

## **The complaint**

Mr and Mrs S complain that The Royal Bank of Scotland Plc ("RBS") failed to ensure that the title to their property was registered in their name when they bought it with the assistance of a mortgage from RBS and RBS failed to warn them of it.

## **What happened**

Mr and Mrs S bought a property in November 2006 with an RBS mortgage, borrowing £125,000 on a repayment basis. They remortgaged again including a further advance in 2008. In December 2020 they tried to remortgage again, at which time their solicitor noticed that the property hadn't been registered in their names. Mr and Mrs S have been unable to remortgage and have had to pay the lender's standard variable rate ("SVR") rather than get a long-term fixed rate that they wanted.

RBS say that it instructed Mr and Mrs S's solicitors in 2006 to register a charge in its favour and it isn't responsible if the solicitors didn't complete the tasks they were supposed to do. Our investigator didn't recommend that this complaint should be upheld as the failure to register Mr and Mrs S's ownership of the property was the responsibility of the solicitor acting for Mr and Mrs S. Mr and Mrs S disagreed and asked for a 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.

Mr and Mrs S were offered a loan by RBS in 2006. As I understand it, this was to buy the upper floor part of a property where Mr and Mrs S already owned the ground floor part. I believe that the ground floor is registered in Mr and Mrs S's name with a mortgage registered to an associate company of RBS. The problem is that the upper floor has not been registered to Mr and Mrs S and as a result the mortgage which was to be registered over their interest in the property in favour of RBS has not been registered. Mr and Mrs S only became aware of the problem when they approached a solicitor - not the original one they used - in 2020 to amalgamate the two titles when they became aware that the original solicitor had not registered their title to the upper part. I note on the file that their new solicitor suggested to RBS that there were avenues that Mr and Mrs S could go down to try and resolve the matter including by contacting the successors to the original solicitors involved. It's clearly not a straightforward matter and I've seen no recent update as to how far this process has got before the complaint came to us.

I've carefully read the file and understand the problems that the non-registration of the title has caused for Mr and Mrs S. This is a complaint against RBS and the question I have to consider was whether it was RBS's fault that Mr and Mrs S's title wasn't registered or whether there was a duty on RBS to alert Mr and Mrs S that their title wasn't registered. It's clearly not the bank's fault that their title wasn't registered. Mr and Mrs S engaged a firm of solicitors to do that not RBS. The solicitors also didn't register RBS's mortgage. But the solicitors' actions are not RBS's fault.

Mr and Mrs S believe that a fault lies with RBS in not chasing up their solicitors to confirm registration of its security and not warning Mr and Mrs S that the security was not in place and if they had done that it would have alerted Mr and Mrs S that their title wasn't registered. But Mr and Mrs S had engaged a solicitor to register their title. RBS had engaged the same solicitor to register its charge. I don't see that RBS offered to monitor the registration of Mr and Mrs S's title and should accept any liability for not doing so. So, if RBS failed to monitor the registration of its own security that doesn't open it to a liability that it failed to monitor the registration of Mr and Mrs S's title. Mr and Mrs S's present solicitor points to third party auditors being in place which should or do audit RBS's securities. But whereas RBS may or may not do this for its own commercial purposes, it provides no assurance that it will check each individual case and Mr and Mrs S couldn't rely on its failure to identify an issue in this case as confirmation that all was well with their own registration.

Mr and Mrs S have also produced a letter from another lender writing to another borrower in December 2022 telling the borrower that its security was not in place and alerting the borrower that there may be a registration issue with their own title. I can see how that would have benefited Mr and Mrs S had RBS sent them such a letter in 2006 or when they remortgaged shortly after that. But I'm unaware of any requirement at that time for RBS to do that and I can't require RBS to meet standards, regulations, or practices that weren't then in place. The problem in upholding this complaint is that Mr and Mrs S were relying on their solicitor and not RBS to register their title and for the reasons set out above I don't find RBS at fault, and I can't fairly uphold this complaint.

### **My final decision**

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S and Mr S to accept or reject my decision before 26 March 2025.

Gerard McManus  
**Ombudsman**