

## **The complaint**

This complaint is about a mortgage account Mr and Mrs F hold with The Royal Bank of Scotland Plc (RBS).

Mr F, who has dealt with the complaint throughout, is unhappy about the following matters.

- The bank's demand that the mortgage be repaid by his 70th birthday amounts to age and gender discrimination against Mrs F, who is younger than him.
- The bank's refusal to extend the mortgage term to the age of 80 is unfair, discriminatory, and a breach of its obligations under the Consumer Duty.
- RBS has failed to provide him and Mrs F with any alternatives other than repaying the mortgage, because the bank is aware they have the funds available to do so.

To settle the complaint, Mr F would like RBS to extend the mortgage term to the age of 80 (or at least 75), and remove age discrimination from the financial products he and Mrs F rely on to live.

Mr F also raised another complaint about travel insurance provided through his current account, which RBS explained would need to be dealt with as a separate complaint from the mortgage complaint.

## **What happened**

In November 2004 Mr and Mrs F took out a mortgage with RBS. This was an interest-only flexible offset mortgage, with an initial drawdown of £40,000 with a reserve facility of £250,000. Mr and Mrs F told RBS they would be repaying the mortgage at the end of the 15-year term by using the proceeds of an endowment policy.

Over the term of the mortgage Mr and Mrs F have both drawn down and repaid funds from the reserve facility, the last drawdown being for £60,000 in June 2023. The current balance owed on the mortgage account as at October 2024 (the latest information available) was just over £107,000.

The original mortgage term came to an end in 2019. RBS agreed to extend the mortgage term to Mr F's 70th birthday, which Mr and Mrs F accepted. The mortgage was due to reach the end of the extended term in June 2024. However, in May 2023 Mr F asked RBS to extend the term to the age of 80. RBS said that it could look at this as an exception, provided it was on a capital and interest repayment basis, in order to repay the outstanding balance which, at that point, was just over £60,000.

The bank's contemporaneous account notes show that Mr F explained to RBS that he didn't want to reduce the balance, but instead wanted to have access to the full £250,000 reserve, up until the age of 80. He told the bank that he wasn't looking to extend the mortgage in order to have more time to pay back the current balance; rather he wanted the extension so he could increase his outstanding balance, so he could carry out home improvements. Therefore he wanted the mortgage to remain on an interest-only basis, extended until the age of 80. RBS wasn't able to agree to this.

Mr F complained, saying only extending the mortgage to his 70th birthday was both age and sex discrimination against Mrs F, who is slightly younger than he is. In addition, although Mr F acknowledged that the funds are available to repay the mortgage, he said that these are earmarked for other projects, and so he would like RBS to extend the mortgage term until the age of 80. Mr F said that RBS's refusal to do so was both discriminatory and in breach of RBS's obligations under the Consumer Duty.

RBS didn't uphold the complaint and so Mr and Mrs F raised it with our service. An Investigator looked at what had happened, but didn't think RBS had acted unfairly. He was satisfied that RBS had given fair consideration to Mr and Mrs F's request for a term extension, and was entitled to decline it. He noted RBS had explained its position in relation to setting maximum age limits for borrowing, and was satisfied this was reasonable, taking into account its obligations under the Equality Act 2010.

Mr F disagreed with the Investigator's findings and made some further comments. He said that the property is in need of remedial work, due to structural movement in the property which is not covered by insurance. Mr F also said that the heating system requires replacement, there are holes in the driveway, the conservatory is leaking, the kitchen is over 35 years old and wearing badly, the bathroom is the original one since the property was built, and there is therefore considerable work that needs to be done on the property. Mr F believes these works will cost more than £100,000, and so the funds he has available are committed to this.

In addition, Mr F says that the Consumer Duty is about *"outcomes and harms, which are very clear here"*. Mr F acknowledges that there is substantial equity in the property (probably about £1 million). But he says that without doing all the work that's necessary, he and Mrs F will be unable to live in the property up to the age of 80, and the cost of moving is likely to be about £50,000. In addition, moving home would cause considerable life disruption, which he and Mrs F do not want to have to go through.

