

The complaint

Mr S complains about his mortgage with THE ROYAL BANK OF SCOTLAND PUBLIC LIMITED COMPANY (RBS). He complains about the original lending decision, about being misled about the property's lease, about the requirement for a guarantor, and about provision of information to him.

What happened

In 2005, Mr S took out a mortgage with RBS. He borrowed around £95,000 on interest only terms over 25 years, secured over a leasehold property. Mr S's brother was guarantor for the lending. In 2007 RBS gave Mr S consent to let the property out, and it has been let ever since.

Mr S now complains:

- The mortgage was irresponsibly lent, because he was on a low income and because he wasn't made aware of the risks of interest only lending. Although his brother acted as guarantor, the presence of a guarantor is not enough to make the lending responsible.
- RBS did not tell Mr S about the lease term, ground rent or service charge before he bought the property, or the costs associated with extending the lease. This prevented him making an informed decision.
- He wasn't given copies of the mortgage documentation or the lease.
- He's since been given permission to let the property out. He's had problems with the tenant and the condition of the property. RBS should have given him guidance on managing the property and the tenant. It should add the cost of repairs to the mortgage balance.
- RBS misled him about the remaining lease term when he asked about it in 2023. As a result he lost out on the chance to extend the lease.
- Because of the above issues, the property may now be unsellable, or if sold leave a shortfall.
- All of the above factors mean that the relationship between him and RBS is unfair within the meaning of s140A Consumer Credit Act 1974.
- The guarantor is vulnerable. RBS has failed to protect the guarantor. It must agree that all communication is with Mr S only.
- RBS failed to respond to Mr S's data subject access request within a reasonable time.

Our investigator said that we couldn't consider anything to do with the lending decision,

because that part of the complaint was out of time. She said that she couldn't consider s140A Consumer Credit Act, because that didn't apply to regulated mortgages like this one. She didn't think that incorrect information about the lease in 2023 made any difference to Mr S's situation. But she said that RBS had delayed in responding to the subject access request – this had caused Mr S distress and inconvenience, for which RBS should pay £100 compensation.

RBS accepted that but Mr S didn't. He didn't agree that any part of the complaint was out of time. He didn't think that RBS had acted fairly. The mortgage was irresponsibly lent, even though he was on a low income and with no checks of the repayment strategy. RBS failed to provide documentation, failed to give guidance on the tenancy or repairs situation, and had said it intended to appoint a receiver. It had wrongly told him there was around 70 years – not 55 years – left on the lease in 2023. Had he known how short the remaining lease was, he would have sought to extend it at the time.

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'm sorry to disappoint Mr S. I can see how strongly he feels about his complaint. But I've reached the same outcome as the investigator, as I'll explain.

Firstly, I agree we can't consider anything to do with the original lending decision or the circumstances in which the loan was taken out. The rules of the Financial Ombudsman Service require complaints to be made by the later of:

- Six years from the date of the event complained of; or
- Three years from when the complainant knew, or ought reasonably to have known, of cause for complaint.

If a complaint is brought outside the time limits and there's no evidence of an earlier complaint having been made, we have no power to consider it – unless the firm complained about consents even though it's out of time (which in this case RBS doesn't), or unless there are exceptional circumstances which explain why the complaint couldn't have been made in time.

The lending decision was in 2005, more than six years before Mr S made this complaint. And I'm satisfied his complaint about the lending decision, and failure to provide documents, was made more than three years after he ought reasonably to have known of cause for complaint. Mr S says he was on a low income at the time; if the mortgage was unaffordable for him, I think that ought to have told him that RBS might not have assessed affordability appropriately. And I can see that RBS has told him many times over the years that the mortgage is on interest only terms and that he would need to have a means of repaying the capital; that would have told him of cause for complaint if he had no means of repaying it. Finally, if he didn't receive the documents he was expecting, he would have known that at the time. Though I can see that the mortgage offer and associated documents were addressed to him. As I've not seen that there were any exceptional circumstances which meant Mr S couldn't have complained in time, I can't consider this part of the complaint.

