

## **The complaint**

Mrs L complains that The Royal Bank of Scotland Plc mis-sold her mortgage. She says she was told she could only get a mortgage term that ran until the age of 60, but she's since discovered that was wrong. She feels she's paid a higher interest rate and life insurance premium as a result of the unsuitable advice she was given.

## **What happened**

In 2015 Mrs L took out a mortgage with RBS after it gave her advice. She took out a repayment mortgage with a five-year fixed interest rate. The term of the mortgage was 14 years and 5 months which would take her up to the age of 60.

During the pandemic Mrs L began having difficulties maintaining her monthly mortgage payments. After several conversations RBS agreed to extend her mortgage term and capitalise the arrears so that they could be repaid in a way Mrs L could afford.

In 2023 Mrs L complained about the sale of the mortgage. She said she'd been told by the RBS adviser that because she was a single female applicant, she could not have a mortgage term that ran beyond the age of 60, despite the fact she didn't plan to retire at that age. She said she was discriminated against on the basis of her sex and age. Now that RBS has agreed to extend her mortgage term, she knows the information she was given at the time was incorrect, and so she feels she was mis-advised to take a product that wasn't suitable for her. She said she'd paid a higher interest rate and life insurance premiums as a result of her mortgage having a shorter term than it should have done.

RBS said that the fact find document that was completed at the time of the advice recorded that Mrs L was considering a mortgage term of 20 years, but she was unsure and wanted the term to fit around her preferred monthly budget of £1,500. The adviser recommended a term of 14 years and 5 months because that was the shortest mortgage term available whilst keeping Mrs L's monthly payments within her preferred budget, and the mortgage would be paid off before her intended retirement age of 80. RBS said it was satisfied the advice given at the time was suitable for Mrs L's stated needs and circumstances.

RBS also said its interest rate products are determined by a number of factors including the cost of purchasing the lending, the length of the product term, and the size of the loan compared to the value of the property. As Mrs L's loan-to-value was 95% at the time the mortgage was sold, the interest rate product reflected the higher risk accepted by RBS if the mortgage defaulted and the property must be recovered and sold to repay the borrowing. RBS said it could not see from its records how Mrs L's life insurance policy was arranged, but the premiums are based on the amount of cover required, the length of the policy, and the age and health of the applicant. It said the premium isn't influenced by the monthly payments or interest rate product. Overall, it was satisfied it hadn't discriminated against Mrs L when it sold the mortgage.

RBS didn't give our service consent to consider Mrs L's complaint as it said it had been made outside the time limits.

One of our Investigators looked into things and explained that he thought Mrs L had made her complaint in time. He said whilst the advice was given more than six years before she complained, he was persuaded she had complained within three years of when she became aware, or ought reasonably to have become aware, that she had cause to complain.

The Investigator went on to consider the merits of Mrs L's complaint and said he didn't think RBS had mis-sold her mortgage. He didn't uphold the complaint.

Mrs L disagreed. She said the adviser gave the advice he did to fit his own criteria to ensure the mortgage was agreed by RBS' underwriters. She said the right advice would have been to take out a mortgage with a term that was seven years longer than the one she took. She said she didn't have a budget that she told RBS about, the adviser gave her a figure for her monthly payments.

Our Investigator wasn't persuaded to change his opinion, so the complaint has been passed to me to make a decision.

### **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.

#### Our jurisdiction to consider Mrs L's complaint

I agree with our Investigator that our service has the power to consider Mrs L's complaint.

The rules which set out the timescales within which a complaint must be made, in order for this service to be able to consider it, are set out in the Dispute Resolution (DISP) rules in the Financial Conduct Authority's handbook.

DISP 2.8.2R says that where a business doesn't agree, which RBS hasn't, I can't look at a complaint that's made more than six years after the event complained about. Or if later, more than three years after the complainant was aware, or ought reasonably to have been aware, of a cause for complaint. Unless the complaint was made to the business before this, and the complainant received a written acknowledgement, or there's some other record of the complaint having been received.

We can however consider complaints that have been brought to us outside the above time limits if we're satisfied the delay was a result of exceptional circumstances.

Mrs L's mortgage was sold in 2015, which is more than six years before she complained in 2023. So I've thought about when Mrs L became aware, or ought reasonably to have become aware, of her cause to complain to decide whether we can consider her complaint.

In 2021 Mrs L had conversations with RBS about how she would clear the arrears that had accrued during the pandemic and lockdown. An option that was discussed was extending the mortgage term. Mrs L told RBS she didn't think that would be an option as she was told in 2015 that her mortgage term could not run beyond the age of 60 because she was a single female applicant. RBS told her that wasn't the case, and it could extend the mortgage term to reduce the monthly payments once the arrears had been capitalised.

I'm satisfied it was those conversations that took place in 2021 that made Mrs L aware of her cause to complain. Whilst she was aware of her mortgage term, and what she was told at the time the mortgage was sold from the outset, she hadn't been given any indication that she could actually have had a longer term and that the advice she'd originally received might

have been unsuitable for her. As such, I'm satisfied Mrs L made her complaint within the three-year time limit, and so we can consider her complaint.