The Investigator reconsidered the matter, taking note of what Mr F had said about Consumer Duty. However, he wasn't persuaded to change his findings.

Mr F asked for an Ombudsman to review the complaint. He provided details of senior staff at the Financial Conduct Authority (FCA) and RBS. Mr F said that we must refer his complaint to these parties, and then justify and explain to him whether or not the Consumer Duty is relevant in this case.

Mr F also clarified that his repayment strategy in the event of a term extension was to be the sale of assets such as shares, a rental property occupied by family members, the use of savings, or downsizing, where he and Mrs F would sell their £1.2 million home and buy a cheaper property. Mr F said that *"any assessment of our joint assets... would prove our repayment potential, however we want/need this offset in the interim..."*

## **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 will begin by explaining that the Financial Ombudsman Service is independent of both consumers and the businesses they are complaining about. This means that we don't act for consumers, nor do we take instructions either from consumers or businesses, or allow either party to direct the course of our investigations; were we to do so, it would compromise our

independence and impartiality. It's up to us to determine what evidence is relevant and the enquiries we need to make in order to investigate a complaint.

Therefore although I've noted Mr F's requests that this service should refer his complaint to the third parties he's named at both the FCA and the bank, this isn't something I'm required to do, and so I will not be contacting those parties. My decision on this complaint is based on my review of the evidence, taking into account what I consider to be good industry practice, the law, and the relevant regulations and guidance in order to decide what I consider to be fair and reasonable in all the circumstances.

I think it was reasonable for RBS to consider a term extension up to the age of 80, based on Mr and Mrs F making capital and interest payments on the (then) balance of about £60,000. But this wasn't acceptable to Mr and Mrs F. They want RBS to extend the mortgage term until the age of 80 (which would be Mr F's 80th birthday, based on the oldest borrower criteria), on an interest-only basis, and with access to the full reserve amount of £250,000. Mr F believes that the bank's refusal to do this amounts to age discrimination, and is in breach of the Consumer Duty.

I note that the term extension in 2019 was granted on the basis that Mr and Mrs F were intending to carry out the essential home improvement works on their property they have detailed to our service. Whilst I acknowledge the pandemic interrupted their plans between 2020 and 2022, it appears, three years on from then, that they have yet to commence any of the remedial work on their property, notwithstanding that this appears, according to Mr F, to be urgently required in order to bring the property up to a standard that is acceptable in order for him and Mrs F to be able to remain living there.

Mr F acknowledges that he has funds available to repay the mortgage. Mr F has also provided details of other assets – shares, a rental property, savings – that he says will enable him and Mrs F to repay the mortgage. He says, though, that they would prefer not to use those assets to do so at this time, rather at a later date of their choosing, up to the age of 80.

But given they have those assets available, I don't think it was unreasonable that RBS wouldn't agree to a further term extension on interest-only terms. If Mr and Mrs F use their savings to repay the mortgage, they still have their other assets available to fund the works, and vice versa. I'm satisfied that, while they would prefer not to do so, Mr and Mrs F had the available assets to repay their mortgage when the term expired in June 2024, and it wasn't therefore unreasonable for RBS to expect them to do so.

I've also taken account of Mr F's argument that RBS hasn't acted in line with the Consumer Duty because its actions are causing him and Mrs F foreseeable harm, and they haven't had a good customer outcome. I've taken account of the Consumer Duty in making my decision. Whilst I acknowledge that Mr and Mrs F haven't had what they consider to be a good outcome, I don't think that this is because of anything RBS has done wrong.

The Consumer Duty doesn't mean that individual customers will always get the outcomes they want or that it will always be the fault of a financial services business if they don't. As I've explained, I'm not persuaded that a term extension until the age of 80 is necessarily in Mr and Mrs F's best interests. In any event, achieving good outcomes means, in this context, giving fair consideration to their request – but it doesn't oblige RBS to grant it. In Mr and Mrs F's case, I'm satisfied that RBS has acted fairly in its decision not to grant Mr and Mrs F a term extension on the terms they wanted.

