

The complaint

A company, which I'll refer to as H, complains that The Royal Bank of Scotland Plc failed to set up a fixed interest rate as instructed on a Coronavirus Business Interruption Loan (CBIL).

What happened

H received a £250,000 CBIL in May 2020. The interest rate was 2.71% over base.

H received a second CBIL of £200,000 in July 2021. The intention was for the rate to be fixed at 3.34%, but RBS wrongly set up a variable rate at 3.34% over base. When H later complained about this, the bank accepted that it had made an error and refunded the excess interest paid. Both parties are satisfied that this was a fair outcome.

In 2023 H also complained about the first CBIL, saying that it had arranged with RBS to fix the interest rate but the bank wrongly set up a variable rate. The bank said it couldn't find evidence that there was an agreement to fix. Unhappy with the bank's response, H referred its complaint about the first CBIL to us.

Our investigator looked at the evidence and agreed that RBS had made an error regarding the first CBIL. He recommended that RBS should refund half the difference between the variable rate payments and the payments that would have been due on a fixed rate – and that this should be done both historically and going forward until the maturity of the loan. He gave these reasons, in summary:

- He was satisfied that around October 2020, H considered fixing the rate of the first CBIL, and RBS provided indicative quotes for a three-year and five-year fix. Then H's director told RBS that H wished to fix the loan for five years. The investigator was persuaded that H gave RBS a clear instruction that it wished to fix its first CBIL and that RBS didn't act on this instruction. The investigator thought H had a reasonable basis to believe it had entered a fixed interest rate after the instruction to fix in October 2020.
- The matter wasn't mentioned again until April 2021, when H applied for its second CBIL, and H's director informed RBS of his desire to fix the rate of the new second CBIL "*as we have in our first CBIL*". The bank therefore missed an opportunity to correct its mistake.
- In considering what how much of the loss for which RBS can fairly be held responsible, the investigator thought it was also relevant to consider how soon H ought to have realised the rate wasn't fixed, which would have enabled it to mitigate the loss.
- The investigator thought H could reasonably have expected that it had to do or sign something for the fixed rate or, at the very least, that it would receive some confirmation in writing about it. Yet in all the communication it doesn't appear that H ever received anything approaching a confirmation.

- From early 2022 there was a steady and substantial rise in the base rate, which continued into 2023. H received quarterly notification of interest statements which evidenced that a fixed interest rate hadn't been applied.
- The investigator said that given the variety of factors, it's not possible to derive an exact figure for the proportion of the loss for which the bank should be held responsible, but in his view it would be fair for RBS to pay half of the loss.

H didn't agree with investigator's argument about halving the bank's responsibility.

While the complaint was still with us for consideration, RBS implemented what it understood to be part of the investigator's redress proposal by setting up a fixed interest rate for the loan, to run from 7 March 2024 until maturity in October 2025. H's director signed an agreement with the bank for this new fixed rate. The bank then put forward a proposal to complete the redress package with the aim of further aligning the outcome with the investigator's recommendations.

The bank's proposal was to calculate half the difference between the variable rate payments and the payments that would have been due on a fixed rate, up to the date when the new fixed rate started in March 2024, then to subtract from that figure a sum equivalent to half the interest that will be paid on the fixed rate loan until October 2025. The bank proposed that it should pay the result of this calculation to H. RBS was of the view that H would be better off with this new proposed redress package than with the investigator's original recommendation.

I noted that the difference between the investigator's original redress and the bank's new proposal could vary, depending on movements in the base rate between now and the end of the fixed rate in October 2025. I looked at several interest rate scenarios – based on level, rising and falling rates over the next 18 months. My own calculations indicated that in each scenario, H would benefit more from the new proposal. Of course, no one can predict exactly what will happen to rates in the future, but the important point here is that the bank's new proposal, in combination with the fixed rate as agreed, would leave H better off than the investigator's original recommendation.

I wrote to H to explain the new offer and asked whether the company wished to make any comments. In response, H's director said that he had signed the new fixed rate agreement because he thought he had to. Nevertheless, he said he has no comments on the bank's new redress proposal as compared with the investigator's original recommendation. But he said he still disagreed with halving the bank's responsibility for the loss, which underpins both the original and new redress packages. He made the following points, in summary:

- It was the bank's error that caused the problem, so H shouldn't be expected to take any responsibility for it. H didn't do anything wrong.
- H assumed the written confirmation in its email in 2020 was enough. The company trusted the bank to get things right during those troubled times and never saw any reason to question what was happening.
- There are good reasons why H didn't see that it had a variable rate earlier, as follows:
 - there were no payments due before June 2021, so H wouldn't have picked up on RBS's error
 - From June to August 2021, H was totally focused on reopening the business

- H didn't receive any notices of change of interest.
- H would agree with this view, of a 50/50 split, if this had been a normal loan under normal trading times, but the times were most certainly not normal, and were globally unprecedented. This should be factored into the decision.

