

The complaint

Mr and Mrs T have complained about a mortgage they hold with The Royal Bank of Scotland Plc trading as The One Account (RBS). They've said they didn't have access to all the account facilities between 2009 and 2015, and the interest rate they've been charged is unfair and out of line with those available in the market.

What happened

Mr and Mrs T applied for this mortgage in 2003. The mortgage offer that was issued on 30 June 2003 showed an initial borrowing amount of £137,500 over a 23-year term, and the interest rate was 4.95% (variable). The repayment guide showed that Mr and Mrs T intended to repay £57,300 gradually over the life of the mortgage, with the remaining £87,500 to be repaid as a lump sum at the end.

The mortgage completed in July 2003.

In August 2003 Mr and Mrs T asked to increase the facility limit to £195,000 as they wanted to use the additional funds as a deposit to purchase a property to let out. RBS declined the request as it didn't show as affordable.

Mr and Mrs T made a further request to increase the facility limit in April 2004, this time they asked for an increase to £159,500 for home improvements. That request was approved and put in place in May 2004.

In November 2004 Mr and Mrs T sent a message to RBS to say they had a cashflow shortage and asked for a temporary increase in the facility limit until March 2005. They said their goal was to have no mortgage within the next five years and were close to being able to realise that, but in the meantime they wanted a temporary increase of £1,500 just in case. RBS spoke to Mr T about his request and he said he wanted a larger increase of £11,500 (to take the limit to £171,000) so he could start his own business. RBS queried the difference between what had been requested and Mr T said he wanted £1,500 now and the remaining £10,000 later. RBS agreed the increase of £1,500 which took the facility limit to £161,000 but said it wouldn't agree the additional £10,000 as it didn't lend for business purposes.

In January 2005 there was a facility increase to £166,000, and then in May 2005 Mr T asked for a further £3,900 as they needed a new car. Mr T said he'd taken redundancy from his job and had a month out of work, with him due to start his new job the following month. RBS said it would need to see his new contract of employment before it could agree to any increase. That was received in June 2005 and the facility limit was increased to £169,900.

In August and September 2005 Mr and Mrs T breached their facility limit and items were returned as unpaid. Mr T said it was an oversight as he hadn't been monitoring the account.

In January 2007 Mr T messaged RBS to say that the mortgage payment might not be made that month due to an income shortfall and an emergency car repair.

Later that month Mr T called RBS “looking to see if we can do anything with rate” and the note of a follow up call says “he is considering other lenders if we can’t offer lower rate”. The notes indicate some options were discussed, such as a flexible mortgage account, and “He will think about this and call back if necessary.” In March 2007 Mr T said he was still considering his options, and then in August 2007 there was a further conversation where Mr T indicated he was interested in a flexible mortgage account with a discounted interest rate. The notes indicate he was told about the process for switching, and he said he would discuss it with Mrs T and call back.

In September 2008 Mr and Mrs T applied for an increase of £25,000 to consolidate some credit card debt. As Mr T had just started a new job he was asked to provide a copy of his contract of employment. There’s no indication in the contact notes that the contract was received and so the facility remained at £169,900.

In February 2010 Mr T said he was expecting to have a new job the following month, and he had sufficient funds until the end of April 2010. He called back in April 2010 and the notes show he said he’d been unemployed since October 2009 and that there was around £1,200 left in the account. He expected a tax rebate of around £4,000-£6,000 and was also due to receive £2,000 for some temporary work he undertook. RBS said it could arrange to cover essential items, and Mr T should contact it again with a proposal to repay the excess debt.

In July 2010 RBS completed and returned a MI12 form to the Department for Work and Pensions so Mr and Mrs T could claim support for mortgage interest.

In May 2012 Mr T asked whether he could increase the facility limit to help him fund launching a new business. The notes indicate neither he nor Mrs T had any income at that time. RBS said it based any lending decision on a customer’s current income, so as there was no household income it wasn’t able to increase the facility limit.

In June 2012 Mr T sent a message to RBS which said:

“I am just in the process of organising finance for our business plus working on temporary assignments. I only have 250 in my account. Equity in the house is circa 150K and I own 42% of a software business that has IP worth 500K. Given that I will be out of funds in the next 5 days and given that One Account has decided not to increase my facility I was wondering what you’d like me to do come month end. An increase of 5000 to my facility would suffice to keep me going until things are sorted. Your thoughts appreciated.”

