

## **The complaint**

Mr A has complained about his mortgage he holds with The Royal Bank of Scotland Plc ("RBS").

## **What happened**

Mr A applied for this mortgage in 2006. The mortgage offer that was issued on 6 December 2006 showed an initial borrowing amount of £250,000 on an interest only basis over a 17-year term. It was an Offset Flexible mortgage, with a variable interest rate which was 5.90% at the time of the mortgage offer. Going forward I will refer to this as the Offset Flexible Mortgage Rate ("OFMR").

The mortgage completed in February 2007.

The OFMR varied and then, due to the financial crash, it fell to 3.75% where it remained until 29 February 2012.

There were then the following interest rate changes up until the end of 2022:

- 01 March 2012                      4.00%
- 04 September 2018                4.25%
- 01 June 2022                        4.50%
- 02 August 2022                    4.75%
- 01 September 2022                5.25%
- 01 November 2022                5.75%
- 01 December 2022                6.50%

The account has been in arrears on and off over the years, and some complaints have been raised.

On file we hold final response letters as dated below relating to the following complaints:

- 14 March 2017 – This was about the removal of Mr A's banking facilities in 2011 which meant he lost the facility to offset funds from his linked account to his offset mortgage.
- 21 June 2019 – Mr A was shocked to hear that his account had been placed with RBS's solicitors as he said he'd been paying his monthly payment and had been advised by RBS that this included a payment towards the arrears.
- 8 November 2019 – Mr A had received an incorrect letter from RBS's solicitors.

- Undated copy on file but refers to the complaint being raised on 2 December 2019 – Mr A was unhappy with how RBS managed his situation in November 2011, when his accounts were closed and all borrowing was called up. He said he believed RBS had the intention to make him bankrupt and it acted illegally. Mr A was unhappy about how RBS had acted regarding his complete borrowing structure.
- Undated copy on file but refers to the complaint being raised on 20 May 2020 – RBS had sent a letter to Mr A advising him of his arrears being around £420,000. Mr A also said there should be a capping agreement live on the account.
- 23 October 2022 – Mr A felt he'd been mis-sold the Offset account, and he was unhappy with the interest rate.
- 9 November 2022 – Mr A was unhappy that RBS was charging him the OFMR when he was no longer able to avail himself of the benefits of the offset mortgage.
- 19 December 2022 – Mr A made a card payment over the phone on 29 October 2022, but the payment did not clear by 31 October which Mr A said had adversely affected his credit file.

Mr A referred the complaint to our service on 3 May 2023 saying, in summary:

- He is paying an offset variable rate that is higher than the core range mortgage variable rate without getting any of the benefits of the offset account.
- He doesn't accept that it was beyond the technical expertise of RBS to simply have set up an 'interest only' product without any benefits, charging an appropriate rate. He said that would have been acceptable to him.

Mr A said he was looking for RBS to act in a fair and reasonable manner by re-setting his interest rate to match that of the service provided - a Standard Variable Interest Only product, and for this rate to be applied retrospectively from 2011. He said it was his understanding that there is a 2% margin between the OFMR and the Standard Variable Rate ("SVR").

Our Investigator considered our jurisdiction first. He said we could only consider complaints that fall within the time limits set out in our rules and having considered those he said we could only consider a complaint that Mr A was paying an offset variable interest rate without the benefits of the offsetting facility for the period after 14 March 2017. That's because RBS responded to a previous complaint about that issue on that date, and that complaint wasn't referred to us in time.

Mr A originally disagreed, but after some correspondence with our Investigator he said he agreed with our jurisdiction.

Our Investigator then considered the merits of the part of the complaint he'd said we could consider and he didn't uphold the complaint.

Mr A didn't agree and so the case was passed to me to decide.

In his response to our Investigator Mr A referred back to parts of the complaint the Investigator had said we couldn't consider, so for that reason I issued a decision about our jurisdiction first. In that I said our service only has the power to consider this complaint in respect of the interest rate charged between 15 March 2017 and 9 November 2022.

## 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.

In his response to my decision about our jurisdiction Mr A said:

*"Whilst I am disappointed that the complaint does not lend itself to further formal response, I am struggling to understand why the period considered should not be from 15th March 2017 to the present day and ongoing."*

Under our rules a business must have a chance to investigate and respond to a complaint before our service gets involved. The last final response letter that was issued before Mr A referred his complaint to our service was 9 November 2022, so we can't consider anything after that point. If Mr A has any later final response letters from RBS and he wants us to look into those issues then he would need to refer those to us as a new complaint (subject to our usual rules).

When considering what is fair and reasonable in all the circumstances of this case, I'm required by DISP 3.6.4R of the Financial Conduct Authority's Handbook to take into account the relevant law, regulations, and good industry practice, when reaching my decision.

I've given careful consideration to all the submissions made by both parties, but I won't address each and every point that has been raised. I'll focus on the matters that I consider most relevant to how I've reached a fair outcome in keeping with the informal nature of our service.

