

## **The complaint**

Mr and Mrs W's complaint about Royal Bank of Scotland Plc (RBS) relates to Mrs W wishing to port their existing joint mortgage over to a new property in her own name, or for RBS to agree to a transfer of title of the existing property into her own name. They are also unhappy that an Early Repayment Charge (ERC) will become payable if they redeem their mortgage early.

## **What happened**

Mr and Mrs W obtained a repayment mortgage with RBS in March 2022 over a 16-year term with a five-year fixed rate until 30 April 2027. A condition of the mortgage was that if it were redeemed prior to 30 April 2027 an ERC would become payable. They obtained further borrowing in April 2023, again on a five-year fixed rate until 31 August 2028.

Subsequently Mr and Mrs W separated, leading to Mrs W ringing RBS to explore her options. She said she discussed matters with an RBS agent, in particular having their property transferred into her sole name and also porting the mortgage in her sole name. She said the agent said she couldn't do that because the mortgage would not be affordable for her. She said he told her the only option was for her to sell the property, which she found distressing, and that she wouldn't meet the criteria for a new product.

Mrs W understands that the ERC is part of the terms and conditions she agreed to, but thinks it is unfair that RBS didn't offer her any help when she explained her situation. Mrs W also says that as a result she had to apply for a mortgage elsewhere at a very high rate because of the impact of the ERC on the equity she would receive from a sale of the property.

Mrs W made a complaint to RBS through its online channel which was declined. RBS says it has checked for the call recording when Mrs W said she contacted them to discuss her options but it was unable to locate anything. Mrs W then provided two telephone numbers in the hope of assisting RBS in tracking the calls but despite looking again they were unable to find anything. RBS have said that prior to taking out the further borrowing in April 2023, the contact notes show that porting was discussed with Mrs W in August 2022 and February 2023, but that this wasn't followed up. RBS acknowledged that Mrs W had asked them if the ERC could be waived or reduced, and that they had said no and explained why.

Mr and Mrs W were unhappy with RBS' final response and so approached this service to see if we could assist in resolving the dispute. Our investigator looked into the complaint but thought that RBS hadn't done anything wrong and had dealt with the complaint fairly. Mr and Mrs W didn't agree and asked for the complaint to be passed to an Ombudsman for a final 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.

I know the parties have provided a lot more detail than set out in my summary, but I have focussed on what I see as the key issues, because it reflects the nature of our service. We are an informal dispute resolution service and an alternative to taking Court action. So, if I've not mentioned something then this isn't because I've ignored it, it's simply because I don't need to comment on every individual argument to be able to reach what I think is the right outcome. Naturally, I have considered the views of both Mr and Mrs W and RBS together with the available evidence.

Our approach to complaints is to look at what's happened, and using the available evidence, determine whether we think a business has been unreasonable. If we think they have, we can ask them to recognise what's gone wrong and make a reasonable attempt to put things right.

The accepted facts are that Mr and Mrs W obtained a mortgage in 2022 and then a further loan in 2023. The mortgage documentation (Section 7 of the Terms and Conditions) makes it clear that there would be an ERC payable if the mortgage was redeemed early. Mr and Mrs W don't dispute that this is what the agreement says, and in fact it was a non-advised product meaning Mr and Mrs W chose it themselves as opposed to them being advised that it was right for them by an RBS advisor.

So, in relation to RBS' refusal to waive or reduce the ERC, I can't say they have been unfair or unreasonable in their decision. Whilst I acknowledge and empathise with Mrs W's difficult circumstances, RBS have applied their terms and conditions correctly and acted as they would with any other customer, and so I can't say they have acted unfairly towards Mr and Mrs W.

RBS' contact notes show that when Mrs W spoke to them in August 2022 and February 2023 porting the mortgage was discussed. This was of course prior to the further borrowing taken out in April 2023. This wasn't followed up by Mrs W with a mortgage advisor, and she has explained that this was because she was told that she would not pass the credit scoring for a new mortgage or pass the criteria to put the mortgage into her sole name.

RBS have made more than one search for this call and they can't find it. I can't therefore listen to it. As such it is impossible for me to say what was said or by whom. What I have seen are the contact notes which indicate that Mr and Mrs W were alive to the possibility of porting the mortgage but took it no further. There is nothing else in the notes to support what Mrs W says. I also note that no actual application was made by Mrs W to either port the mortgage or transfer the title. RBS were therefore never in the position of declining it and so I can't say they have acted unfairly.

During the course of this complaint RBS have confirmed that it would be prepared to look at porting the mortgage or trying to effect a or a transfer of title. However, they have emphasised that an assessment to determine whether it would be affordable would be required. I appreciate Mrs W might be concerned about the effect on her credit rating should she make or have made such an application, but that was a step which was always going to be required and would be required of any other customer. So, Mrs W is in no different a position now to that which she would have been. So, I can't say RBS has acted unfairly or unreasonably here and I'm not upholding this complaint.

### **My final decision**

For the reasons set out above I do not uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W and Mr W to accept or reject my decision before 26 November 2024.

Jonathan Willis  
**Ombudsman**