RBS responded to say that an application could be made to increase the facility at any time, and if the property hadn’t been valued within the last six months, then a revaluation would be required as a condition of any increase. Mr T called RBS to ask for a £20,000 facility increase. RBS based its assessment on Mr T’s declared income of £30,000 plus child tax credits of around £5,900 and it failed the affordability check so the facility couldn’t be increased.

As it couldn’t increase the facility limit RBS referred him to the collections team to see if any assistance could be given to help Mr and Mrs T with their financial difficulties. The collections team said it could look at a managed excess of up to £1,000 for essential items, which Mr T said wouldn’t help as he was looking for £3,000. RBS directed Mr T to some providers for free debt advice.

In August 2012 Mr T sent a message to RBS asking that it refund £300 in charges, and that it increase their facility limit. Due to the nature of the contact a complaint was raised.

The complaint notes indicate RBS refunded £390 of charges and arranged for its collections team to call Mr and Mrs T to go through an income and expenditure assessment so it could see what assistance it could offer. Mr T said he was starting a new business and his only income was child benefit and tax credits, so he asked that the interest be waived until the following year. RBS said that was outside of what it could agree and as he had no means to make payments then no way forward was agreed.

In the meantime, RBS had been sending letters to Mr and Mrs T as they were over their facility limit, which culminated in a letter on 2 October 2012 which said that RBS had cancelled the banking facility on the account. A demand for repayment was issued on 30 November 2012 as the situation was worsening.

Mr T called RBS upon receipt of the letter and said he was now in full-time employment and would receive his first salary from that at the end of January 2013. He said he wanted to make a complaint about how he'd been treated, and he wanted all the interest reversed and the balance taken back to £169,900. From the notes it seems a response was sent to the complaint, but as there is no copy of that on file, I've not been able to see what was said.

As no further funds were received the account was passed to pre-litigation in February 2013. Upon receipt of the pre-litigation letter Mr T called and said he was able to pay £4,000 and he raised the same complaint points as he had previously. Whilst RBS originally acknowledged it as a new complaint, it later cancelled it deeming it a duplicate of the complaint that it said it had answered in December 2012.

The account was reviewed in May 2013 and RBS instructed solicitors to commence legal action. The notes indicate the arrears had worsened and the lump sum Mr T had said he would pay hadn't been received.

Mr T contacted RBS and was told in order to prevent further action he and Mrs T needed an agreement in place to repay the arrears. The notes indicate that RBS again explained that interest is payable monthly, and it can't increase the facility limit if Mr and Mrs T don't have the ability to repay it. It was agreed that Mr and Mrs T would pay an additional £260 on top of the monthly interest payment due. The notes indicate Mr T said he wanted the banking facilities back within 30 days or he would raise a complaint with the Financial Ombudsman Service and speak to his MP.

Mr and Mrs T made the required payments between June 2013 and March 2014, and on 25 March 2014 a complaint response letter was sent. That said there were limits to what financial assistance was available, and interest isn't stopped in any circumstance. It went on to say that there was an arrangement in place for Mr and Mrs T to pay an additional £260 a month for the next 14 months.

A letter was sent to the CEO by Mr and Mrs T which was received by RBS in May 2014. A response was issued on 22 May 2014 which said that RBS had been limited in what it could do previously as the information provided showed Mr and Mrs T couldn't afford to have a repayment plan put in place, and it couldn't increase the facility limit whilst they remained without the income to support any increase. It said a repayment plan had been put in place in May 2013 and that, provided Mr and Mrs T continued with the repayments, the account should be back in order in approximately nine months' time. RBS said it would then agree a new repayment plan with Mr and Mrs T and if they maintained that for six months then it would look to reinstate their banking facilities. The letter closed by saying interest had been applied in accordance with the terms and conditions of the account, and the information it had reported to the credit reference agencies was correct so couldn't be amended.

The notes indicate the account was brought up to date in February 2015, and so the six months' monitoring period began. Mr and Mrs T met that, so the banking facilities were reinstated in September 2015. RBS has been unable to provide a copy of any correspondence it may have sent at the time to notify Mr and Mrs T of that, and there's no record of any such correspondence on the contact notes.