#### Did RBS give Mrs L unsuitable advice?

When RBS gave Mrs L advice to take out this mortgage in 2015, it had a regulatory obligation to ensure that the mortgage product was suitable for her. I've seen the documents that the adviser completed at the time of his discussions with Mrs L, and I've also considered Mrs L's testimony about what happened. Having done so, I'm satisfied the recommendation RBS made was suitable for Mrs L's needs at the time of the sale.

The fact find document that RBS completed with Mrs L in 2015 stated that Mrs L's preferred mortgage term was 20 years, but she wasn't sure of that, and she just wanted her monthly payments to fit within her budget. It also stated that Mrs L wanted the shortest available term that would fit her monthly budget. Mrs L has told us she didn't have a monthly budget when she approached RBS, it was the adviser that gave her the monthly figure of £1,500.

I can't know for sure what was discussed at the time, but even if Mrs L didn't have a specific budget in mind when she approached RBS for advice, that monthly budget was arrived at after consideration of Mrs L's monthly income and expenditure and was deemed an amount she could afford. The monthly budget of £1,500 was referred to in RBS' suitability letter which outlined the advice given that was sent to Mrs L's address. So I think if she was concerned about that budget, it's likely she would have raised those concerns at the time, and there's no evidence she did so. Thinking about all the evidence I've seen; on the balance of probabilities, I'm persuaded that it was agreed between RBS and Mrs L that £1,500 per month was a reasonable budget for her monthly mortgage payments.

It was in Mrs L's best interests to agree to a shorter mortgage term if that was deemed affordable for her and didn't conflict with any of her other priorities and plans that she had later in life. RBS recommended Mrs L take out a repayment mortgage, that means that the shorter the mortgage term, the quicker the mortgage would be repaid, and the less interest Mrs L would pay overall. So, if Mrs L was comfortable with the monthly payment amount under the mortgage term of 14 years and 5 months, then I'm satisfied it was reasonable of RBS to advise Mrs L to take out a mortgage with that term, rather than a longer term. Whilst the fact find document says Mrs L wanted a term of 20 years, there was no particular reason why that was her preference, and she hasn't told us now about any reason the shorter term that was recommended was unsuitable for her at the time either. I appreciate Mrs L's circumstances have since changed and the impact of the pandemic meant she was unable to afford her mortgage payments. But I'm not satisfied that was reasonably foreseeable at the time this advice was given, and it doesn't make the original advice unsuitable.

I've also not seen anything to suggest that Mrs L was charged a higher interest rate or life insurance premium as a result of her mortgage term ending at the age of 60. The interest rate RBS initially recommended might seem high in comparison to other rates that were available at the time, but Mrs L's mortgage was going to be 95% of the property's value. That means there's more risk for the lender and so the higher rate reflects that risk. I'm not persuaded the overall term of Mrs L's mortgage influenced the interest rate she was charged. And if anything, the shorter term meant Mrs L was repaying the mortgage more quickly than she otherwise would have done, which would have resulted in her loan-to-value reducing sooner – which would likely have given her access to lower products sooner than if she'd had a longer term. It also means she's paying less interest overall over the mortgage term. Overall, I'm satisfied the mortgage RBS recommended to Mrs L was suitable for her.

#### Was Mrs L discriminated against?

There's nothing in the documentation from the time this advice was given that suggests RBS told Mrs L that she could not have a mortgage term that would run past the age of 60 as she was a single female applicant. But, I don't doubt that's what Mrs L recollects from the conversations she had in 2015. She's been very clear and consistent about what she remembers being told – to both RBS and this service. However, that information was not correct. RBS' lending criteria at the time meant that Mrs L would have been able to borrow up until the age of 70. Although there were also some extra considerations if the proposed lending was to go beyond her retirement age.

I think what's most likely to have happened, is Mrs L and the adviser had a conversation about the state pension age for females at the time, and the potential impact it may have on her application if the mortgage was going to go beyond retirement age. And Mrs L took from that conversation that she wouldn't be able to have a mortgage that went beyond the age of 60. I can't know that for certain, but it is my role to decide what I think is most likely to have happened based on the balance of probabilities. And based on everything both sides have said, I'm persuaded it's most likely that Mrs L's recollections have come from something the adviser said about retirement, which perhaps wasn't as clear as it could have been.

Mrs L says she feels RBS has discriminated against her based on her sex and age. Based on what Mrs L has told our service, I can understand why she feels this way. But having looked at all the evidence I don't think RBS has done so. Nor do I think RBS has acted unfairly or unreasonably. I'm satisfied it was in Mrs L's best interests to have a mortgage with the shortest term she could comfortably afford. I've not been made aware of anything about Mrs L's particular circumstances that suggested otherwise. In any event, RBS has since offered to extend the mortgage term for five years to allow Mrs L to repay the arrears in a way that's affordable for her.

Whilst I appreciate it will come as a disappointment to Mrs L, I'm satisfied RBS did not mis-sell her mortgage.

### **My final decision**

Considering everything, for the reasons I've explained, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs L to accept or reject my decision before 25 September 2024.

Kathryn Billings  
**Ombudsman**