

The complaint

Mr F complains about The Royal Bank of Scotland Plc (RBS) removing him from their assisted voluntary sale scheme.

What happened

Mr F had a mortgage with RBS that was secured over his residential property. He fell into arrears and was due to be evicted in mid-June 2022.

The eviction was put on hold when Mr F entered RBS's assisted voluntary sale (AVS) scheme at the end of June/early July. But in October RBS decided to remove Mr F from the scheme on grounds he'd failed to co-operate.

Mr F complained to RBS. In reply they said AVS is offered to customers who are fully engaged and who fully co-operate with all their external suppliers. Since they felt Mr F hadn't fully engaged or co-operated, they'd decided to remove him from the scheme.

Mr F was unhappy with RBS's response and brought his complaint to the Financial Ombudsman Service. Our investigator thought RBS had treated Mr F fairly in all the circumstances. Since Mr F didn't agree, his complaint's been passed to me to review afresh.

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.

Some of the paperwork and call recordings are incomplete or of poor quality. I've noted Mr F's concerns about that. But I'm satisfied I have enough information to come to a decision that is fair and reasonable.

My decision is about the complaint Mr F originally brought to us – the way in which the AVS scheme was explained to him and his removal from it. He's raised some other issues about what happened in the run up to the eviction date and his request for service charges to be added to the mortgage debt. They aren't part of this complaint, and I won't address them here.

I may not mention all the points Mr F and RBS have made. No discourtesy is intended by that. It simply reflects the informal nature of the service we provide. I've taken into account everything the parties have told us. I'll focus here on what I consider to be the key issues in coming to my decision. I appreciate Mr F's strength of feeling about his complaint. However, whilst I understand he will be disappointed, I've come to the same outcome as our investigator for similar reasons.

At the end of June 2022 Mr F signed an authority confirming he wished to take part in the AVS scheme and agreeing to its terms and conditions. Although Mr F didn't retain a copy of the terms and conditions, he's confirmed he received them and signed the authority. He's suggested that since the original terms and conditions went missing, we can't be certain

those RBS have now provided are what he signed up to. It's unfortunate the original paperwork isn't available. But I've no reason to disbelieve RBS when they say the terms and conditions of the AVS scheme Mr F agreed to are those they've now provided.

The terms and conditions included that:

- Mr F must work with RBS's asset managers (the managers) to get the property on the market as soon as he could. The managers would discuss with him the asking price and recommended selling price. The initial asking price could not be more than the recommended asking price set by the valuer and/or estate agent;
- Mr F must allow arranged viewings of the property;
- The managers must at all times receive Mr F's full co-operation. If he failed to co-operate, the property would be withdrawn from the scheme and Mr F might become liable for any costs incurred. At that stage RBS might restart litigation proceedings;
- Mr F must use the time on the scheme to find alternative accommodation to move into after the sale had completed; and
- Mr F must carry on paying his mortgage throughout the scheme; failure to do so would result in his removal from it.

By signing the authority Mr F confirmed he understood, amongst other things, RBS would nominate an estate agent to market the property and that failure to comply with the conditions of the scheme would result in Mr F's removal from it.

The terms of the scheme were set out in a way that was clear, fair and not misleading, as I'd expect in line with Financial Conduct Authority principles. I appreciate Mr F was going through a stressful time. But given his situation and the importance of the scheme to him, it's reasonable to think he would have read the documents and understood the basis of the scheme and his obligations under it.

The managers discussed with Mr F in mid-July how the scheme would work. And they followed up with an email to confirm things. In some regards the managers gave the impression that Mr F might have more input into the process than the terms and conditions of the scheme allowed. For example, they said they'd recommend an asking price to RBS and Mr F following the valuations and go ahead once they'd both agreed. But they made clear they'd be choosing the estate agents and that they'd manage the overall process. And they set out the expectation that the scheme would lead to a sale within 12 months.

On balance, I think it was made clear to Mr F at the outset that RBS would control the marketing and asking price of the property; he'd be obliged to co-operate fully with the marketing process; and the managers would offer guidance and support in relation to the scheme.

