

The complaint

Mrs T's complaint is about a 'Retirement Home Plan' she has with Bank of Scotland plc (BoS). Her representative feels the mortgage was mis-sold because of Mrs T's cognitive impairments, due to an educational disability, meant that she couldn't understand the contract she was entering into or the extension to it by way of further borrowing in 2006.

Mrs T's representative doesn't believe BoS carried out suitable affordability checks at the time of either of the advances. Nor does she believe a suitable valuation was undertaken in 2006 when the further advance was granted, as she doesn't think the property was worth enough to allow the advance. In addition, she doesn't think the term of the mortgage was appropriate as no consideration was made of whether Mrs T would be able to continue managing a house of multiple occupancy (HMO) into her 80s and 90s.

Mrs T is being represented by a relative, who I will refer to hereafter as Mrs H.

What happened

Mrs T arranged a mortgage with BoS on her main residence in 1990. It appears to have been arranged on a variable interest rate and on a repayment basis. The property was valued at £145,000 in 1990. By 2001 she owed around £55,000 of the original borrowing, about £32,000 on an existing further advance and was applying for a second further advance of £20,000. She also wanted to extend the term of the mortgage and add a fixed rate product in order to reduce the payments. Mrs T confirmed this in writing and also involved an independent financial adviser (IFA) when doing so. The further advance money was to be used to help purchase an overseas property. The new further advance was granted on the account in May 2001.

Whilst the information available from 2001 is limited because of the amount of time that has passed, BoS' notes from the time detail there was discussion about the affordability of the proposed mortgage arrangements. Mrs T was recorded as a hotelier with an income of £50,000.

As a consequence of Mrs T asking for an extension to the mortgage term and her age at the time, the mortgage was converted to the Retirement Home Plan. This had a term of 40 years, meaning Mrs T would be 99 when the term expired. The Home Retirement Plan was an interest-only mortgage that was designed to be repaid when the mortgaged property was sold. Mrs T confirmed in writing that she wanted to move ahead with the change. Whilst the handwriting of the letter is poor, the instruction is understandable.

The conversion to the retirement home plan went through in June 2001, several months after Mrs T's first enquiry about changes to her mortgage. The mortgage balance was slightly over £100,000. Whilst the mortgage loan was on an interest-only basis, it appears Mrs T made some overpayments for the initial years of the arrangement.

In 2006 Mrs T applied for a further advance on the mortgage, which was granted. No advice was given by BoS in relation to the application. This brought the borrowing up to just over £300,000. A fixed rate was attached to the mortgage and Mrs T changed the mortgage to a repayment basis. The documentation from the time recorded Mrs T as a hotel manager with

an income of £131,560 (Mrs H has suggested this was the total turnover of Mrs T's businesses rather than her income). She also had a very significant amount of debts - £180,000 – spread over loans and multiple credit cards. The property value was estimated as being around £350,000. Mrs T made the necessary mortgage payments to the mortgage until 2019.

In the summer of 2017 Mrs T again contacted BoS to enquire about borrowing a further £10,000 for home improvements. The process to do so was explained to her and she said she would call again. Some months later she called again about the further advance. She explained that a flat roof in her home had become damaged in bad weather, but her insurer had declined a claim for the damage, so she needed money to complete repairs. BoS advised her to get some quotes for the work and call back. She didn't contact it again.

In the autumn of 2019 Mrs T started to miss payments. BoS was told in September 2019 that Mrs T had cancelled the direct debit mandate and BoS received a letter explaining her financial difficulties.

The following month Mrs H telephoned BoS and explained that Mrs T was in financial difficulties as her main source of income had stopped. It was explained that Mrs T owned three other properties outright – two commercial rentals run as HMOs and a residential property abroad. It was explained that Mrs T had lost the licence on the larger HMO, which was her main source of income. As such, Mrs T couldn't afford to pay the mortgage with BoS on her home. It was also confirmed she was in arrears with the utilities on the larger HMO property. Mrs H was told she needed to obtain Mrs T's authority if she wanted to discuss the account with it.

A redemption statement and a letter of authority were sent to Mrs T shortly after Mrs H's call. Mrs H was also reminded that she needed the letter of authority completed before BoS could speak to her about the situation and the possibility of a negative equity sale.

At the end of November 2019 Mrs H called BoS again and told it the HMO had been sold. Most of the debts associated with it had been cleared, but there was still the electricity bill to pay. Mrs T also had credit card debt totalling almost £50,000, was in arrears of council tax, had a car loan and owed HMRC two years of tax.

Mrs H explained that Mrs T was in receipt of a state pension and an income from the second of her HMO properties – this totalled around £1,400 per month. It was also confirmed that the overseas property was being sold to pay off more of Mrs T's debts. Mrs H also told BoS the property its mortgage was on, which was Mrs T's home, was in a state of disrepair, so she thought it might be in negative equity. It was confirmed that Mrs T would move into the remaining HMO after her home was sold. BoS said it would send an income and expenditure form for Mrs T to fill in and return. It also suggested the proceeds from the sale of the overseas property should be used to pay any shortfall with its mortgage. This appears to have been agreed, but Mrs H then questioned how Mrs T had been given the mortgage in the first place. It was introduced that Mrs T had difficulties.

