

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. My provisional findings were set out as follows:

"What I can and can't consider – my provisional view"

Mr and Mrs M complained to RBS in August 2022. Our investigator thought a complaint that the guarantee had been mis-sold - on the grounds that Mr and Mrs M weren't made aware that they might have to make a payment for it or that there was some other fault in what RBS did at the start - was one we couldn't consider because it was made out of time.

This is because, on one hand, the event Mr and Mrs M were complaining of was the starting of or 'sale' of the guarantee, which took place in 2008, and more than six years passed since

then before they complained – and, on the other hand, Mr and Mrs M also became aware of having cause to make this complaint in 2016, more than three years before they did complain, as they knew in 2016 that they would have to make payments for the guarantee.

I agree with our investigator on these points. So in my view any complaint about what RBS did or failed to do in 2008, associated with the sale or arrangement of the guarantee, is a complaint made out of time because Mr and Mrs M's concerns about it include concerns about not being told they might have to pay. They knew they had to pay already by 2016, so under the rules that govern our service they had three years to complain about it from then – and I could only consider that complaint if there were exceptional circumstances to explain why they didn't complain to RBS before the end of that three year period. Mr and Mrs M haven't said anything to make me think there are exceptional circumstances for the delay in bringing that complaint. So I don't think I can consider that complaint.

However I don't think this means I can't consider a complaint about events in 2016, when it appears the guarantee was amended and repriced and Mr and Mrs M say RBS said various things about all this which misled them. In my view I am able to consider those matters, so I can consider the substance of Mr and Mrs M's complaint – which was about the payments they made from 2016 onwards and what happened at that time and afterwards.

I note that when Mr and Mrs M disagreed with our investigator's view about time limits, they said it wasn't until later that they realised the guarantee was being provided by RBS and that their payments for the guarantee were being kept by RBS. I don't agree that this makes a difference to what I've said above about the complaint about the 'sale' of the guarantee or events in 2008 relating to the arrangement of the guarantee. But as I think I'm able to consider the complaint insofar as it relates to the payments made from 2016 onwards, I am able to consider, in relation to that, Mr and Mrs M's point that they didn't know until later that the payment was being kept by RBS.

So, insofar as I think I can consider it, I turn now to consider the merits of Mr and Mrs M's complaint.

What I've provisionally 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, my present view is that RBS did make some errors but doesn't need to do anything more to put things right. I'll explain my reasons.

With regard to portfolio performance and the portfolio management fees, our investigator did consider this and agreed with RBS that the portfolio performance hadn't been negatively impacted by the marker that was put on it relating to the guarantee. He thought the failure to remove or reduce the marker in line with the mortgage guarantee, caused inconvenience but not financial loss.

RBS says it should've removed the marker in 2020 but didn't until 2022 and it paid £250 to Mr and Mrs M to compensate them for this. Our investigator thought that was fair.

From what I've seen, I agree that the portfolio performance wasn't impacted by the marker. Also the performance doesn't in itself indicate to me that RBS mismanaged the portfolio. The portfolio achieved a positive return but underperformed its benchmark while slightly outperforming the middle return of other investment managers, according to RBS. But investment outperformance can't be guaranteed, and poor performance isn't in any case evidence in itself of negligent investment management. 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.

Turning to the guarantee, in essence Mr and Mrs M's complaint about it is that they think they didn't need to be paying for it because they found in 2020 that they could stop paying for it – and they think RBS should've told them this earlier. But the fact the guarantee could be cancelled in 2020 doesn't mean that they could have cancelled it earlier – and the evidence we have is it was still needed in 2016.

The correspondence recently shared with Mr and Mrs M shows their lender wanted the guarantee to carry on in 2016 but agreed to a reduced guarantee amount – so a guarantee was still needed. Mr and Mrs M have pointed out their mortgage reduced substantially since it started in or around 2007 – from around €300,000 to around €90,000. What happened in 2016 is that the guarantee was reduced to reflect a reduced mortgage balance. It is apparent that in 2016 RBS made clear the guarantee that was being provided would have a price. For example a letter in November 2016 told Mr and Mrs M payment for the guarantee was due. Also they have confirmed they knew about the payments from that point and agreed to make them. The payments from 2016 were for a guarantee that matched the reduced mortgage amount. So the reduced mortgage amount wouldn't justify a refund of those payments.