In the meantime, Mr and Mrs T had referred a complaint to our Service where it was considered by one of my Ombudsman colleagues. His decision, which was issued in May 2015, says:

"Mr and Mrs T complain that RBS has not treated them fairly over their requests for assistance when they had financial difficulties. They seek the refund of all charges, reinstatement of the offset facility, a note to their credit account and compensation of more than £50,000 (now reduced to £28,000). They say that the unfair treatment by RBS lasted for 30 months."

He didn't uphold the complaint.

An RBS call note on 27 April 2017 said that an appointment had been made for Mr T the following day to discuss his strategy due to being behind the repayment plan, and as part of that it says "Mr mentioned that he was not aware his account had been [reinstated] he would [like] to start using it again paying salary in."

The facility limit was breached again from September 2018.

In October 2022 Mr T spoke to RBS and said he'd just started a new business and he hoped to use some of the future profits to make payments, however if a balance remained at the end of the term he would sell the property and downsize.

Notes from August 2023 indicate the account had been in excess of the borrowing limit since February 2023. A call note of 23 August 2023 says Mr T said he'd been made redundant 13 months previously so was living on his pension to pay his bills, and that he was in the process of setting up an online business with big potential to pay off the account. He went over the full history of the account back to 2009 and a complaint was raised about everything that had happened since then. RBS undertook an income and expenditure review on the phone and that showed a deficit of over £2,000 a month. A 30 day hold was placed on the account to give Mr T time to seek financial advice, but he was warned that the account was already three payments behind.

It isn't clear what happened with that complaint, but the notes seem to indicate it was closed due to Mr T not responding to a letter RBS sent him. In any event the complaint was reopened and Mr T added further points he wanted to be included, such as the justification for the increase in the interest rate.

RBS sent its final response letter on 29 February 2024. It said it wouldn't be considering issues that had occurred more than six years before the complaint was made (such as the facility being withdrawn and only reinstated in 2015) and it didn't uphold the complaint about the interest rate charged.

The complaint was referred to our Service in May 2024.

Our Investigator said we can't consider a complaint about the facility being unavailable between 2009 and 2015 because RBS had responded to a complaint about that in May 2014 and Mr and Mrs T needed to refer that complaint to our service within six months

of the date of the letter for us to be able to consider it. He didn't uphold Mr and Mrs T's complaint about the interest rate they had been charged.

Mr and Mrs T didn't agree with our Investigator's assessment and so the case was passed to me to decide.

What I've decided – and why

I issued a provisional decision earlier this month, the findings of which said:

"Although I've read and considered the whole file, I'll keep my comments to what I think is relevant. If I don't comment on any specific point it's not because I've not considered it but because I don't think I need to comment on it in order to reach the right outcome.

I am satisfied I have the jurisdiction to look at this complaint as although the issues complained about span a long period, I can still consider if the relationship was unfair or not. I acknowledge an Ombudsman colleague issued a decision in May 2015 but as the complaint file for that is no longer available it isn't clear to me exactly what formed part of that complaint and so, for completeness, I feel it is best I don't exercise my discretion to dismiss those parts of the complaint and instead I will consider everything here.

Having considered everything very carefully I don't think RBS treated Mr and Mrs T unreasonably nor do I think the relationship was otherwise unfair, and I'll explain why below.

The availability of the facility features and treatment whilst in financial difficulties

Mr and Mrs T have said the facility features weren't available to them from 2009, but the evidence available to me shows that they weren't withdrawn until October 2012. I can see that from September 2008 no further facility limit increases were agreed due to Mr and Mrs T not passing the affordability assessments and/or not providing the evidence to support the affordability assessment, but the remainder of the features of the account remained available, so it could still be used as a normal bank account (for example).

In September 2008 RBS agreed in principle to increase the facility limit so Mr and Mrs T could consolidate some other debts, and it said that to put the increase in place it needed to see a copy of Mr T's employment contract as he'd said he'd just started a new job. It doesn't appear that the employment contract was provided and so the facility limit remained the same. I've no reason to believe that if a copy of Mr T's employment contract had been provided, showing his income to be as declared, that the increase in the facility limit wouldn't have been put in place. But as it wasn't provided the facility increase application couldn't be approved. I don't think RBS acted unfairly in asking for a copy of the employment contract as Mr T had indicated he'd just started a new job, so RBS would want to satisfy itself of the income Mr T would be receiving as part of its affordability assessment to ensure it was lending responsibly.