I also put a suggestion to both parties about interest that should be paid on the redress, in order to compensate H for the loss of use of funds. In the investigator's original recommendation, the bank would have been required to add interest at 8% simple per annum to the reimbursed payments from the date the losses arose to the date of settlement. I calculated that it would have come to about £280. To make things simple and to save the parties time and argument, I proposed to award the interest as a lump sum, rather than constructing a complex formula to apply to the new redress package in order to arrive at the same result. Neither party raised any objection to this.

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 agree with the investigator that RBS made an error in October 2020 by not acting on H's instruction to go ahead with arranging the fixed rate. No new agreement was signed, nor did H receive any confirmation of the new rate, but I accept that H believed it had done what was required to get the rate changed, so it was reasonable for the company to believe that the fix was in place.

This led to H unknowingly having a variable rate rather than a fixed rate from the end of 2020 onwards. At the end of 2021, the Bank of England base rate started to rise for the first time since 2018. From then on, the base rate rose steeply, reaching 4.00% by February 2023 and levelling off at 5.25% in August 2023. As a result of the rising base rate, the monthly interest paid on H's actual variable rate CBIL became greater than would have been due on the fixed rate.

Compared with the loan repayments that H believed to have been agreed in October 2020, this outcome represented a loss to the company – put simply, H paid a lot more in interest than it had expected to. And in the future, if the loan continued on a variable rate, the loss would be likely to continue accumulating until maturity in 2025.

It was RBS's error that caused the CBIL to remain on a variable rate when H believed it had changed to a fixed rate, so I agree with the investigator that the bank should compensate the company. But I also agree it wouldn't be fair to require the bank to compensate H for its entire loss.

The company received quarterly advice of its interest rate and the payments taken, so from mid-2022 it possessed information that showed its rate was increasing, which could only mean that it was still on a variable rate. If H had acted on this information and raised it with the bank, the matter could have been addressed before the base rate had risen very far, thereby reducing the loss. But H didn't complain until March 2023. The company was in a position to mitigate the loss, but it didn't do that, and the rate of loss continued to increase. The larger part of H's loss built up after the company was in possession of information that indicated it was paying variable rate interest. In the circumstances, I don't think I can fairly require the bank to refund all the loss.

As the investigator said, it's not possible to derive an exact proportion for the bank's responsibility for the loss, but in my opinion his proposal that RBS should pay half is fair and reasonable.

I understand H's director's argument that the company didn't cause the problem and it trusted the bank to get things right. But I'm required to take into account all the circumstances of the complaint and I can't ignore the information that the bank sent to H during the period of loss. H's actions weren't the cause of the loss, but as the company had the opportunity to mitigate the loss, I think it's fair to expect it to have done so. That's the reason why I don't think it would be fair to require RBS to meet all the loss.

I also understand the point H's director makes about the troubled times in the economy and H's own trading. But I've seen the bank's quarterly advice statements – copies of which were sent to us by the company – covering the period from the end of 2021 to the end of 2022 which clearly show a steep rise in interest payments from £1,621.79 to £ 2,354.85, with each stating that the interest was calculated as “Base + 2.71%” and recording the current and previous base rates. I think those advice statements repeatedly demonstrated that the CBIL was on a variable rate. As a result, I think H ought to have become aware that the rate wasn't fixed, even if trading conditions were difficult at the time.

For all the reasons I've given above, I think the new redress proposal is, in combination with the new fixed rate agreement, a fair offer to settle this complaint.

Putting things right

RBS has already put in place a fixed interest rate for the CBIL, starting in March 2024 and running to the expiry of the loan, with the interest rate that would have been available in October 2020, and H has agreed to that.

The bank has also offered to refund part of the interest already paid on the CBIL, according to the formula below. I think the bank's offer is fair and I require it to make the refund as follows:

- RBS should calculate (a) the sum of the monthly payments that would have been due from October 2020 up to March 2024, had a five-year fixed rate gone ahead, using throughout the interest rate that would have been available for a fixed rate CBIL commencing on 7 October 2020.
- RBS should calculate (b), the difference between (a) and the sum of the monthly payments actually made on the loan during the same period.
- RBS should calculate (c), being half of (b).
- RBS should calculate (d), being half the interest that will be paid on the fixed rate loan from 7 March 2024 until October 2025.
- RBS should calculate (e), being (c) minus (d).
- RBS should pay (e) to H.

My final decision

My final decision is that I uphold this complaint and I require The Royal Bank of Scotland Plc to make a refund of interest to H as set out above.

RBS should also pay £280 to H as compensation for the loss of use of funds.

Under the rules of the Financial Ombudsman Service, I'm required to ask H to accept or reject my decision before 8 July 2024.

Colin Brown
Ombudsman