

The complaint

Ms M complains that The Royal Bank of Scotland Plc (RBS) haven't treated her fairly while she's been having financial difficulties with her mortgage payments. She says RBS is trying to repossess her home. She also complains that she wasn't told about a fee that has now been applied to her mortgage account.

What happened

In 2005 Ms M took out a repayment mortgage of £130,000 with RBS over 25 years. In late 2019 she switched to a five year fixed interest rate of 1.93%.

At various times, due to caring commitments, Ms M fell into arrears and was offered various payment plans but unfortunately wasn't able to maintain them all, so by October 2022 RBS began litigation proceedings. This situation continued throughout 2023 with the litigation process being suspended while RBS allowed Ms M more time to address the mortgage arrears.

But in March 2024 Ms M became aware of a charge that was applied to her mortgage account. She questioned what it was for and said she'd been given no advance warning of such a charge being applied. She subsequently said that because she'd made a number of mortgage payments around this time the additional charge caused her not to be able to make her contractual monthly payment (CMP) in May 2024.

RBS said the charge had been applied by the solicitors when it passed the account to them. It also said it had made Ms M aware of the litigation process prior to this happening and felt it had managed her account fairly and had provided appropriate support as well as delaying repossession hearings and proceedings to allow her to address the mortgage arrears.

Ms M wasn't happy with the response, so she brought her complaint to us where one of our investigators looked into the matter. He didn't think the complaint should be upheld as he thought RBS had offered Ms M adequate support from 2022 – including delaying repossession proceedings – and had made her aware that her mortgage account had been passed to solicitors in November 2022. So he didn't think RBS had acted unfairly in pursuing the matter and noted the charge had been taken by the solicitors in accordance with its process. He also noted the charge had been added to the mortgage account, so he didn't agree that it caused Ms M to miss her May 2024 CMP.

Ms M didn't agree. She said that following a conversation with RBS in late 2023 she made a number of mortgage payments and was "congratulated" on getting her account up to date. She set up a direct debit at that point to ensure her CMP were in place – which was confirmed by a text shortly afterwards. She thought RBS had continued to treat her unfairly and had been "underhand" in charging solicitors' fees without informing her. She asked for her complaint to be referred to an ombudsman, so it's been passed to me to review.

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.

And having done so I've reached the same conclusion as the investigator. I know Ms M will be disappointed with this outcome – so I'll explain my decision.

Many of the concerns Ms M raised here were about the way she thought RBS had treated her up to mid-2023. I note Ms M brought a previous complaint to us around that time and a final decision was issued in respect of those complaint points in August 2023. The ombudsman decided that up to that point RBS hadn't failed to support Ms M appropriately during the time she suffered financial difficulties and acted reasonably in beginning legal proceedings. So I can only look at events after that – and in particular, this complaint relates to events in March 2024 when a charge of £856.60 Ms M says she'd been unaware of was added to her mortgage balance.

Was the charge justified?

Around October 2022, having not heard from Ms M regarding her mortgage arrears position, RBS sent her a pre litigation letter noting that it intended to pass her account to a solicitor if there was no response within 15 days. RBS says the account was then passed to the solicitors on 28 November 2022. So from that point onwards any work the solicitors needed to do on the account would result in fees and charges being added to the loan. To support that I've seen an invoice the solicitor sent to RBS in February 2024 detailing total costs of over £6,200 in fees – not including various disbursements – that had been applied to that date. So I think Ms M ought to have been aware for some time that the position with arrears on her mortgage account had led to legal fees being incurred.

In March 2023 another fee of £856.60 showed up on her mortgage account. RBS says this was noted within the annual statement she would have received later that same month and presumably led to her contacting RBS to complain about it the following month. I haven't been provided with the reason for that particular charge but there's no evidence to suggest it wasn't justified in the same way that all the previous fees were, so I can't reasonably say that RBS did anything wrong when the fee was then added to Ms M's mortgage account.

Did the fee cause Ms M to not be able to make a CMP?

Ms M has told us that making a number of payments from January to April 2024 meant that she struggled to make her CMP in May 2024. But she says that not knowing about the legal fee also made it difficult for her to make the payment as well. She said it was an additional cost she was unable to pay. But the legal charge was added to Ms M's mortgage account so it wouldn't have put an additional strain on any outstanding payments she needed to make in May 2024.

I don't think it would be fair to say that adding the fee onto the mortgage account would have made any difference to the monthly financial position she found herself in. There was no requirement for her to make an additional payment of £856.60 at that time.

Should Ms M have been made aware of the charge?

Ms M said RBS had been "underhand" in not making her aware of the legal fee. She thought it should have informed her in advance of applying the charge. I have some sympathy for Ms M's frustration here as to only be aware of the charge following receipt of her annual statement would I assume have been of some surprise and concern to her. But as I've said previously, I think the charge was justified and I don't think RBS was obliged to make Ms M aware in advance of it being applied. As RBS has explained to us the solicitors don't make it

aware of each individual charge or invoice each month for example, but usually hold onto the costs until they reach a certain stage of the process. So I don't think it's unreasonable for RBS to simply apply a fee to the mortgage account when it's made aware of charges by the solicitor.

I also note that by making Ms M aware in 2022 that legal proceedings had commenced RBS had in effect given her notice that various charges would then be applied for any legal work involved, so I don't think it was obliged to give Ms M notice each time a fee was due. And because any costs were to be added to the loan and weren't required to be paid by Ms M in advance, there would have been no financial disadvantage to her in only being made aware through information such as ad-hoc or regular statements for example. To have written a separate letter in advance of applying fees would more likely than not have resulted in additional legal fees for doing so.

I also note that during this investigation there has been reason to set up a new complaint for Ms M relating to payments to her account since late 2023. This complaint will be investigated separately, and an outcome communicated to Ms M in due course.

My final decision

For the reasons that I've given I don't uphold Ms M's complaint about the litigation fee being added to her account in March 2024.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or reject my decision before 13 March 2025.

Keith Lawrence
Ombudsman