I understand why Mr and Mrs T asked for an increase in the facility limit in 2012 as they felt investing in a business opportunity would increase their income longer term. But RBS has to assess the affordability based on the income and expenditure at the time of the application to demonstrate a customer can afford the higher monthly payments. Unfortunately, Mr and Mrs T didn't meet the affordability criteria, so RBS was unable to agree to increase the facility limit. In any event, the terms and conditions of the account state lending can't be made for business purposes:

‘Your One account is a personal account and may not be operated for the purpose of any business or profession and you may not borrow on the Account to finance any business or profession.’

Mr and Mrs T have also said that they were told there was no point updating the valuation of their property, and if they wanted to do that Mr and Mrs T would need to pay for a revaluation. It isn't clear when this conversation took place and having reviewed the history of the account I can't see where the loan to value was discussed in this context. But to explain. No facility limit increases were turned down due to the loan to value, and whilst the loan to value would impact which interest rate band the mortgage fell into, RBS held a valuation figure on its records for those purposes. It would only be if there was a reason why that valuation was likely to be wrong (such as if work had been carried out on the property to increase its value) and that could make a difference to which interest rate band the lending fell into that it would be worth arranging for a new valuation to be carried out. And if a new valuation was carried out, that would be something the customer would have to pay for. That isn't unusual as RBS would be charged by the surveyor, so it would pass that cost onto the customer that had requested the updated valuation. I don't think RBS treated Mr and Mrs T unfairly in this regard.

Having reviewed the history of the account it is clear that Mr and Mrs T have had a very difficult time, with Mr T being made redundant, and at other times changing his job. One thing Mr T asked RBS to do in 2012 (other than increasing the facility limit) was to waive all the interest for an extended period of time until he had some funds available. I can see that, at that time, RBS refunded the charges that it had added to the account – a total of £390 – but it said waiving the interest for the extended period of time that Mr and Mrs T had requested wasn't something it was able to do.

RBS completed an income and expenditure assessment at the time and that showed Mr and Mrs T didn't have the affordability to make payments. As Mr and Mrs T already only had to cover the interest charged, RBS had very limited options available to try to assist. The normal considerations of things like switching to interest only or extending the mortgage term weren't an option here and reducing the interest rate (albeit not waiving interest altogether) wouldn't have made a difference as the affordability assessment didn't show any means to make payments. This wasn't a one-off affordability issue as Mr and Mrs T had contacted RBS a few times since 2004 to say they were struggling and so I don't think it was unreasonable for RBS to say it wouldn't waive all the interest for the period Mr and Mrs T had requested.

In December 2012 RBS issued a final demand to Mr and Mrs T. In response Mr and Mrs T said Mr T had gained employment and would receive his first salary payment at the end of January 2013. RBS placed its collections activity on hold to allow Mr and Mrs T to make a payment at the end of January 2013.

As no payments were received letters were sent to Mr and Mrs T on 6 February and 20 March 2013, with the second giving a 15-day notice before litigation would commence. Mr T contacted RBS to say he was back in employment and would be able to pay £4,000. The contact notes show Mr T was also told he needed to pay money into the account each month to cover the interest charged. No payments were received so on 9 May 2013 RBS passed the account to its solicitors to start litigation. A formal payment arrangement was then entered into on 16 May 2013, with the payments due to start in June 2013.

I understand receiving a letter from RBS's solicitor in May 2013 about the commencement of litigation action would have been distressing for Mr and Mrs T, but by then no payments had been made into the account since August 2012 (other than a £13 dividend in November 2012). Mr T had told RBS that he had started full time employment

and would receive his first salary in January 2013, and in March 2013 he'd been reminded he needed to pay money in each month to cover the interest charged. Having considered everything very carefully I don't think RBS acted unfairly in instructing its solicitor in May 2013 and, once that happened, it prompted Mr and Mrs T to enter an arrangement to clear the amount they were over the facility by.

At the time the facility features were removed in October 2012 Mr and Mrs T were around £1,600 over their facility limit and had been over the limit since July 2012. The situation had worsened each month since July 2012 and from that point the only receipts into the account were child tax credits totalling less than the monthly interest that was due. Mr T had told RBS that the only income he and Mrs T were receiving was child benefits and child tax credits.