RBS's reasons for removing Mr F from the scheme are, in summary, as follows:

1. Mr F wasn't fully engaged and hadn't fully co-operated with the managers and estate agent.
2. Mr F entered the scheme in mid-July and by mid-October discussions were still going on about putting the property on the market.
3. The managers had worked hard to accommodate Mr F's requests, but he kept raising new issues which wasn't in keeping with the spirit of the scheme and had led to delay.

4. The time the managers had spent in guiding Mr F was much more than expected and his actions were impacting them and the estate agents.

Mr F said, in summary:

1. The scheme hadn't operated in the way RBS had led him to believe it would. For example, when he agreed to take part in the AVS scheme, he was told three valuations would be obtained. That hadn't happened.
2. RBS were wrong to say he was responsible for all the delays that had occurred. The valuer didn't attend the property for a month after he'd entered the scheme and there was a delay in September by the managers.
3. He had co-operated with the process in several ways.
4. He hadn't been aware of viewings the estate agent had arranged and it had subsequently been shown they hadn't let him know about them even though they said they had.
5. He'd agreed a way forward with the managers in October; it was unfair for RBS to end the scheme after that.

Although Mr F had understood from a conversation with RBS before entering the scheme that three valuations of his property would be obtained, the managers explained soon after they'd been appointed they would only get two – one from an estate agent and one from a chartered surveyor. Although Mr F feels he was misled, he knew the position early on. Given his circumstances on entering the scheme and his wish to remain on it, I think it's unlikely, on balance, he would have opted not to go ahead if he'd known sooner how the property would be valued – if that is what he is suggesting.

The marketing of the property was initially delayed when the chartered surveyor wasn't available. It wasn't until early August his valuation and that of the estate agents were both to hand. There was a further delay in September when the managers were investigating concerns Mr F had raised about the estate agent's conduct and discussing things with RBS, and marketing of the property was paused. I agree with Mr F he can't be blamed for those delays. But it's reasonable to look at what happened overall and whether Mr F's actions meant it was fair for RBS to remove him from the AVS scheme.

Mr F feels he did all RBS and the managers asked him to do in a timely way including providing a copy of the terms and conditions signature page when RBS's copy went missing, showing the estate agent and valuer round the property, responding to the surveyor's questions and providing same day comments on the particulars of sale.

Mr F was in regular discussions with the managers who spent a lot of time addressing issues he raised. Understandably he wanted the property to be in a good state of repair and decoration when it was viewed, and I'll come back to that. But he also raised several times concerns he had about the price at which the property had been valued and its marketing. For example, he said the estate agents weren't appropriate given their poor history of selling another property in the same building and their location; the price was too low based on his own enquiries; other estate agents on RBS's approved list were more appropriate and had put a higher value on the property; the market was uncertain, but it was unlikely the property would sell until the spring/summer of the following year. And when he spoke to RBS in early September he said, amongst other things, he hadn't agreed to the property going on the market and he wasn't going to sell at the price being asked.

RBS and the managers addressed Mr F's concerns about the valuation of the property several times. It was reasonable for them to rely on the professional advice of the estate

agent and chartered surveyor in fixing the price, even if Mr F wasn't happy with it. And the terms of the scheme allowed RBS to market the property at that price. So, it was reasonable for them to go ahead on that basis. They explained that to Mr F.

Mr F was reluctant to allow viewings until he'd tidied up and carried out some works and redecoration to the property. That wasn't unreasonable. And I note the managers asked for his help in presenting the property in the best way. It was in both parties' interests that the best price possible be obtained as quickly as possible so Mr F could afford to buy an alternative property and RBS could recover their loan.