Mr and Mrs M have said that when they realised RBS was keeping the fee, they realised the guarantee wasn't needed. But the correspondence shows that whether or not the guarantee was still needed was down to the lender. The guarantee was in essence a promise by RBS that it would guarantee to cover certain sums Mr and Mrs M owed or might owe their lender if Mr and Mrs M couldn't or didn't repay those sums themselves. RBS couldn't be released from that obligation, or change it, without the lender's permission.

I don't know when the mortgage first reduced, but I've seen nothing to suggest that 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. RBS would've then had to seek permission from their lender for any alterations. It seems this is what happened in 2016. It follows that when Mr and Mrs M's mortgage reduced further after 2016 (or if their mortgage had reduced earlier), RBS wouldn't have been in a position to alert them to this.

It seems to me that what mortgage arrangements Mr and Mrs M made with their lender and how they decided to meet their lender's requirements, were matters for them to decide. I've not seen evidence that RBS gave them advice on their mortgage in 2016. Mr and Mrs M have explained that they approached RBS originally to obtain evidence that they could meet the mortgage payments – because their RBS portfolio was their main income source. A guarantee was then arranged by RBS in 2008. As I've noted above, I'm not considering here the details of what took place in 2008.

When RBS suggested - presumably in 2020 - that Mr and Mrs M ask for the guarantee to be cancelled, I don't think RBS would've known for sure that this could be done. Its suggestion may have been prompted by what Mr and Mrs M told it about the reduced mortgage balance or about not wanting to make the payments for the guarantee. But the cancellation needed to be agreed by the lender before it could be carried out. We know that in 2016 the lender didn't agree to a cancellation, only to a reduction.

Mr and Mrs M have said they thought the guarantee was free until 2016 – so they were seeking to recover only the payments they made since then. But from the correspondence it is apparent that they were charged for the guarantee – and RBS says this happened from 2008 onwards. So Mr and Mrs M's suggestion that payments after 2016 were unnecessary because they hadn't had to pay for the guarantee before 2016, isn't correct. Payments made

before 2016 arose from the 2008 arrangements and I've explained my current view that I don't think I can consider a complaint about those 2008 events or those payments.

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 – and, as noted above, Mr and Mrs M agreed to pay for it in 2016. RBS says the altered fee in 2016 was based on around 2% of the guaranteed amount and that this is the usual sort of rate it charges. I've no reason to doubt that. Also I've noted Mr and Mrs M were made aware of the charge and agreed to it. I don't see that it made any difference that RBS kept the payment rather than passing it on, and passing on the obligations, to some other party.

In light of all I've said above, I've not identified grounds to say that RBS should refund the payments Mr and Mrs M made for the guarantee from 2016 that they've asked be refunded.

I don't overlook what Mr and Mrs M have said about having been given false information on how to cancel the guarantee and the marker. They say this was a tactic to fob them off and mislead them – and they point out RBS denied that any withdrawals had been made from their account for the guarantee.

In this regard I note that when Mr and Mrs M first complained, RBS didn't believe they'd been paying for a guarantee or that the payments had been made to RBS. It seems the arrangement was unusual and not familiar to those Mr and Mrs M were speaking to at that time, and it was set up for them by their original RBS contacts on a bespoke basis. Those they dealt with later weren't able to identify the relevant RBS persons or department with knowledge of the arrangement. So it was a while before RBS obtained documents Mr and Mrs M asked for in relation to their complaint.

In total RBS has paid Mr and Mrs M £300 for inconvenience caused by these matters, including the delay in removing the marker from their portfolio. In considering whether this is fair, I bear in mind that the delay in removing the marker didn't cause financial loss but did cause Mr and Mrs M inconvenience. I also bear in mind RBS gave Mr and Mrs M incorrect information about the arrangements they had and took some time to track down information and documents for them – which also caused inconvenience. With all that in mind, in my view the £300 paid is fair and reasonable redress for the inconvenience RBS caused.

So I intend to uphold Mr and Mrs M's complaint in part... But I think RBS has already paid fair compensation...." *[End of provisional decision text.]*

Responses to my provisional decision

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

Mr and Mrs M replied to my findings, making more 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 complain 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 paid Mr and Mrs M fair and reasonable redress in all the circumstances. 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