The terms and conditions of the account say:

'We may write to you (or your personal representatives) (i) to forbid any further withdrawals from the Account; (ii) to reduce your Facility; and/or (iii) to require immediate repayment of all or part of the borrowing on your Account, with interest and charges, if:

- a without our prior agreement, you exceed the Facility, fail to make any Monthly Payment or otherwise breach any requirement contained or referred to in your Offer letter, these Conditions or the One account Telephone Banking Conditions'

This is a debt that is secured on Mr and Mrs T's property, so it wouldn't have been responsible for RBS to allow the debt to continue to grow either by increasing the facility limit or by allowing further spending to be made on the account so the debt continued to grow beyond the agreed facility limit when Mr and Mrs T didn't have the income to cover the interest due each month even at the current level of debt. RBS had a responsibility to ensure any additional lending it agreed (which an increase in the facility limit would be) was affordable and sustainable.

I'm satisfied that RBS acted fairly and responsibly when it withdrew the banking features, and I'm also satisfied its actions were in line with the terms and conditions of the account.

Mr and Mrs T have said they weren't notified when the banking features were reinstated on the account, and had they been told they could have used it fully again. Instead they say they've been paying a higher rate of interest for features they haven't been able to make use of as they didn't know they had been reinstated.

The banking features were withdrawn in October 2012 and the complaint response letter of 22 May 2014 gave an indication of when they would be available again following a repayment plan being put in place in May 2013. It said if Mr and Mrs T continued with the payments they were making then it anticipated the account would be back under its limit in around nine months' time, and if Mr and Mrs T then maintained a further six consecutive monthly payments then it would look to reinstate the facility's banking features. That seems a reasonable decision for RBS to have made as it would be responsible to ensure that the account would remain within the facility limit for a period of time before giving Mr and Mrs T access to all the account features again.

The statement dated 18 February 2015 showed that Mr and Mrs T were around £20 over the limit, and the one dated 18 March 2015 showed they were back within it (by around £0.70). So, upon receipt of the monthly statements, Mr and Mrs T should have been aware they were back within their facility limit. It is possible that Mr and Mrs T hadn't recalled what RBS had said in its complaint response letter of 22 May 2014 about when

the banking features could be reinstated, and RBS also hasn't been able to provide evidence of any correspondence being sent to Mr and Mrs T in September 2015 when the decision was made to reinstate them.

Mr and Mrs T have said that if they'd known they could use the account again Mr T would have arranged to have his salary paid in each month, which would have saved them a substantial amount of interest. I've considered that argument and looked at both the contact notes and the account transactions since September 2015. I can see Mr and Mrs T made ad-hoc bank transfer payments out of the account which showed on the following statements:

- December 2015 £230
- January 2016 £29
- April 2016 £82
- June 2016 £110
- July 2016 £40
- February 2017 £260
- June 2017 £220
- August 2017 £70
- February 2018 £100
- September 2018 £450
- February 2019 £300

In addition, there is a contact note in April 2017 which says "Mr mentioned that he was not aware his account had been [reinstated] he would [like] to start using it again paying salary in." That is a contemporaneous note that was entered onto Mr and Mrs T's account, and so I'm satisfied it most likely represents a conversation that took place at the time.

Not telling them about the reinstatement of the banking features sooner wasn't fair in itself. To determine whether an unfair action (or omission, as here) has created an unfair relationship I must consider the following. Firstly, whether the act or omission that created and/or perpetuated the unfairness stopped. Here, that stopped in April 2017 when Mr T was told the banking features had been reinstated. The second thing that I need to consider is what detriment has been caused, if any, by that act or omission.

In this case, the potential for detriment arises from Mr and Mrs T being unaware of the reinstatement therefore not having the opportunity to use the banking features (such as having an income paid in). The question for me to consider there is; if Mr and Mrs T had known about the reinstatement earlier than April 2017, what would they have done differently? Deciding a question like that is not an exact science; all I have to go on is what Mr and Mrs T did do, after they did find out.

Sadly, that's not helpful in their case because the unavoidable fact is that they didn't start to use the banking features again after they found out about the reinstatement. And Mr and Mrs T haven't given me any reason to think they'd have acted differently if they'd found out sooner.