RBS *did* offer to consider a term extension on a capital repayment basis for the (then) account balance of £60,000, as an exception to its general lending criteria. This wasn't the

outcome Mr and Mrs F wanted, but I'm satisfied that RBS acted fairly in offering this as an alternative when it decided not to extend the mortgage in line with Mr and Mrs F requirements.

Mr F has also argued that RBS's decision in 2019 to extend the mortgage term until his 70th birthday discriminated against Mrs F on the basis of age and sex.

RBS is entitled to take age into account in its decision-making, provided it does so in the way provided for in the Equality Act 2010. I note that in its final response letter RBS explained the basis on which it was applying the Equality Act 2010 to its lending criteria.

Furthermore, it is standard industry practice on a joint account for the upper age limit to apply to the oldest borrower. Given this, I'm satisfied RBS did nothing wrong in 2019 in extending the mortgage term to Mr F's 70th birthday. I note Mrs F's birthday is a few months after Mr F's, and that she has now passed her 70th birthday, so this part of the complaint is now something of a moot point. However, as the mortgage hasn't yet been repaid, Mrs F has suffered no detriment by RBS applying its upper age limit to Mr F as the older borrower. Nor am I persuaded RBS has discriminated against Mrs F on the basis of sex. The extension until Mr F's 70th birthday was based purely on age, not sex or gender.

Mr F has also argued that refusing to grant a term extension to the age of 80 is discriminatory on the basis of age. RBS has explained that it uses the Office of National Statistics (ONS) mortality rates for England and Wales to show that there are significant increases in the mortality rates between those aged 70-74 and those aged 75-79. Health issues and death would impact on the ability of borrowers to repay a mortgage. Even if, like Mr and Mrs F, they have pension income and capital assets, sickness and the potential need for care could impact borrowers' ability to repay the mortgage.

I'm therefore satisfied that RBS has been able to show that the risks of mortality and, by implication, the risk that borrowers become unable to pay their mortgage, are increased in the age group over 70, and that assessment has been carried out using reliable evidence.

In summary, although I have taken relevant law into account, specific findings of a breach of the Equality Act 2010 are more a matter for the courts than they are for this service. I think the crucial question is whether RBS acted fairly in declining the term extension up to the age of 80, on an interest-only basis, with full access to the £250,000 reserve. The provisions of the Equality Act are one of the factors to be taken into account in deciding that, but – as long as RBS has given their application fair consideration – those factors don't mean it should be granted.

A further issue is that Mr and Mrs F aren't looking simply to extend the mortgage term – they want to have access to the full reserve of up to £250,000. There is therefore substantial additional risk to RBS in granting a term extension on this basis, where Mr and Mrs F could potentially increase their current mortgage balance – and the monthly interest charged – by almost 150% from its current level of about £107,000.

Mr and Mrs F are now both 71, with substantial assets, and whilst they are in good health at the moment, there is no guarantee that, between now and when they reach the age of 80, their circumstances will be the same.

Mr and Mrs F have confirmed that one of their repayment strategies – if they decide not to liquidate other assets – is to sell the property (which currently has over £1 million equity in it) and downsize. Mr F has highlighted the considerable upheaval and disruption this would cause in their lives if he and Mrs F had to do this now. But it is likely to be considerably more

disruptive for this to happen in nine years' time when they are 80. And, as I've explained, this isn't their only means of repaying the mortgage.

Therefore I'm not persuaded RBS has treated Mr and Mrs F unfairly in declining their request for an extension on the terms Mr F has outlined. There are assets available to repay the mortgage and still carry out the works, and I can see no basis, given that RBS already extended the term based on Mr and Mrs F's assurance that it would be repaid in 2024, why the bank should agree to a further extension until 2034. This is particularly so given Mr and Mrs F's stated intention to increase the mortgage balance by drawing on the reserve, which increases the risk to RBS.

### **My final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs F to accept or reject my decision before 8 April 2025.

Jan O'Leary  
**Ombudsman**