

## **complaint**

Mr O complains of numerous failings by his mortgagee The Royal Bank of Scotland Plc in connection with a new mortgage and a transfer of the security from his sole name into the joint names of himself and his wife.

To resolve his complaint he wants RBS to pay £2,038 for the fees of his solicitor, the interest incurred on his existing mortgage and his credit card over the period of delay, and £350 in compensation.

## **background**

Mr O had a mortgage with RBS in his sole name. The term of the mortgage was due to end in November 2018 and he agreed with RBS to take a new mortgage in the joint names of himself and his wife with additional borrowing to cover consolidation of a credit card debt, solicitors' fees of £300 for the transfer of the property into joint names (TOT – transfer of title), and spending money for a trip abroad.

He says the application caused considerable stress and time spent on the phone dealing with various RBS departments. He received threatening emails and texts from RBS. Owing to gross negligence by RBS he has received a solicitors' bill for over £2,000 and has had to pay £236 on the credit card to prevent a default notice.

Mr O says he received a mortgage offer on 3 December 2018 and wrote to RBS that day requesting that the mortgage be completed on 7 December. On 5 December RBS wrote to Mr O's solicitors (D) instructing them to also act for RBS in connection with the TOT, i.e. the transfer of the property from Mr O's sole name into the joint names of himself and his wife. This would involve discharge of the existing legal charge and registration of a new legal charge signed by Mr and Mrs O.

The TOT and the new mortgage were completed on 23 January 2019. Mr O considers that they should have been completed sooner than this, and would have been but for RBS' gross negligence.

On Mr O's complaint to RBS it acknowledged (a) that it hadn't responded to D in a timely manner on two occasions as expected after the offer was issued and (b) it hadn't forwarded his complaint to the complaints department on 13 December 2018. It apologised for this and credited Mr O's account with £150 compensation.

Mr O wasn't happy with this and brought his complaint to this service. RBS referred in its submission to the two occasions. It said that on 24 December D had said RBS was asking them to confirm in the certificate of title that they had completed searches etc. but this was contrary to RBS' instructions. So the certificate would have to be qualified. However RBS had replied insisting on an unqualified certificate of title.

On 8 January D had phoned RBS to discuss the matter. The staff member who took the call couldn't answer the query and promised that a colleague would call back. But there was no evidence of this having been done. RBS said there had been a service failure as it didn't return D's call on 8 January 2019 as promised. Likewise D also didn't return a call which RBS made on 9 January 2019 but RBS didn't follow up. This caused a delay of 12 days before contact was established.

Our investigator didn't recommend Mr O's complaint be upheld. He felt RBS had completed the application as quickly as possible and had admitted the occasions where it had caused delays, and paid appropriate compensation.

The investigator said RBS had accepted that it could have responded to D in a timelier manner on two occasions and that Mr O's complaint should have been sent to the complaints department on 13 December 2018. At this point, RBS was still waiting for paperwork from D to complete the application. It was difficult to say whether this delay had caused a direct financial loss because it was unknown whether it would have speeded up the application process. Therefore the investigator thought the £150 compensation was reasonable in the circumstances.

In relation to the interest on Mr O's credit card and payment of his existing mortgage, the investigator didn't think it fair to ask RBS to compensate for the costs Mr O had incurred. These were agreements which Mr O had with RBS which he was aware he needed to adhere to. Although he had applied for the new mortgage and had a timeframe of a month for it to be sorted, there was never a guarantee that this could have been achieved.

The investigator believed that RBS had accepted responsibility for the mistakes it had made and that the compensation it had paid was fair and reasonable in the circumstances.

Mr O didn't agree so the complaint's been passed to me for review.

I took a different view of the complaint to the investigator. So I decided to issue a provisional decision, setting out my view of the case and inviting further comments. Both parties have now responded and so I issue my final decision.

### **my provisional decision**

In my provisional decision, I said:

"I've gone through Mr O's letter of complaint to identify the allegations against RBS. I'll number these for ease of reference.

1. D needed a written consent from RBS to deal with a legal restriction on the title to the property. On 5 December D asked Mr O to request this from Mr O's existing RBS contact. I assume Mr O did that, and RBS replied:

*"Apologies but I don't actually understand what the solicitors are asking for there - it seems to be related to the legal side of things whereas I just advise on the new mortgage. I would recommend the solicitors calling in directly to discuss..."*

Mr O complains:

*"Again, this is another time RBS has requested my solicitor call your bank, being the same process three different departments and no departments taking ownership."*

2. On 7 December D saw that RBS had uploaded details relating to a remortgage but assumed that because RBS hadn't clarified the change of requirements, that the registration of Mrs O at the Land Registry was still to be processed.

3. On 11 December RBS' legal team queried the need for consent and advised that D were to complete the remortgage process on Mr O's behalf then complete the registration. The RBS legal department were insistent that on completion of the new mortgage the existing mortgage would be redeemed and negate the need for a letter of consent. The RBS legal team were giving Mr O's solicitor the wrong instructions. Mr O says this is the one of the main reasons why D has charged over £2,038:

*"...now my solicitor is dealing with the whole remortgage process from the legal documents to transferring the funds etc and at my great expense... my solicitor requires a copy of the mortgage deed and a redeem figure urgently. I have now paid RBS £950 for arranging and processing the mortgage but now my solicitor has been told they need to deal with. I have paid a further £150 for administration for the changing the deeds, but again my solicitor is dealing with...."*

