

The complaint

Mr and Mrs L complain that Bank of Ireland (UK) Plc (“Bol”) has offered them higher interest rates on their mortgage unfairly.

What happened

The details of this complaint are well known to both parties, so I won’t repeat them again here in detail. Instead I’ll summarise the main facts that I consider to be fundamental to the outcome and focus on giving my reasons for my decision.

Mr and Mrs L have been mortgage customers of Bol since 2008. At that time, they borrowed around £200,000 on interest only terms. Mr and Mrs L self-certified their income. No proof of income was required by Bol to approve the loan.

Over the years, Mr and Mrs L enquired about making changes to their mortgage – including switching to a repayment mortgage and applying for lower interest rates. Due to not meeting affordability criteria, Bol said it couldn’t switch them to a repayment mortgage. Whilst they’ve been able to switch rates, Bol says they only qualify for rates from its self-certified product range.

Mr and Mrs L complained to Bol about not having access to its lower ‘prime’ rates, amongst giving other reasons why they think they’ve been treated unfairly as a result.

Bol didn’t uphold the complaint. It said to switch from a self-certified rate to a prime rate, any application would be subject to affordability and underwriting checks. And, having assessed Mr and Mrs L’s circumstances, they weren’t eligible for the prime products. Bol doesn’t think Mr and Mrs L have been treated unfairly because they’ve been offered new interest rates from the self-certified range, albeit not as competitive as they’d like.

Unhappy with Bol’s response, Mr and Mrs L brought their complaint to our service. Our investigator looked into things and upheld the complaint. She thought Mr and Mrs L had been treated unfairly in the circumstances and should have been offered prime rates since from at least 2018. Both parties responded with further comments. After further consideration, our investigator’s opinion remained unchanged.

As an agreement hasn’t been reached, the case has been passed to me to decide.

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.

Our investigator considered the contact between the parties since the inception of the mortgage in 2008. She said there was no evidence to suggest Mr and Mrs L applied for a rate switch prior to 2018. Or that they were told they’d have access to lower interest rates and the ability to switch to a repayment mortgage if they made regular overpayments to their account. When considering the same, I’ve seen no evidence to suggest the contrary.

I'm satisfied Bol explained the process for switching rates to Mr and Mrs L in 2014. This was the first enquiry they made since their account reverted to Bol's standard variable rate ("SVR") in 2011. At this time, they also asked about the process for switching to a repayment mortgage. It wasn't until a few years later, July 2018 to be precise, that they called back to proceed with an application to make these changes.

I've seen no evidence to suggest Mr and Mrs L were unfairly declined a lower interest rate before this date or that their mortgage remained on the SVR as a result of unfair treatment by Bol. As such, I've considered the events from 2018 onwards and whether Mr and Mrs L were treated fairly at the time of this application and subsequently in 2020.

On both occasions Bol conducted affordability assessments to see if Mr and Mrs L met the criteria for a repayment mortgage. It's not in dispute that Mr and Mrs L were making at least their minimum monthly payments - with significant overpayments being made between 2018 and 2020. But when considering their circumstances, Bol concluded that they could not afford a repayment mortgage. Mr and Mrs L's mortgage remained on interest only terms. On both occasions they were offered a new rate from the self-certified range at 2.65% and 2.24% respectively. Bol says Mr and Mrs L didn't meet the 'new borrower' criteria for prime products.

Our investigator has detailed what this means in line with Bol's lending process and criteria. In short, she explained why interest rates available to self-certified customers may be higher – to reflect the risk lenders are willing to take in return for accepting (without proof) the income details provided by customers. Lenders can use their commercial discretion when pricing their interest rate products and there is nothing inherently wrong with offering different rates to customers based on its own assessment of risk. By the time Mr and Mrs L applied for a new interest rate in 2018, stricter lending criteria applied, and self-certification was no longer accepted.

In line with Bol's processes at the time, to access prime rates Mr and Mrs L would have needed to reapply as new borrowers using proof of income to verify affordability. Because they did not meet Bol's criteria, they could not access prime rates. They either had the option to remain with Bol on a higher self-certified interest rate or shop around for a mortgage elsewhere with a different lender. By contrast, existing non self-certified customers, have access to lower prime rates, without any affordability checks required.

