

## The complaint

The trustees of a trust I shall call P complain about how The Royal Bank of Scotland Plc (RBS) has proposed to put right a mistake it made in stating the wrong final settlement figure in P's loan agreement.

## What happened

The background to this complaint is well known to both parties. In summary, in November 2018, P took out a loan with RBS. The term was for 54 months, with a variable interest rate. The loan agreement specified the monthly repayment and explained that, as these repayments had been calculated on a 10-year period (not 54 months), *'the amount of the final payment may be substantial'*. The agreement gave an estimate for the amount of the final payment, but this amount was wrong.

In July 2020, the trustees of P realised there had been a mistake and contacted RBS. RBS admitted the error and apologised for it. In January 2021, it confirmed that the actual amount to be repaid as the final instalment was around £100,000 higher than stated in the agreement. In compensation for its mistake, RBS refunded to P the £4,550 arrangement fee it had charged for the loan. The trustees of P didn't think this was sufficient to put right RBS's mistake, so they brought their complaint to our service.

RBS said that in its loan agreement with P, the final instalment amount quoted was only provided as an estimate. It said that the agreement clearly stated that *'this amount is subject to change and may increase, for example, as a result of changes in the Interest Rate'*. However, the trustees of P explained that they would never have gone ahead with the loan had they appreciated the size of the final instalment. They said that they had based their financial forecasts on the estimate provided.

In September 2021, RBS made a further offer to P. It said that, in addition to the £4,550 it had already returned, it would refund to P the loan document fee, and pay a further £1,000 as compensation, and offer P a new loan at the termination of the existing loan for the amount remaining payable. This new loan would be at the same interest rate margin as the existing loan and with no refinancing fees.

Our Investigator considered the trustees' complaint and discussed the matter with RBS. Following those discussions, RBS amended its offer further. The amounts offered to P remained the same; however, RBS said that P could repay the difference between the actual final repayment figure (calculated with interest charges applied as set out in the agreement) and the final repayment figure quoted in the loan agreement over an interest-free repayment period following the existing loan. RBS said that an affordable repayment plan would be agreed between P and its relationship manager at RBS.

Our Investigator considered the harm to P from RBS's mistake and said she thought the revised offer from RBS was fair to put things right.

The trustees didn't agree so the matter has been passed to me to decide.

## 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.

It's not in dispute that RBS made a mistake. The figure provided in P's loan agreement as the estimated final instalment amount was substantially wrong. The question is what should happen to put things right.

The loan agreement clearly states that *'the Customer will repay the Loan and interest by monthly instalments ... and a final instalment of an amount sufficient to repay the Loan and interest in full.'* The agreement also states that the amount indicated for the final instalment is an estimate and subject to change. Therefore, I believe P is liable to pay the actual final instalment amount due.

However, I have to decide what is fair and reasonable in all the circumstances of this complaint, so I have considered the harm P suffered as a result of RBS's mistake. The trustees of P have said that, had they appreciated the size of the final instalment, they would have sold the property on which the loan was secured in 2018 and not taken out the loan. They've commented that they could not have picked a worse time to be a landlord. They've said that they used the amount stated in the agreement as the final instalment in their financial forecasts, including when making decisions on refurbishing the property.

I'm aware that P incurred substantial refurbishment costs to make their property compliant with fire safety requirements, and that they suffered substantial rent arrears arising from the pandemic. However, these difficult circumstances were not fully known at the time of taking out the loan and it's not clear to me that, had the correct estimate been provided, the trustees would have sold the property upfront. I don't think it would be fair to hold RBS responsible for the harm suffered by P arising from, for example, more stringent fire regulations or the pandemic.

I am also aware that P has struggled with cash flow. Therefore, it is plausible that P would have managed its resources differently had it anticipated a larger final instalment. However, I have seen no evidence to persuade me that P would have avoided significant costs.

Although P has generated lower overall rent from its property than anticipated over the period of the loan, it has retained the benefit of the property, and therefore the benefit of the loan.

For all the reasons set out above, I think it fair that P repays the full amount outstanding on the loan at the end of its regular monthly repayments.

RBS has offered to P that it can pay back the difference between the actual final repayment figure (calculated with interest charges applied as set out in the agreement) and the final repayment figure quoted in the loan agreement over an interest-free repayment period subsequent to the existing loan. This repayment plan would be on affordable terms to be agreed between P and its relationship manager at RBS. It presumes that P continues to meet its monthly repayments as set out in the agreement for the duration of the existing loan and pays the final repayment figure quoted in the loan agreement.

While I acknowledge that P would like me to go further, I do not believe it would be fair for me to require RBS to write off this additional amount. I believe this arrangement appears a reasonable way for these funds to be repaid.

In addition, RBS has already paid P £4,550 to refund the arrangement fee and has offered to pay P both £550 to refund its loan document fee and £1,000 as compensation.

Overall, I believe this is a fair package of measures to put right the mistake made by RBS.

### **My final decision**

I uphold this complaint. In addition to the £4,550 already refunded to P, I require The Royal Bank of Scotland Plc to:

- Pay P £550 to refund the loan document fee
- Pay P £1,000 in compensation
- Arrange with P an interest-free affordable repayment plan by which P can return to RBS the difference between the actual final repayment figure (calculated with interest charges applied as set out in the loan agreement) and the final repayment figure quoted in the agreement.

Under the rules of the Financial Ombudsman Service, I'm required to ask the trustees of P to accept or reject my decision before 1 August 2022.

Andy Wright  
**Ombudsman**