

## The complaint

Mr and Mrs M complain they paid The Royal Bank of Scotland Plc ("RBS") around £7000 in fees unnecessarily for a mortgage guarantee and would like RBS to refund this to them. They also seek a refund of fees paid to RBS for managing their investment portfolio, on the basis that the performance was disappointing and/or may have been negatively impacted by a marker put on the portfolio, related to the mortgage guarantee, and wasn't amended or removed when the mortgage guarantee was. So they say their portfolio was mis-managed.

## Background and further details of the complaint

Mr and Mrs M complained they were paying a mortgage guarantee fee from 2016 onwards and the payments amounted to around £7000. They have said that until 2016 they weren't informed there were any charges involved with the guarantee (which began in 2008) and that from what they were told in 2016 their understanding was the guarantee had until then been part of their package, with RBS covering the costs.

Mr and Mrs M say that after RBS was bailed out by the government it told them it couldn't cover the costs of the guarantee anymore, so they'd have to cover the cost instead (they refer here to conversations in 2016, but I note RBS was bailed out in 2008, eight years before 2016). They say they understood from this in 2016 that RBS had previously been paying some other party for the guarantee, but they found out much more recently that the payments to RBS were being kept by RBS.

In light of the above, Mr and Mrs M believe they were given wrong or misleading information in 2016. They don't understand why RBS would say it couldn't afford to pay for a guarantee if it was providing the guarantee itself. They say RBS never gave them advice or information about choices they might have to cancel the guarantee – for example once the mortgage was reduced to around a quarter of the original amount RBS knew about. They have said: *"We were never told that there was a cost involved that we may one day have to pay. With this in mind we believe that the guarantee was, for want of a more accurate term, mis-sold and we are entitled to a refund of the money we paid."*

## My provisional decision

I wrote to the parties with my provisional findings, explaining that I intended to uphold the complaint in part, because I thought RBS did make errors. But I thought RBS had already paid fair compensation for these. Those provisional findings are attached to this decision.

RBS replied but raised no objections and had nothing new to add.

Mr and Mrs M replied to my findings and making new points. In brief summary they said:

- Telling them the complaint was too late doesn't make it right. This conclusion means RBS gets to keep their seven thousand pounds with no explanation as to why it was taking it. This is a lot of money to them. They feel robbed by a massive bank that they feel has been unhelpful and looking after no one. What is £300 in comparison. It is always the little people who lose out and it is very disappointing.

- They had no help from RBS and “kept running into walls”. RBS never told them they could have the guarantee cancelled, only that they could get it reduced. Only after many questions and phone calls did they speak to someone who asked if they wanted to cancel it and they said yes so it was cancelled.
- RBS is a massive company and knows all the rules. By stonewalling them at every turn it could escape being held responsible. They couldn’t complain about things until they find out there’s something to complain about. RBS broke its agreement that they would not be liable to pay anything.

### **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.

Having done so I’ve arrived at the same conclusions as I did in my provisional decision and for the same reasons. I’ll summarise these briefly in light of Mr and Mrs M’s further points.

According to our rules, I can’t consider a complaint made more than six years after the event complained of or, if later, more than three years after the date the complainant became aware, or ought reasonably to have become aware, of having cause for complaint. The exceptions are if the business consents to us looking at the complaint (RBS doesn’t consent here) or if the failure to comply with the time limits is due to exceptional circumstances.

Mr and Mrs M complained to RBS in August 2022. Their complaint about what RBS did or failed to do in 2008, associated with the sale or arrangement of the guarantee, is a complaint made more than six years after the event complained of. Their concerns about this event include concerns about not being told they might have to pay for the guarantee. But they knew they had to pay already by 2016, so Mr and Mrs M became aware of having cause to complaint about that in 2016, more than three years before they did complain. So that complaint was made out of time.

Mr and Mrs M haven’t said anything to make me think there were exceptional circumstances to explain why they didn’t complain to RBS for more than three years after they found they would have to pay in 2016. I note that they have said they paid a lot for the guarantee and didn’t know about the time limit rules, and that RBS didn’t tell them they could cancel the guarantee and was obstructive when they tried to find out about it. But none of this makes me think Mr and Mrs M couldn’t have complained about the guarantee earlier than they did and within the time allowed. I don’t believe errors or failings by RBS left Mr and Mrs M with insufficient time to complain – or were made in order to make them run out of time. So I find there were no exceptional circumstances for the delay in bringing that complaint and I haven’t considered the merits of that complaint because I have no power to do so.

But I have considered Mr and Mrs M’s complaint insofar as it relates to events from 2016, when the guarantee was amended and repriced and Mr and Mrs M say RBS said various things about all this which misled them. Indeed the substance of Mr and Mrs M’s complaint, insofar as it concerned financial loss, was about payments made from 2016 onwards.

The evidence is Mr and Mrs M’s lender wanted the guarantee to carry on in 2016 but agreed to a reduced guarantee amount to reflect a reduced mortgage balance. So a guarantee was still needed at that point. Also I’ve seen nothing to suggest RBS would’ve known whether or when the mortgage balance reduced – it wasn’t an RBS mortgage. So if Mr and Mrs M wanted to update the guarantee to reflect changes in the mortgage, this is something they would’ve had to initiate themselves.

Providing a guarantee does have a cost – as there is a potential liability associated with it. So the idea of charging for the guarantee isn't wrong in itself. Mr and Mrs M knew in 2016 that they would pay for it and they agreed to do so. Also RBS didn't give Mr and Mrs M advice on their mortgage in 2016. How they decided to meet their lender's requirements was up to them – and it was open to them to seek a different arrangement with their lender if they didn't wish it to rely on the guarantee.

Taking everything into account, I've not identified grounds for RBS refunding the payments Mr and Mrs M made for the guarantee from 2016 that they've asked to be refunded.

With regard to portfolio performance and the portfolio management fees, RBS says it should've removed a marker from the portfolio in 2020 but didn't until 2022. The portfolio performance wasn't impacted by the marker, from what I've seen. Also the performance doesn't in itself indicate to me that RBS mismanaged the portfolio. I've seen nothing to suggest there was anything remarkable in how RBS invested the portfolio that would indicate wrongdoing by RBS or negligent investment management.

That said, it seems the guarantee was an unusual arrangement and those Mr and Mrs M spoke to at RBS before they complained weren't able to identify the relevant RBS persons or department with knowledge of the arrangement. So RBS at that time gave Mr and Mrs M wrong information about the guarantee and it was a while before it obtained documents to explain things properly. The delay in removing the marker from the portfolio also caused inconvenience. In total RBS paid Mr and Mrs M £300 for inconvenience caused by these matters. In my view that was fair and reasonable redress for the inconvenience RBS caused.

So I uphold Mr and Mrs M's complaint in part, because RBS did make errors. But I find RBS has already paid fair compensation for these, so I don't find it needs to do anything more. I appreciate my conclusion disappoints Mr and Mrs M. I'm grateful to them for the prompt and courteous assistance they have given us throughout our consideration of these matters.

### **My final decision**

I uphold this complaint in part. I find the £300 The Royal Bank of Scotland Plc has already paid Mr and Mrs M is fair and reasonable redress in all the circumstances. So I make no further award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M and Mrs M to accept or reject my decision before 1 July 2024.

Richard Sheridan  
**Ombudsman**