Having done all that, I don't think this complaint should be upheld. I realise this will be disappointing for Mr A. But I hope the reasons I have set out below will help him to understand why I have come to this conclusion.

Whilst the OFMR was 0.95 percentage points above the Bank of England base rate ("base rate") at inception, the terms don't say the OFMR should or would act as a base rate tracker. Rather they show RBS has the power to vary the rate at its discretion.

There was also no obligation on RBS to offer a new preferential rate at any time in the rules of mortgage regulation. And nothing in Mr A's mortgage offer says that RBS would move him onto a new rate either. If any existing customer – including Mr A – had wanted a new preferential interest rate they needed to contact RBS to request that, and if they had an Offset Flexible Mortgage (like Mr A) then they would need to complete an internal remortgage to RBS's core range of products.

That said, our service is required to consider what is fair and reasonable in all the circumstances. That includes thinking more broadly about whether the way, and the extent to which, the terms have been used has resulted in unfair treatment for Mr A. I think that is the ultimate question I need to answer in deciding whether to uphold this case.

In answering this question, I have explained that although I'm only able to consider the fairness of interest charged to Mr A's mortgage between 15 March 2017 and 9 November 2022, it's necessary for me to consider historic changes to RBS's OFMR.

I've considered all the available evidence and all of the changes RBS made to the OFMR since Mr A took his mortgage. Having done so, I am not persuaded that anything RBS has done in varying the rate has led to Mr A being treated unfairly. I have set out why below.

For reasons of commercial confidentiality, I haven't set out in detail the evidence RBS has provided in full. Nor has our service provided copies of it to Mr A.

Our rules allow me to accept information in confidence, so that only a description of it is disclosed, where I consider it appropriate to do so. In this case, I do consider it appropriate to accept the information and evidence RBS has provided in confidence, subject to the summary of it I have set out in this decision.

The 2006 mortgage offer makes clear the OFMR is a variable rate, and as I've said there's no suggestion in either the offer or the terms and conditions that it's directly linked to - or tracks - base rate.

When Mr A took out his mortgage, the OFMR was 6.20% (it had increased from the 5.90% shown in the mortgage offer. The OFMR then varied both up and down until April 2009 when there was a period of stability. In March 2012 the OFMR was varied up by 0.25 percentage points, and then it remained stable again until September 2018. The next change was in June 2022, at which time the OFMR started to increase regularly.

As I say, there's nothing that links the OFMR to base rate, or says that the OFMR must be changed when base rate changes. Nor is there anything in the terms and conditions that obliges RBS to change the OFMR at any time – the terms allow RBS to make changes, but don't require it to do so.

Between February 2007 (when Mr A took out his mortgage) and April 2009, while the OFMR reduced, it didn't reduce by the same proportion as the reduction in the base rate. Therefore, the difference between base rate and the OFMR increased from 0.95 percentage points to 3.25 percentage points.

Despite this increase in 'margin', the OFMR Mr A was paying in 2009 was still lower than what it was when he agreed to the mortgage in 2006/07 and it was in line, if not lower, than the market average SVR for the time.

I've already set out that this wasn't a tracker mortgage, so RBS was not contractually obligated to track base rate. Nor is it the case that Mr A's mortgage had a 'cap' preventing RBS's OFMR from increasing beyond a certain 'margin' above base rate. So, there was nothing in the contract that expressly prohibited RBS from setting the OFMR at a level whereby the margin between the OFMR and base rate would change. But that doesn't mean that RBS could set the OFMR at whatever level it chose.

To evidence its decisions at the time and reliance on the contract terms, RBS has told us that despite a reduction in base rate, its total group funding costs increased considerably over the years 2008-2009. As such, it has said it was not able to pass on the full reductions in base rate to its OFMR customers. And in 2012 the OFMR increased despite there being no change to the base rate, which reflected an increase in RBS's costs for this type of product.

The mortgage market went through a period of significant change as a result of the global financial crisis. This impacted the funding costs of businesses, including RBS, and was reflected in changes to a number of lenders' interest rates charged across the market at the time. This was clear at the time and has been the subject of analysis by both the Bank of England and the Financial Conduct Authority since. Whilst base rate did reduce significantly during this period, the cost to lenders of funding their businesses changed, as did their prudential requirements. These were made up of several factors that are not directly linked to base rate. With this in mind, and in conjunction with the information RBS has been able to provide, I am satisfied it had legitimate reasons to vary its OFMR in the way that it did.

Whilst the evidence provided is limited due to the passage of time, I have not seen any evidence to suggest the changes RBS made were arbitrary, excessive, or unfair. Rather, the evidence I've seen satisfies me that RBS acted in line with its terms and conditions to protect its legitimate interests while balancing its obligation to treat Mr A fairly. And I'm further satisfied that, albeit limited, the information RBS has been able to provide for this period is corroborated by evidence of wider market conditions at the time.