There was a second call on the same day from Mrs H. She asked BoS if it would accept an offer of £150,000 for the property. It was noted that she confirmed Mrs T's other two properties were owned outright. It was also detailed that if the money from the sale of the overseas property was directed to its mortgage, there would be no negative equity. However, if that didn't happen, BoS confirmed that any shortfall would be passed to its collections department for it to be explored how Mrs T could pay it. Mrs H was told the process to agree a shortfall sale would take about eight weeks.

Mrs H called BoS again a week later. She said they hadn't received the negative equity sale application pack. She also said they had spoken to a debt charity and having done so, Mrs T wanted BoS to accept £150,000 in full and final settlement of the mortgage debt. BoS said it didn't accept offers on the basis of full and final settlement. Mrs H then made a complaint that the mortgage had been mis-sold as it went beyond retirement and Mrs T's difficulties hadn't been taken into account at the time the mortgage was granted.

In April 2020 Mrs T called BoS and asked for a payment holiday. This was granted for May, June and July 2020. She called again in May 2020 and passed the telephone to a friend (not Mrs H) who asked if BoS would write off the mortgage if Mrs T paid it £150,000. She was directed to the negative equity team, which had already said no to this proposition and had asked Mrs T to provide it with further information.

BoS considered Mrs T's complaint. It said it wasn't able to establish how Mrs T's existing mortgage had been converted to a Retirement Home Plan in 2001 – due to discussions with it, an independent financial adviser (IFA) it has record of being involved, or a combination of both. However, Mrs T would have been sent all the details of the changes in writing and would have received annual statements thereafter.

As for the 2006 further advance, BoS said its records showed that it had revalued the property and, based on that valuation, the advance was reasonable as the mortgage represented 85% of its value. It also recorded the funds released in 2006 were used to repay other debts that already existed, so Mrs T's overall financial position was not worse and the lower interest rate on the mortgage meant the payments were more affordable than before. BoS said it would have credit scored the application and the application met lending criteria. It received information from the accountant and looked at bank statements; both of which supported affordability. It sympathised with the situation Mrs T was in regarding her financial difficulties, but recommended she speak to its negative equity team for assistance going forward.

Mrs T wasn't happy with BoS' response and referred her complaint to this service. When she did Mrs H explained that Mrs T had owned two HMOs. She lost the licence on one of them and all the tenants moved out in October 2019. This meant her income dropped and she couldn't afford her mortgage. The residential property was in negative equity and so she was told to apply for permission to sell at a shortfall and would have to agree a payment plan for the shortfall of around £85,000. This was despite BoS knowing that Mrs T had a negative monthly income and her circumstances wouldn't change. She said the mortgage arrangements weren't suitable due to Mrs T's '*educational disability*'. She also confirmed that Mrs T by then also had mental health issues as a consequence of the situation and her educational disability.

BoS objected to this service considering the complaint. It said it considered if the mortgage was unaffordable, Mrs T would have known this within six years of the mortgage advances. Our investigator considered BoS' objection to this service considering the merits of Mrs T's complaint, but he wasn't persuaded she would have known about the suitability issues she'd now raised any earlier than the changes in her circumstances. BoS considered the matter further and consented to us looking at the merits of Mrs T's complaint.

Our investigator noted Mrs H's comments about Mrs T having an educational disability and cognitive impairment. As this hadn't been mentioned to BoS until late in 2019 and in light of Mrs T's interactions with BoS during the term of the mortgage and the fact that she had run a business successfully for what appeared to be around 30 years, our investigator asked Mrs H for some further information. Mrs H didn't respond to this request until after the investigator declined the complaint. She said that Mrs T's credit card companies hadn't asked for any evidence of the disability before they had written off the debts. She questioned

whether we should be asking for such information and said there was none available, but it would be possible to have an assessment done.

The investigator went on to consider the merits of Mrs T's complaint, but he didn't recommend it be upheld. Mrs H didn't accept the investigator's conclusions. She considered it was bad advice to consolidate Mrs T's debts in 2006 because if she'd been unable to pay them, the supplying companies would have taken a lower payment or written the debts off completely. However, BoS agreeing to lend the money against Mrs T's home meant the debt put her home at risk. Mrs H asked that the complaint be looked at by an ombudsman.

Mrs H made some further comment before the complaint was passed to me for consideration. She considered BoS should have refused lending in 2006 and that the debts wouldn't have been secured, so Mrs T wouldn't have been at risk of losing her home. She didn't consider Mrs T was in a position to maintain the payments to the mortgage until the end of the term and therefore, she was likely to lose her home no matter what. In addition, Mrs H said that Mrs T had taken out a further loan in 2011 for £80,000 and run up more credit card debt, which she considered evidenced Mrs T having difficulty understanding finances.

