudsman's website in relation to interest only mortgages:

<https://www.financial-ombudsman.org.uk/businesses/complaints-deal/mortgages/interest-only-mortgages>

"Fair treatment of customers at risk of being unable to repay

You need to show you've explored all options in a fair manner – taking possession should be a last resort. Your actions should have included:

- *considering reasonable requests made by the consumer – for example, a term extension, conversion to a repayment mortgage, or allowing overpayments*
- *considering whether the consumer has other options to repay the debt, such as a new mortgage with another lender or equity release*
- *ensuring your customer knows they can get advice on their options, by referring them to a free independent debt organisation, or suggesting they speak with an independent financial adviser"*

I would draw your attention to the second and third sub paragraphs above.

As you have pointed out Natwest did suggest we seek independent advice, so I accept that they complied with the third sub paragraph above.

However, Natwest did not comply with the second sub paragraph. You have described a series of conversations which took place between myself and the Natwest call centre regarding the Natwest One Account. In none of those conversations did I have any meaningful discussion about "other options to repay". At no time did the bank suggest that I consider refinancing. In fact, quite the contrary, through their approach and tone and lack of encouragement, and constant reference to lack of 'affordability', it lead me to believe that refinancing was hopeless."

I've considered this point carefully, but I'm not persuaded by it. RBS wasn't seeking to take possession because Mr and Mrs E's second term extension had come to an end (which would have been in 2020). It was seeking possession because Mr and Mrs E had once again breached the maximum facility limit that had been agreed. If Mr and Mrs E had remained within their facility limit, I have no reason to believe RBS wouldn't have honoured that 12-month further extended period to allow them time to repay their One account debt.

In any event, the second bullet point doesn't mean what Mr and Mrs E think. The second bullet point means a lender shouldn't push ahead with a repossession at the end of the mortgage term if an alternative financing option is going through. By that I mean if, for example, a consumer provides a copy of a formal mortgage offer from another lender which would be enough to repay the debt, then the current lender should allow a reasonable time period for that new lending to complete. It doesn't mean a lender needs to proactively tell a customer about what other funding options may be available to them. That would be the job of the independent financial adviser, which is covered in point three.

RBS told Mr and Mrs E that they should seek independent financial advice. I can't hold RBS liable if Mr and Mrs E chose not to do so, until it was so late that their options were more limited.

Having considered everything, I'm satisfied RBS did nothing wrong with proceeding with litigation when it did, and for that reason I can't hold RBS liable for the costs Mr and Mrs E incurred. I'm also satisfied that RBS treated Mr and Mrs E fairly when their original term came to an end in 2014, and from then until the point the mortgage debt was repaid. For the reasons given I don't uphold this complaint and I make no order or award.

My final decision

I don't uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs E to accept or reject my decision before 20 April 2021.

Julia Meadows
Ombudsman