Mr S also complains that RBS failed to advise him about the terms of the lease, including the remaining duration and the costs of extending it, as well as the ground rent and service charge liabilities. But this is not a matter that RBS is responsible for. As the lender, it was merely lending him the money to buy the property and making sure that the property was adequate security for the lending. The decision to buy the property, and the obligations Mr S

would be taking on by doing so, was a decision for Mr S – it was not something RBS was involved in or obliged to advise him about. All RBS was doing was considering whether to lend Mr S the money he needed to buy the property he had decided to buy when he applied for the loan to fund the purchase. If Mr S considers that he wasn't given a copy of the lease, or given proper advice about the legal aspects of purchasing a leasehold property, that might be something to take up with the solicitor who acted for him in the conveyancing. It's not something I can consider in a complaint about RBS, because it wasn't RBS's responsibility.

The same applies to Mr S's complaint that RBS should have advised and supported him in managing the tenancy and the repair obligations. RBS gave Mr S consent to let the property out in 2007. But in doing so it didn't become his adviser in his capacity as a landlord. This was not something it could have done or that I would have expected it to do. Mr S's relations with his tenants and his obligations as a landlord to keep the property in good repair are a matter for him, not RBS. Nor would I expect RBS to cover the costs of repairs to Mr S's property. It remains open to Mr S to apply to RBS for further borrowing to cover any maintenance costs, but that would have to be a normal mortgage application subject to affordability and other lending criteria in the usual way.

Mr S says he was given wrong information about the remaining term of the lease in 2023. He asked RBS in a webchat how long was left, and it said 70 years. That wasn't correct. At the time it was 55 years. RBS shouldn't have given Mr S incorrect information. However, I'm not persuaded that this caused him any loss or detriment. I've not seen any evidence that Mr S has applied to the freeholder to extend the lease term, either in 2023 or more recently. And I think it's unlikely the costs of doing so would have been significantly less if he had applied in 2023 compared to the costs of doing so now.

More generally, the length of the lease and the terms of the relationship between Mr S as leaseholder and his freeholder are a matter for Mr S as the property owner, not for RBS. I wouldn't have expected RBS to have advised Mr S that he could or should have applied for a lease extension before 2023 and in not doing so it didn't do anything wrong. RBS told Mr S in 2015 that it didn't have a copy of the lease – I wouldn't expect it to have one – so he could have obtained a copy from his solicitor or the freeholder at that time or since if he wasn't given one at the time of the purchase.

RBS has a regulatory obligation to communicate with the guarantor in certain circumstances. In doing so, it should take into account any vulnerabilities it's aware of at the time. I don't require RBS to only communicate with Mr S and never contact the guarantor. It's open to Mr S to apply to RBS to remove the guarantor at any time – but that would also be subject to RBS's lending criteria and affordability requirements at the time of an application.

For all those reasons, I don't think RBS has treated Mr S unfairly. In saying that I've taken into account everything he's said, and the rules of mortgage regulation. I haven't taken into account s140A Consumer Credit Act 1974, because it doesn't apply to regulated mortgages such as this one. But I have thought about RBS's obligations to treat Mr S fairly more generally. I also haven't considered the matters Mr S has complained about more recently, such as the appointment of receivers. Our investigator explained that because that wasn't included in this complaint originally, she'll set up a separate case to deal with that.

Finally, I do agree that RBS's delay in dealing with Mr S's subject access request caused him distress and inconvenience. He was clearly worried about his mortgage and wider situation and wanted further information. I understand RBS did provide him with what he was entitled to. But I agree it's fair that it compensates him for the delay, and I agree that £100 is fair in all the circumstances.

My final decision

My final decision is that THE ROYAL BANK OF SCOTLAND PUBLIC LIMITED COMPANY should pay Mr S £100 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 20 May 2026.

Simon Pugh
Ombudsman