Putting all of that together, my conclusion is that whilst I'm persuaded RBS ought to have done more to bring the reinstatement of the banking features to Mr and Mrs T's attention sooner, I don't think that has created an unfair relationship that's led to any detriment in this particular case.

In summary, I'm satisfied that RBS didn't act unfairly when it withdrew the banking features in October 2012 or when it didn't reinstate those until September 2015, which was six months after the account had been brought back within the facility limit. I do think that RBS should have notified Mr and Mrs T of the reinstatement in September 2015, but I don't think that omission changes the overall position as any unfairness resulting from that omission was put right in April 2017 when Mr and Mrs T were told the features had been reinstated and they still didn't use them.

The interest rate charged

To assess the fairness of the interest rate terms, it's helpful to first set out the relevant terms themselves.

The June 2003 mortgage offer pack sets out the terms of the One account and how the interest rate was intended to operate. It says:

"At any time we can alter the Interest Rate used to calculate the interest you pay. We will of course give you notice of any change at the earliest opportunity. The Interest Rate will also vary in relation to your Facility as a proportion of the value of your Property. It is in your interest not to have a Facility which is larger than you actually need. The current interest rate is 4.95%."

This shows that the mortgage was on the One Account variable rate. This is a managed variable rate which depends in part on the loan to value of the overall facility limit.

Whilst the variable rate was 1.2 percentage points above the Bank of England base rate ("base rate") at inception, the terms don't say the variable rate should or would act as a base rate tracker.

The January 2003 edition of the terms and conditions says:

'The initial Interest Rate is stated in your Offer letter. We can change it with immediate effect at any time, but we will either inform you in writing of each change (at the earliest opportunity and at most within 30 days) or we will publish notice of the change in at least 3 national daily newspapers.'

I've considered whether the terms of Mr and Mrs T's agreement go further than reasonably necessary to protect RBS's legitimate interests and whether the variation clause is sufficiently transparent.

While grammatically easy to follow, the relevant term allowing for the interest rate to be varied is very broad, providing seemingly unfettered discretion about when the lender can make changes to the interest rate and by how much. I think this clause is wider than reasonably necessary to achieve a legitimate purpose and is so subjective that it does not explain to the consumer when a change may be made or the method for determining the new price. In my opinion it would be difficult for a customer to understand the basis and the mechanics for any decisions taken that relied on this term, to be able to understand the economic consequences of entering into the agreement and, if necessary, to challenge a variation made in reliance on it. That means that there's a real possibility a court would consider this to be an unfair term within the Unfair Terms in Consumer Contracts Regulations, which is relevant law for me to take into account.

Even though I consider that there is a reasonable basis to conclude that the variation terms are overly broad and do not explain adequately the mechanism for determining the new price, the central issue is whether there has been any unfairness to Mr and Mrs T.

The fairness of the underlying variation clause will not of itself properly answer that question.

Under our rules, we are required to consider what is fair and reasonable in all the circumstances. That includes – but is not limited to – relevant law. So, while I have taken account of the relevant law regarding unfair contractual terms, I've also thought more broadly about whether the way the terms have been used has resulted in Mr and Mrs T being treated unfairly. I think that is the ultimate question I need to answer when weighing up if this case should be upheld.

There was also no obligation on RBS to offer a new preferential rate at any time, and nothing in Mr and Mrs T's mortgage offer says that RBS would move them onto a new rate either. In fact, the terms and conditions document states 'We may offer discounted or special interest rates to new customers, for which you will not be eligible'. If any existing customer – including Mr and Mrs T – had wanted a new preferential interest rate they needed to contact RBS to request that, and if their product was The One Account (like Mr and Mrs T) then they would need to complete an internal remortgage to RBS's core range of products.

I've considered all the available evidence, and all of the changes RBS made to the variable rate since Mr and Mrs T took their mortgage. Having done so, I am not persuaded that anything RBS has done in varying the rate has led to Mr and Mrs T being treated unfairly.

For reasons of commercial confidentiality, I haven't set out in full detail the evidence RBS has provided us. Nor has our Service provided copies of it to Mr and Mrs T. Our rules allow me to accept information in confidence, so that only a description of it is disclosed, where I consider it appropriate to do so. In this case, I do consider it appropriate to accept the information and evidence RBS has provided in confidence, subject to the summary of it I have set out in this decision.

