

The complaint

Mr S has complained that The Royal Bank of Scotland Plc (RBS) will not remove him from a mortgage held in the joint names of him and his former partner, Miss D which they took out in 2006. Mr S says he has not lived in the property for more than 16 years, and that both he and Miss D want him to be taken off the mortgage.

To settle the complaint Mr S wants RBS to release him from the mortgage and to remove the reporting of arrears from his credit file.

What happened

When Mr S brought his complaint to our service, the investigator noted that it was in the sole name of Mr S. As a result, the investigator didn't think we should look at the complaint; our rules allow us to dismiss a complaint (that is, decide not to consider it) where it involves a joint account and not all parties have joined in the complaint.

Mr S was unhappy with this, and asked for an ombudsman to review the complaint.

Provisional decision of 8 August 2022

I issued a provisional decision, in which I made the following findings:

I've looked at what Mr S and RBS have said about this matter, and I've reviewed the investigator's findings and looked at our rules. Having done so, I think this is a complaint that we should be able to consider, but I don't think it should be upheld.

Under our rules, we generally need both parties to a joint account to bring the complaint together. However, there is discretion to allow one party to bring a complaint in certain circumstances; in this case, the issues in the complaint relate to Mr S's belief that RBS hasn't treated him fairly, by not removing him from the mortgage or by not amending his credit file.

These are issues that affect him, and so I don't need the other joint account holder to consent to the complaint in order to look at this complaint. In the circumstances, I'm satisfied that I can consider this complaint from Mr S alone about RBS's refusal to remove him from the mortgage account.

Generally where a property and mortgage are in joint names and one party wants to be removed from both, it is necessary for the property title to be transferred out of joint names into the sole name of the party who is retaining the property. In relation to the mortgage, there needs to be an application for a transfer of equity (ToE), which will require the lender (in this case, RBS) to ascertain whether or not the application meets its lending criteria in terms of affordability.

However, because of the General Data Protection Regulation (GDPR), I am unable to obtain any information about Miss D's dealings with RBS, as this would be a

breach of her personal data. So I am unable to say whether or not Miss D applied for a ToE. Indeed, I note that on 7 February 2023 Mr S was told the same thing by RBS.

Mr S has provided undated screenshots that show a text exchange with Miss D, where she is apparently surprised that Mr S is still on the mortgage. He's also provided an email from his solicitor dated 4 April (no year, but I believe it is 2023) where the solicitor says: *"I have now received an email today from [Miss D]'s solicitor confirming that she has a further appointment with the bank on 17th April at 5.30 pm..."*.

The email goes on to explain that if, within a reasonable time, Miss D isn't able to confirm that the mortgage and title to the property can be transferred into her sole name, then the only course of action is to begin legal action for a sale of the property and division of the proceeds of sale.

I completely understand that Mr S wants to avoid the expense of going to court. But if a ToE hasn't been applied for, or if it has, but was declined (and, because of the GDPR I am unable to confirm either of these things), then the only option left to Mr S is to pursue the legal action recommended by his solicitors through the courts.

I don't have any power to order RBS to remove Mr S from the mortgage account; that's a matter for RBS's lending criteria, when considering any application from Miss D for a ToE.

I fully understand how upsetting these events have been for Mr S, who hasn't been able to buy another property because of adverse data about arrears on this mortgage that have been reported on his credit file. But while the account remains in joint names, RBS is required to provide credit reference agencies with accurate information about the account. It is always open to Mr S to file a notice of correction with the credit reference agencies, if he believes the information recorded on his credit file is misleading or inaccurate. He can find information on how to do this online.

However, I'm unable to find that RBS has done anything wrong in relation to the mortgage account remaining in joint names.

RBS had nothing further to add to the provisional decision. Despite a reminder, Mr S hasn't responded.

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've reviewed the file, considered what both parties have said, and revisited my provisional decision.

Mr S and Miss D took out the mortgage in 2006, and so any changes they want to make to the mortgage fall within transitional arrangements put in place by the regulator. The transitional arrangements are the rules introduced in 2014 by the Financial Conduct Authority ("FCA") as part of the Mortgage Market Review ("MMR"). MMR tightened up the rules on checking affordability. However, as highlighted by the FCA, the purpose of the transitional arrangements is to allow flexibility so that exceptions can be made to the

affordability rules for existing borrowers as long as there is no additional borrowing and the proposed transaction is in their best interests.

This involves a degree of discretion on the part of the lender. The rule doesn't say that it *must* not apply the new requirements – it says that it *need* not do so. The removal of a customer from a mortgage comes within the scope of the rule. So I think it follows that where a change to a mortgage account is in a consumer's best interests, the rules shouldn't be used unfairly to prevent it happening.

However, I understand that the title to the property remains in joint names, so Mr S and Miss D are both joint owners of the property. Given this, there is an additional factor that needs to be considered.

Mr S remaining on the title deeds as a joint owner grants him a legal interest that would interfere with RBS's standing as mortgagee if Mr S is also not on the mortgage account. For this reason it is standard practice amongst mortgage lenders not to grant a mortgage where there are joint owners on the property title who are not also on the mortgage.

Therefore, I can only concur with the advice Mr S's solicitors have given him – which is that if Miss D doesn't progress an application for a transfer of the legal title and a ToE herself, then the only option for Mr S will be to seek a remedy through the courts. Neither RBS nor the Financial Ombudsman Service has any power to force Miss D to do this.

I do have considerable sympathy for the position in which Mr S finds himself. But in all the circumstances, I'm unable to find that RBS is at fault.

My final decision

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

This final decision concludes the Financial Ombudsman Service's review of this complaint. This means that we are unable to consider the complaint any further, nor enter into any correspondence about the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 20 September 2023.

Jan O'Leary
Ombudsman