4. D tried to submit the certificate of title and draw down the mortgage but could not satisfy the conditions and requested that RBS contact them by return agreeing that this was acceptable. A response was never forthcoming.
5. On 3, 4 and 7 January D tried to call someone who wasn't in the mortgage department to discuss the unqualified certificate of title, but was continually passed from department to department, again no department or employee taking ownership.
6. On 9 January Mr O emailed RBS:

*"All the documentation has been completed weeks ago and D have been trying to send the certificate of title without success. RBS requires this to release the funds."*

7. On 10 January Mr O emailed RBS:

*"Regarding you are not or authorised or qualified to deal with the legal side of the mortgage, this is not a satisfactory answer. I have paid RBS £950 to complete my mortgage and a further £150 to complete changing of the title deeds. Therefore I expect a qualified adviser to complete the mortgage process from conception to completion, if that person doesn't have the expertise in the legal side of the process then it's the Bank's and adviser responsibility to allocate a representative to complete the deed changing process works with the mortgage adviser overseeing the complete programme."*

8. On 11 January Mr O spoke to the complaints department to find that his complaint had been noted but not registered therefore the complaint had to be re-instated. In its final response dated 7 February 2019 RBS acknowledged the complaint had been logged on the date of receipt 7 January 2019. It said that on 11 January 2019 it had sent an acknowledgement of the complaint. It had noted an email from Mr O dated 13 December 2018 where he had expressed dissatisfaction. RBS acknowledged Mr O's complaint should have been raised with it at this date. It had backdated his complaint accordingly and apologised for this.
9. On 31 January Mr O emailed RBS:

*"Can you please chase this up as everything is on hold until this is rectified"*

Following the same numbering my views are:

1. What caused the problem here was that D asked Mr O to refer its request to his RBS contact. That contact, inevitably, was a mortgage adviser who could not be expected to understand the request. D should have made that request to the RBS department which had instructed D, namely mortgage operations, quoting the reference in the letter of instruction dated 5 December 2018.
2. I can't see what change of requirements is referred to here. It was still necessary to register the TOT.
3. I don't agree that the RBS legal team was giving D the wrong instructions. It seems to me that upon discharge of the legal charge in the sole name of Mr O, the restriction protecting that charge would fall away and be replaced by a restriction protecting the new joint charge. In these circumstances the recommendation that D ought to deal with the discharge and new mortgage was entirely sensible.
4. In its final response dated 7 February 2019 RBS acknowledged *"we did not respond to your solicitor in a timely manner on two occasions as expected"*. I assume this was one of those occasions.
5. D should have made that call to the RBS department which had instructed it, namely mortgage operations, quoting the reference in the letter of instruction dated 5 December.
6. This is the instance referred to above where RBS was asking D to confirm in the certificate of title that they had completed searches etc. but this was contrary to RBS' instructions. So the certificate would have to be qualified. However RBS had replied insisting on an unqualified certificate of title.

In its letter of instruction to D dated 5 December 2018 RBS had said:

*"We **DO NOT** require you to renew local authority or other searches."*

It followed from this that D's certificate of title would properly be qualified to record that updated searches had not been made. It wasn't reasonable for RBS to nevertheless insist upon receiving an unqualified certificate.

7. I don't agree. The fees of £950 and £150 weren't conveyancing fees. And the mortgage illustration said expressly that the £150 transfer of equity fee didn't include solicitors' fees, so RBS made it clear at the start that Mr O would be responsible for legal costs.
8. RBS has apologised for this and it is included in its payment of £150 compensation which I deal with below.
9. The complaint indicates that RBS' response to this was that an eDS1 had been transmitted to the land registry. This is the application to remove the registration of the earlier legal charge. It's post-completion work and it's not clear from the complaint why this should cause everything to be on hold. And in any case the complaint says that D had completed on 22 January, before the email was sent.

In his response to the investigator's view Mr O said RBS had taken full responsibility for the delay from 5 December to 24 January. But I don't agree. What RBS took responsibility for was a period of delay from 8 January to 22 January, which it accepted was *partially* its fault as D had also failed to return RBS' call on 9 January.

In my view Mr O's expectation that the TOT and new mortgage could be completed in five days (3 to 7 December 2018) was always unrealistic. That simply wasn't enough time for the necessary work to be done.

However I don't agree that RBS' failings started only on 8 January or that they were limited to two instances of failing to respond to D. Much more significant than this, and the actual cause of the problems between RBS and D, was that RBS insisted upon receiving an unqualified certificate of title despite having instructed D not to make updated searches.

I don't agree that RBS was grossly negligent. But I do consider that RBS bears responsibility for:

- failing to log Mr O's complaint on 13 December;
- the instances of failing to respond to D;
- unreasonably requiring an unqualified certificate of title.

I'm not persuaded that but for these matters, D's fees would have been £300 instead of £1,665 plus disbursements. It's not clear where the figure of £300 comes from, and the latter figure doesn't seem to me excessive for transferring a property from a sole name to joint names, redeeming a sole mortgage and completing a joint mortgage. I've examined D's time recording spreadsheet but it's not obvious from this that additional work was required owing to failings by RBS.

Nor do I consider it appropriate to penalise RBS for the interest paid by Mr O on his sole mortgage and credit card, for the reasons given by the investigator.

However I do agree with Mr O that an appropriate sum by way of compensation for the trouble and upset caused to him would be £350, of which RBS has paid £150."

### **the responses to my provisional decision**

Both parties accepted my provisional decision.

### **my findings**

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

As both parties have accepted my provisional conclusions I confirm them here.

**my final decision**

My decision is that I uphold this complaint and order The Royal Bank of Scotland Plc to pay Mr O £200 compensation for the trouble and upset caused to him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 14 June 2020.

Edward Callaghan  
**ombudsman**