

## **The complaint**

Mr and Mrs L complain Scottish Building Society ("SBS") took the incorrect repayments on their mortgage account so they've underpaid the interest. This stopped them from switching to a better deal as there's a dispute over the redemption figure.

## **What happened**

Around March 2016, Mr and Mrs L applied for a mortgage of £250,000 with SBS on a self-build variable rate over ten years. The mortgage was arranged on the basis the funds would be advanced in stages as Mr and Mrs L's property was being built.

The mortgage completed in June 2016 and the first payment of £31,000 was advanced. Shortly afterwards, around October 2016, after Mr and Mrs L noticed the repayment method wasn't what they'd applied for, SBS agreed to switch the mortgage to part interest only, part capital repayment. This was on a variable rate of 5.74% until October 2019.

In March 2017, a further £120,000 was advanced to Mr and Mrs L. Around a year later, after they queried why their interest only repayments didn't match what was shown on their statement, SBS found it hadn't updated their payments correctly when the further funds were taken. So, Mr and Mrs L were paying too little towards the mortgage interest each month. This continued until July 2018 when SBS amended the payments going forward. Mr and Mrs L have explained they didn't notice this had happened any sooner as Mr L had been very unwell and undergoing intensive treatment. So they didn't check their payments.

Around September 2018, Mr and Mrs L applied to make a capital repayment of £100,000. They thought this would bring the amount outstanding to £50,000. But the redemption statement showed they'd still owe around £62,000. The extra amount was the unpaid interest. Mr and Mrs L disagreed they should have to pay it when it was due to SBS's error.

As things weren't resolved, Mr and Mrs L made a complaint to SBS. To put things right, it offered to restructure their account so they wouldn't be charged interest on the unpaid interest that had been added to the mortgage. It also offered them £1,185.87 to recognise the inconvenience caused to them. And it said it would waive any early repayment charge ("ERC") if Mr and Mrs L redeemed the mortgage early. It had already waived the ERC of around £3,000 which should've applied to the capital repayment they'd already made.

Unhappy with SBS's response, Mr and Mrs L asked our service to look into things. They thought it should remove the interest that was owed from the mortgage balance. Our investigator initially didn't uphold the complaint. But later recommended SBS remove half of the interest applied to the account balance. SBS accepted our investigator's opinion.

Mr and Mrs L said they'd had to remain on the self-build mortgage at a higher rate whilst this dispute was being settled. So they thought SBS should cover the cost of that too. As the complaint wasn't resolved, it was passed to me to reach a decision on.

I issued a provisional decision on this complaint in January 2022. I thought the outstanding matters to decide were whether SBS should write off the full amount of unpaid interest and whether it should cover the higher rate of interest Mr and Mrs L had remained on while the complaint was ongoing. And overall, I didn't think so. In summary I said:

- It was understandable in Mr and Mrs L's circumstances that they didn't realise they were underpaying straight away. But I thought they should've been alerted that something had gone wrong when their payments didn't increase at all, considering the amount advanced. So they ought reasonably to have noticed quicker they were underpaying.
- In the circumstances, I thought restructuring the account as though 50% of the unpaid interest had never been added was fair.
- Mr and Mrs L had a duty to mitigate their losses and I didn't think they had by remaining on a higher rate for longer than they needed to rather than switching to a better deal.
- I didn't think Mr and Mrs L were led to believe they couldn't switch to a different product to save money while their complaint was ongoing.
- It was down to Mr and Mrs L to apply to switch to a different product – I hadn't seen anything to suggest that would happen automatically.

I was under the impression the mortgage had already been paid off so I didn't think it was possible for SBS to restructure the account. Instead, to put things right, in summary, I thought SBS should refund half of the interest amount that went incorrectly unpaid together with any additional interest on that amount if Mr and Mrs L had already repaid it when they redeemed their mortgage. I also said SBS should add 8% simple interest to that amount and pay the compensation it had already offered Mr and Mrs L if it hadn't done so already.

I asked both parties for comments before I reached a final decision. SBS said it accepted my decision. It said it had already adjusted Mr and Mrs L's account to remove half of the unpaid interest and any interest charged on that amount. And it had credited the compensation previously offered to the account. So it thought the only remaining payment to make was the 8% interest I'd set out in my provisional decision.

SBS also pointed out that:

- An interest only mortgage wasn't available to Mr and Mrs L and they'd accepted a repayment mortgage. SBS said it amended it after completion to assist Mr and Mrs L.
- As far as it was aware, Mr L's health had improved by April 2016 and Mr and Mrs L had said he would assist with building the property. So it assumes his health issues returned.
- SBS hasn't been given the necessary documentation to show the property build is now finished. And that's why, it says, Mr and Mrs L have remained on the higher rate.
- The mortgage has not been redeemed.

Mr and Mrs L said there were elements of my provisional decision which weren't factually correct. They said in summary:

- They don't agree they were responsible for notifying SBS of the error in the payments.
- The mortgage was set up incorrectly and it took months for it to be resolved. They imply this shows they would've flagged the problem with underpayments had they noticed it.

- Mr L's treatment for his health was gruelling as he was very seriously ill. And it took over a year for him to recover. So checking the payments were being taken correctly wasn't a priority – particularly as they were being charged correctly by other providers.
- Once they did highlight the issue to SBS, it took a very long time for it to be rectified.
- They were aware they'd have to apply to switch their mortgage when the build was complete. They had an offer from another lender but didn't proceed as they didn't want to over-pay SBS to redeem the mortgage. They took advice on this.
- They didn't realise how long it would take to resolve this matter – so they've had to pay a very high interest rate for several years longer than they expected.
- They would like SBS to provide a full statement of the mortgage account showing the capital outstanding, the interest charged, interest paid, the adjustment based on my final decision and how much needs to be paid to clear the mortgage along with the compensation to be paid.