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 have looked at the evidence from the 2001 alterations to Mrs T's mortgage. It's clear that she was receiving advice about her mortgage (and possibly her subsequent property purchase) from a firm of IFAs. BoS wouldn't be responsible for any advice the IFA gave Mrs T about her mortgage.

Mrs T wanted to borrow some money against her home. She wanted to extend the term of the mortgage and attach a fixed rate to it in order to make the additional lending more affordable. This is quite clear and Mrs T wrote a letter confirming that's what she wanted. I understand that Mrs H has said Mrs T would have been incapable of writing a letter to BoS, but I have no reason to doubt the letter, given it was recorded in a note of a telephone call with Mrs T that she would be sending in such a letter.

At the time of the sale Mrs T was recorded as being a hotelier with an income of £50,000. She was self-employed and owned the hotel in question. This meant that Mrs T would decide when she wanted to retire and that she would not necessarily lose her income when she did – given she owned the hotel she could have arranged alternative management of the business. Alternatively, if she did retire and sell the hotel, she could use some of the sale proceeds to repay her mortgage with BoS.

BoS can't be held responsible for any advice the IFA gave Mrs T. However, if BoS suggested the possibility of changing the mortgage type to facilitate Mrs T's requirements from her mortgage, I don't think I could find that it was inappropriate for it to do so. The mortgage type Mrs T ended up with is one that was designed to go beyond retirement. It also appears that BoS looked into the affordability of the mortgage arrangement beyond Mrs T's state retirement age. I haven't seen any evidence that BoS made any errors in granting the mortgage it was asked for. It would also appear that Mrs T was fully informed about the nature of the changes and accepted them.

There is more evidence from the 2006 further advance. Mrs T had a great deal of unsecured debt. It's not clear how or why she ran this debt up, but it existed, and Mrs T wanted to consolidate it onto her mortgage. The consolidation of debts will usually involve those debts

being paid over an extended period, with the potential for more interest to be paid. This can be appropriate in some cases, but not in others.

In Mrs T's case she had in the region of £180,000 of debts that were in the main attracting much higher interest rates than they would under the mortgage. In addition, the amount of the monthly payments would have been causing those debts to increase as her recorded net income over the previous three years was in the region of £35,000. The likelihood of Mrs T being able to repay the debts in any form of a reasonable period of time was very low, purely because of the amount of debt there was. I think consolidation of the debts was probably one of the more palatable options open to her to deal with the situation. I would highlight that Mrs T didn't seek advice about her decision to consolidate her debts, she simply made an application to do so.

I note that Mrs H has said the debts should have been left as they were, on the assumption they would have just been written off by Mrs H's creditors. That might have happened, but alternatively she may have been pushed into bankruptcy or forced to sell some of her capital assets, with the potential result of her losing her business and income.

The income detailed on the application form was clearly incorrect and may well have been Mrs T's turnover as Mrs H suggested, but there is evidence BoS knew this. Mrs T provided proof of income for the three years prior to her application. So it would appear BoS completed affordability checks on the new mortgage lending. In the circumstances where Mrs T didn't ask for advice, I don't think BoS was wrong to simply assess the application that had been made to it and see if it was affordable and met its lending criteria. I can't find that BoS did anything wrong.

Mrs H has put forward that Mrs T wasn't capable of understanding her mortgage or her interactions with BoS. The evidence of Mrs T's interactions with BoS don't indicate that is the case. Nor does the fact she ran a successful business for many years. While Mrs T did get into debt on a personal basis, that doesn't mean she was not capable of understanding what she was doing; many people get into debt and financial difficulties but not because of any disability or cognitive impairment. In the absence of any evidence to support Mrs H's statement that Mrs T has a disability that would mean she wasn't capable of understanding what she was doing when interacting with BoS about her mortgage, I am unable to find it acted inappropriately when dealing with Mrs T.

In relation to the sale of Mrs T's home at a shortfall, BoS has indicated it would allow this to happen, but would want to explore whether Mrs T was able to repay some or all of the shortfall. I note that Mrs H has provided evidence that Mrs T has an income shortfall, this assessment by the debt charity was based on her position when living in the mortgaged property. The assessment BoS will want to make is that from after Mrs T moves and has reduced outgoings. In addition, Mrs H has confirmed that Mrs T has two unencumbered properties, which might provide the possibility of the shortfall being paid. It isn't unreasonable for BoS to want to fully explore the situation. So I don't consider BoS was wrong when it said it wouldn't accept the offer to pay £150,000 in full and final settlement of her mortgage debt with it.

My final decision

My decision is that I don't uphold this complaint. Under the rules of the Financial Ombudsman Service, I am required to ask Mrs T to accept or reject my decision before 16 April 2021.

Derry Baxter
Ombudsman