When Mr and Mrs T took out this mortgage, the rate was 4.70% (it had decreased from the 4.95% shown in the mortgage offer). The rate then varied both up and down until April 2009 when there was a period of stability (with the rate being 3.75%). In May 2012 the rate was varied up by 0.25 percentage points, and then it remained stable again until November 2018. The next change was in August 2022, at which time the rate started to increase regularly.

As I say, there's nothing that links the variable rate to base rate or says that the variable rate must be changed when base rate changes. Nor is there anything in the terms and conditions that obliges RBS to change the variable rate at any time – the terms allow RBS to make changes, but don't require it to do so.

Between July 2003 (when Mr and Mrs T took out this mortgage) and April 2009, while the variable rate reduced, it didn't reduce by the same proportion as the reduction in the base rate. Therefore, the difference between base rate and the variable rate increased from 1.2 percentage points to 3.25 percentage points.

Despite this increase in 'margin', the variable rate Mr and Mrs T were paying in 2009 was still lower than what it was when they agreed to the mortgage in 2003 and it was in line, if not lower, than the market average standard variable rate for the time.

I've already set out that this wasn't a tracker mortgage, so RBS was not contractually obligated to track base rate. Nor is it the case that Mr and Mrs T's mortgage had a 'cap' preventing RBS's variable rate from increasing beyond a certain 'margin' above base

rate. So, there was nothing in the contract that expressly prohibited RBS from setting the variable rate at a level whereby the margin between the variable rate and base rate would change. But that doesn't mean that RBS could set the variable rate at whatever level it chose.

To evidence its decisions at the time and reliance on the contract terms, RBS has told us that despite a reduction in base rate, its total group funding costs increased considerably over the years 2008-2009. As such, it has said it was not able to pass on the full reductions in base rate to its variable rate customers. And in 2012 the variable rate increased despite there being no change to the base rate, which reflected an increase in RBS's costs for this type of product.

The mortgage market went through a period of significant change as a result of the global financial crisis. This impacted the funding costs of businesses, including RBS, and was reflected in changes to a number of lenders' interest rates charged across the market at the time. This was clear at the time and has been the subject of analysis by both the Bank of England and the Financial Conduct Authority since. Whilst base rate did reduce significantly during this period, the cost to lenders of funding their businesses changed, as did their prudential requirements. These were made up of several factors that are not directly linked to base rate. With this in mind, and in conjunction with the information RBS has been able to provide, I am satisfied it had legitimate reasons to vary its variable rate in the way that it did.

Whilst the evidence provided is limited due to the passage of time, I have not seen any evidence to suggest the interest rate changes RBS made were arbitrary, excessive, or unfair. Rather, the evidence I've seen satisfies me that RBS acted in line with its terms and conditions to protect its legitimate interests while balancing its obligation to treat Mr and Mrs T fairly. And I'm further satisfied that, albeit limited, the information RBS has been able to provide for this period is corroborated by evidence of wider market conditions at the time.

Overall, I'm satisfied that RBS has shown that it was entitled to rely on the terms and conditions to make the changes to the variable rate it did make, and that there was no obligation on it to make changes to the variable rate at other times. Taking that into account, I don't think there's evidence either that RBS relied on changes it was not entitled to make in setting the variable rate charged at the start of the period I can consider, or that it acted unfairly in making further changes to the variable rate during that period.

That being the case, I don't think there is any basis to say Mr and Mrs T were charged an unfairly high rate of interest on their mortgage during the period I can consider, and I've seen no evidence to say that the interest they were charged during that period was unfair for any other reason.

In conclusion, I don't intend to uphold this complaint. I'm not persuaded that RBS acted unfairly in its dealings with Mr and Mrs T, other than it should have notified them of the reinstatement of the banking facilities in 2015. But as that potential unfairness was put right in April 2017, and Mr and Mrs T didn't start to use the banking facilities again at that time, I don't think this created an unfair relationship that led to any detriment.

RBS didn't add anything more. Mr and Mrs T made some further submissions.