Following the responses I received, I got in touch with both parties again. I explained in more detail in light of the comments received, why I thought Mr and Mrs L ought reasonably to have been aware they were making underpayments sooner and why I didn't think it was SBS' responsibility to cover the higher rate of interest they've remained on.

I also highlighted SBS' offer of compensation was for it to be paid to Mr and Mrs L's account. And I explained although I'd previously directed SBS to pay 8% simple interest on the refunded unpaid interest, this was to compensate Mr and Mrs L for being deprived of the money I thought they'd had to overpay to redeem their mortgage. But both parties had confirmed the mortgage is ongoing and hasn't been redeemed. So it's possible for SBS to restructure the account (and indeed, it's said it's already done this). And I didn't think it was fair to ask it to pay 8% interest on any sums as Mr and Mrs L haven't been deprived of them.

Mr and Mrs L had asked for a clear statement of their mortgage account and I thought that's reasonable.

Again, I asked both parties for comments before I reached a final decision. SBS didn't reply by the deadline set. Mr and Mrs L reiterated that their mortgage had been poorly managed – and they had applied for an interest only mortgage in the first place. They've been trying to resolve this situation for a very long time and have been spending more than needed on interest in the meantime. They provided copies of emails to our service which showed how long they've been trying to reach a resolution for – and that Mrs L's employment ended while this was ongoing. And they've said if they'd known how long things would take, they would've acted differently.

Mr and Mrs L also provided a copy of their building completion certificate and questioned why SBS didn't offer a reduced interest rate until the complaint was resolved. If it had done so, they say they would've provided the completion certificate immediately.

### **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.

Both parties have raised what they think happened when the mortgage was first taken out. But that isn't in question here – I previously referred to it to provide some background to the complaint only. As I explained in my provisional decision, what is in question, is whether SBS should write off the full amount of unpaid interest on the account and, whether it should cover the higher rate of interest Mr and Mrs L have remained on.

I've thought very carefully about the details Mr and Mrs L have given about Mr L's health and treatment at the time further sums were advanced and their payments should've increased. I know it must be difficult to give such personal details so I thank them for giving me the information they have.

Mr and Mrs L had asked for a considerable sum to be released to them in March 2017. So I think it's very likely they would've expected their repayments to increase significantly. I fully appreciate their focus and attention wasn't on their finances at the time and instead, was understandably on Mr L's treatment. But I must consider that at the time, their build seemed to be ongoing – and they'd continued to apply for further funds from SBS to go towards it. So I think some attention was also being paid to their finances and to the management of their build. And overall, I do think they ought reasonably to have noticed their repayments hadn't increased at all at a time they would've expected it to do so significantly. And that should've alerted them that something had gone wrong.

I appreciate Mr and Mrs L don't think it was their responsibility to notify SBS that it was taking too little in payments from them – and I accept they've underpaid on their mortgage due to SBS's error. But that's not enough for me to say in this case that they don't need to repay the contractual amount they agreed to if I think they should've been aware earlier – and could've taken steps to sort out the problem sooner.

So overall, the comments made haven't changed my mind that Mr and Mrs L ought reasonably to have been aware they were underpaying on their mortgage sooner than they did. And I think SBS's agreement to put things right by removing half of the underpaid interest from their account – together with any associated interest – is fair.

I thank both parties for clarifying that Mr and Mrs L have not redeemed their mortgage with SBS. It seems SBS thinks Mr and Mrs L have remained on their more expensive product because they've not shown their property has been completed yet. But Mr and Mrs L have explained they've done so because they don't want to overpay to redeem the mortgage and then be in a position where they have to reclaim the money back.

In this case, it doesn't make a difference why Mr and Mrs L have remained on the self-build rate. I say this because it seems from everything I've seen, they could've switched to a different rate. And it seems they were accepted by another provider to do so. I understand why they wanted this outstanding issue with SBS to be resolved before switching but I think it was their decision to stay on the more expensive rate while this was ongoing. So I don't think it would be fair to direct SBS to cover the higher rate of interest they were charged while *they chose to* remain on the self-build product.

I appreciate Mr and Mrs L have said they didn't think this dispute would've gone on for so long and I apologise for the length of time it's taken our service to look into things – I know they've tried to push things along in the meantime. But I haven't seen anything to suggest they couldn't have switched to a different product at any point between the time their build was completed and now. Mr and Mrs L think SBS should've told them to provide their completion certificate and offered them a new rate while the complaint was ongoing. But I can see in September 2018, it did say they could switch rates on receipt of the certificate and I think it was for Mr and Mrs L to apply for this. So I'm not persuaded them paying more in interest than they'd have to elsewhere is SBS's responsibility.

### **Putting things right**

To put things right in this case, SBS should send Mr and Mrs L a statement outlining the details they've requested above within two weeks of the date that my decision is accepted. And it should do what it's already offered if it hasn't done so already:

Restructure Mr and Mrs L's account as if half of the interest which went incorrectly unpaid between March 2017 and July 2018 wasn't added. This means also removing any further interest that was charged on that amount.

Pay the compensation previously offered of £1,185.87 to Mr and Mrs L's account if it hasn't done so already.

### **My final decision**

For the reasons I've given above and in my provisional decision, I uphold Mr and Mrs L's complaint and direct Scottish Building Society to put things right by doing what I've said.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs L to accept or reject my decision before 31 March 2022.

Nadya Neve  
**Ombudsman**