Overall, I'm satisfied that RBS has shown that it was entitled to rely on the terms and conditions to make the changes to the OFMR it did make, and that there was no obligation on it to make changes to the OFMR at other times. Taking that into account, I don't think there's evidence either that RBS relied on changes it was not entitled to make in setting the OFMR charged at the start of the period I can consider, or that it acted unfairly in making further changes to the OFMR during that period.

That being the case, I don't think there is any basis to say Mr A was charged an unfairly high rate of interest on his mortgage during the period I can consider, and I've seen no evidence to say that the interest he was charged during that period was unfair for any other reason.

For the reasons I explained in my decision about our jurisdiction we can't consider a complaint about the fact Mr A was being charged the OFMR without having the offset benefits before 15 March 2017. And since then, unless Mr A applies to move to a core range product (whether that be a preferential interest rate product, or the SVR) then he will remain on the OFMR. That's because to move from an offset product to a core range product an internal remortgage would be required which would be a full application process; albeit as it would be a like-for-like change, no underwriting would be required.

I understand Mr A feels RBS could have simply set up a product for him without any benefits, but RBS doesn't offer bespoke products in that way. If Mr A wanted a different rate then he would have needed to apply by way of an internal remortgage as I've set out above.

Mr A says that he didn't apply to transfer his mortgage to a core range product because when he spoke to an RBS mortgage adviser it was clear to him that it was just a box ticking exercise, and he wouldn't be eligible for a new product. He says he asked the adviser directly if he met the criteria (age and financial history) and she agreed it was effectively a waste of time. He said it didn't make sense that he would be unwilling to proceed if he believed there was any chance of approval.

Unfortunately, due to the passage of time the calls are no longer available. What we have got is the contemporaneous call notes and Mr A's recollections of what was said. Whilst it is unfortunate we don't have the calls to listen to, that is often the nature of complaints made some time after the event in question and so it is something we're used to dealing with.

It is unfortunate that Mr A didn't go ahead with an application as, had he done so, I see no reason to believe that RBS wouldn't have been able to offer him a new interest rate product (if one was available that suited his needs and circumstances). As whilst RBS would need to go through a full mortgage interview, with affordability information taken, as long as Mr A was doing a like for like switch (that is, with no changes to the borrowing amount, term or repayment basis) then RBS wouldn't re-underwrite the mortgage. Underwriting would only have been required if Mr A wanted to borrow more money, change the remaining term of his mortgage, or to move some or all of his mortgage onto a repayment basis.

RBS would still need to obtain all the information from Mr A it would normally need to underwrite a mortgage (that is, information about his income and other credit commitments) as this would be an internal remortgage process (as he would be moving from an offset mortgage to RBS's core range). But it wouldn't then use that information to refuse to carry

out the transfer. The only thing that might have been a barrier were if there was no suitable product available for Mr A to move onto. By that I mean, for example, if Mr A only had four years left to run on his mortgage but all the products that were available had a five-year term so wouldn't fit.

As I said, it is unfortunate that the calls are no longer available so I can hear exactly what was said in respect of the application process. Whilst Mr A has said the adviser told him it wouldn't be worth applying that isn't reflected by what has been recorded in the call notes. The October 2019 call note indicates Mr A was going to call back when he had all the information he needed to hand, and the February 2020 call note doesn't indicate RBS told Mr A he wouldn't be eligible, it says he was offered the opportunity to carry out an application but didn't want to do so.

Whilst I don't doubt Mr A's recollections have been given in good faith, I simply don't have enough to say with any certainty that the only reason Mr A didn't apply for an internal remortgage to the RBS core range in 2019/2020 was because an RBS mortgage adviser told him he wasn't eligible for the internal remortgage process.

Mr A has said that his OFMR has been around 2% higher than the core SVR. It isn't clear why Mr A feels that was the case, as it isn't.

For many years the OFMR was broadly the same as the core SVR and, in fact, up until February 2012 the OFMR was lower than the equivalent core SVR. The OFMR was only notably higher than the core SVR between October 2016 and December 2017, from April 2020 until May 2022, and from September to November 2022. By notable I mean, for example, from December 2017 the OFMR was 4.00% and the core SVR was 3.99%, so there was no notable difference.

Other than during those three periods the OFMR has been broadly the same, or has been notably lower, than the core SVR.

The largest differential between the OFMR and the SVR, where the OFMR was higher was 0.66 percentage points between April 2020 and February 2022. Other than that, the differential (when the OFMR was higher) was around 0.50 percentage points or less. In the period since Mr A took out the mortgage, the OFMR has never been 2 percentage points higher than the core SVR.

In contrast, when the OFMR was lower, the differential ran at 1.24 percentage points, with the OFMR being 1.51 percentage points lower at one point.

Having considered everything, whilst I've a great deal of sympathy for the situation Mr A found himself in, I don't think RBS has done anything wrong when looking at the parts of this complaint I can consider.

### **My final decision**

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 29 March 2024.

Julia Meadows  
**Ombudsman**