I acknowledge Mr F needed workmen to carry out some minor repairs, which can take time to arrange. And I appreciate his point that, broadly, given he was about to be evicted, it wasn't surprising he hadn't done the work before he entered the scheme - although he's also said he was already preparing the property for sale before he received notice of eviction in June. But, according to RBS's notes at the time, Mr F had told them by around 8 September that the workmen had been, and he'd done most of the decorating. I think RBS could reasonably expect Mr F to have agreed to go ahead with viewings by that stage even if some decorating still needed to be done. Mr F's told us he was still asking to delay things by 13 September since the property wasn't ready for viewings.

I've considered Mr F's point the investigation that took place after he'd been removed from the scheme suggested the estate agents had been untruthful in saying he'd agreed to viewings they'd arranged in early September. I note Mr F feels this is a significant issue, but I don't think it affects the outcome of his complaint. That's because, against the background of all the concerns he'd been raising, his reluctance to sell at the asking price and since he was still refusing to allow viewings in mid-September, it was reasonable, on balance, for RBS to take the view he wasn't fully co-operating at that stage.

Marketing of the property was paused around that time while the managers reviewed things with RBS and looked into concerns Mr F had raised about the estate agents' actions. I can see that works were still outstanding several weeks later since the managers' proposals to take things forward in October included further time for Mr F to finish them. I think it was reasonable for RBS to expect Mr F to have completed them by then and/or to be allowing viewings. Since no progress had been made and bearing in mind the background I've set out, it was reasonable for RBS still to have concerns about his commitment to the sale.

Mr F says he verbally agreed the managers' October proposal - although he's told us previously his agreement was provisional, and he was waiting for the managers' letter to arrive before agreeing formally. Mr F didn't write back to the managers to confirm his agreement, although he was able to respond promptly about other issues the letter addressed. I've noted Mr F's reasons for this, but I don't think the other issues about what had happened in the past stopped him from agreeing how things should be taken forward. And it wouldn't have been unreasonable for RBS to take his failure to provide written confirmation into account in coming to their decision to remove him from the scheme.

I can understand RBS's decision to remove him will have been unexpected and upsetting given the managers' proposal. But the letter said they'd confirm things with RBS if Mr F agreed their proposals. So, in the end it was for RBS to decide if Mr F should stay on the scheme. I think RBS gave fair consideration to what had happened since Mr F entered the scheme. And bearing all the circumstances in mind, I think it was reasonable for RBS to conclude Mr F had caused delay and wasn't fully co-operating as the scheme required. On that basis, on balance, I think the decision to remove Mr F from the scheme was fair.

I've noted Mr F feels RBS manufactured a way of removing him from the scheme. I'm not persuaded there's any evidence of that. And I don't think the points he's raised recently

about the missing signed authority affect the outcome of his complaint. Even if the authority was missing, Mr F didn't dispute signing up to the scheme. RBS's and the managers' main concerns were about his commitment to the scheme, not whether it was in place from a legal viewpoint. And since steps had already been taken to market the property through the scheme, I think it would have been in RBS's best interests for the property to be sold in that way if they felt they had Mr F's full co-operation.

Mr F's also raised concerns about the way in which his complaint and subject access requests were handled by RBS, and that RBS have continued to charge him interest on his mortgage. I don't generally have the power to consider complaints handling and subject access request issues, and I won't comment on them here. I note the response to Mr F's complaint was outside usual timescales. But Mr F has been able to bring his complaint to us. The eviction has been put on hold while we've looked into things. I'm satisfied I have enough information to come to a decision that is fair and reasonable. And it's not unreasonable Mr F has been responsible for mortgage payments in the meantime since he's carried on living in the property and the mortgage hasn't been repaid.

Bearing everything in mind, I don't uphold Mr F's complaint. I note RBS told Mr F in responding to his complaint that he had the option of marketing the property himself. I understand he was concerned about damaging his chances of going back onto the AVS scheme if he went ahead with that. Mr F may wish to contact RBS to see if that or other options are available to him now. I'd expect RBS to continue to treat Mr F fairly while he discusses his situation with them.

My final decision

For the reasons I've explained, I don't uphold Mr F's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 22 December 2023.

Julia Wilkinson
Ombudsman