I won't set out Mr and Mrs T's response in full, and neither will I deal with their points in anywhere near the same level of detail as their submission. No discourtesy is intended by that but the answers to most of the points they've raised I'd already dealt with in my

provisional decision so I would simply be repeating what I have already said. It is clear Mr and Mrs T feel very disgruntled about much of their mortgage relationship with RBS but that doesn't mean RBS is at fault as Mr and Mrs T believe.

I note Mr and Mrs T now acknowledge there was a conversation in 2017 whereby Mr T was told the banking facilities had been reinstated, whereas previously they've said it wasn't mentioned at all until they found out in 2023. Whilst Mr and Mrs T said, in response to my provisional decision, that there was just a vague mention in passing, I must keep in mind those recollections of the 2017 call are made at a distance of time which, although given in good faith, can sometimes be inaccurate or contradictory, and they didn't previously recall there being a call at all. They've also said there was nothing in writing and the lack of formal notice and support to start using the banking facilities again is central to their argument.

I acknowledge there was no formal notice in writing in either 2015 or 2017, but if they wanted to start using the banking facilities again all Mr and Mrs T had to do was contact RBS (either over the phone or in writing) to request access if they were unable to log on using their previous credentials (or were unable to remember them). Mr and Mrs T have said that they simply accepted the reality that they would continue to bank elsewhere. But that was their decision. I can't hold RBS liable for the fact Mr and Mrs T chose not to speak to RBS about how to access the banking facilities again. RBS told them, in 2017, they could use the banking facilities. What happened, or not, after that was in Mr and Mrs T's hands. A customer has a duty to mitigate their own losses, so I can't hold RBS liable for Mr and Mrs T choosing not to make contact with it to make use of the full banking facilities.

I won't go into Mr and Mrs T's full timeline for the same reasons I've already explained, I would simply be repeating things I had already set out in my provisional findings. But to draw out a few points:

- Mr and Mrs T wrote that in 2013 there was "No outreach from RBS despite resumed income. No effort to assess suitability." But that isn't correct. A contact note from 16 May 2013 which sets out the details of a call between RBS and Mr T says that they went through an income and expenditure review which showed Mr and Mrs T had a free income of £1,237 and an agreement was reached that Mr and Mrs T would pay an additional £260 on top of their interest payments of £563 a month. It says that Mr T was told that if he wants the arrears to clear quicker he and Mrs T will need to make additional payments.
- Mr and Mrs T wrote that in October 2022 they "advised RBS of a new business venture and our intention to repay the account. No engagement or support was offered." But that was just a response to RBS asking them how they intended to repay the debt at the end of the mortgage term. Mr and Mrs T didn't ask for any engagement or support on that, and it isn't clear what they think RBS could, and should, have done other than recording Mr and Mrs T's answer to the question.

Mr and Mrs T have said that RBS made no effort to tailor the product to their evolving circumstances, but that isn't how mortgage products work. Mr and Mrs T had this mortgage and unless they changed to a different mortgage product then all RBS could think about would be forbearance if Mr and Mrs T were struggling to meet their payments. I set out my findings on that in the provisional decision so I won't repeat them here.

In their submissions Mr and Mrs T have included a section they've entitled "Evidence of Systemic Failures". Whilst I thank Mr and Mrs T for their research on this subject, I can't take that into account as I'm deciding Mr and Mrs T's individual complaint, and to do so I need to look at what happened on their specific mortgage in their individual circumstances. What RBS may or may not have done to other customers, or how other customers feel about RBS, aren't relevant considerations here.

Mr and Mrs T have said their total requested compensation is £550,000, or alternatively a write-off of their remaining balance (of around £184,000). But even if I were to uphold this complaint the award would be nothing like those sums. At most it would be a modest amount of compensation for any distress caused (typically in the hundreds of pounds, rather than hundreds of thousands of pounds) and perhaps a perhaps a small interest rate comparison. But, as I'm not upholding this complaint I make no order or award.

Finally, Mr and Mrs T have said the recent underpayments were a principled protest against unjust and increasing charges. Mortgage payments aren't an optional payment so by choosing not to make their payments in full Mr and Mrs T have put themselves at risk of further legal action and will have impacted their credit files. I would urge Mr and Mrs T to contact RBS at the earliest opportunity to see if a way forward can be found.

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, and having considered the full file afresh, I see no reason to depart from my provisional findings.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs T to accept or reject my decision before 16 July 2025.

Julia Meadows
Ombudsman