Whilst in theory it appears Mr and Mrs L had the option to shop around for a more suitable product elsewhere, their options were limited. Lending standards and their circumstances have changed since 2008. Mr and Mrs L haven't passed the new borrower assessments carried out by Bol's during this time. When considering what I know about Mr and Mrs L's circumstances, I find it plausible that they did try shopping around to find better deals but weren't successfully accepted on similar terms with other lenders either. So, I'm persuaded Mr and Mrs L were unable to move their mortgage to another lender and I find they had no option but to remain with Bol. As such the only options available to them were to accept the higher self-certified rates or remain on the SVR.

The Financial Conduct Authority (FCA) has, in the MCOB handbook, set out an evidential provision for the fair treatment of customers who are unable to source deals with their existing lender or move their mortgage elsewhere. I'm satisfied MCOB 11.8.1 E applies here.

In summary, in situations where a customer is *either* unable to enter into a new regulated mortgage contract with their existing lender *or* a new mortgage lender, a lender should not take advantage of the customer's situation or treat them differently to other customers with similar characteristics. To do so may be in contravention of Principle 6.

I've set out why I'm persuaded, on balance, that Mr and Mrs L were unable to enter into a new mortgage contract with a new lender. As such they satisfy 11.8.1 (2). Whilst they could access a new (self-certified) product with Bol, the provision still applies as 11.8.1 does not require *both* (1) and (2) to be satisfied before it is relevant to considering whether they were fairly treated, it requires either to be satisfied.

11.8.1 E does not require all customers to be treated the same. But it does, in my view, show that there may be unfairness where a borrower who is unable to move to another lender is treated less favourably than a borrower who shares similar characteristics, "*for example, by offering less favourable interest rates or other terms*". Where the lender offers less favourable products to some customers, it may give rise to the possibility of unfair outcomes in some situations.

A key finding I must make is whether Mr and Mrs L, who originally became Bol's customers as self-certified borrowers, could be considered as having similar characteristics as a different borrower with Bol who had originally provided proof of income and been offered a prime interest rate product.

Mr and Mrs L applied for a self-certified mortgage over a decade ago. The terms and implications of such a mortgage have already been set out. They now want to access prime rates but they can't because they don't meet Bol's affordability criteria.

Mr and Mrs L have consistently managed their mortgage account in line with the contract terms. They have never missed a payment and have made significant overpayments. They also have a repayment strategy in place to repay the capital at the end of the mortgage term. When considering Mr and Mrs L's circumstances since 2018, I think on balance it's unlikely that Bol doesn't have prime customers whose circumstances and mortgage accounts were in similar, if not worse positions.

Due to the significant time that had passed since the inception of their mortgage, I'm not persuaded the way in which the mortgage was originally taken out (i.e. self-certified vs proof of income) can fairly be considered a relevant 'characteristic' of the mortgage in 2018.

Whilst Mr and Mrs L hadn't proved their income in 2008, they did then meet Bol's eligibility and lending criteria as new borrowers. But, as these criteria changed over time, following the introduction of tighter regulation and more stringent checks – Mr and Mrs L did not meet the new borrower criteria in 2018.

In 2018, a prime borrower wanting to switch their product would not have been subject to an affordability assessment. Meaning they were not required to meet Bol's new lending criteria in order to access cheaper rates. I think it's likely that there were Bol prime borrowers whose circumstances had also changed, meaning although they'd passed the lending criteria in 2008, would've been unable to pass the new, stricter lending criteria that existed in 2018. But they wouldn't have been prevented from accessing the cheaper rates. As such, Mr and Mrs L have been treated less favourably than Bol's prime borrowers, because of the way their mortgage was approved in 2008. By not being able to access prime rates, Mr and Mrs L have been treated differently from Bol's prime borrowers, as they're being expected to meet higher standards than other customers who likely had similar characteristics.

As such, when considering 11.8.1 E, I find the characteristics of Mr and Mrs L's mortgage in 2018 are what's relevant here. I'm less persuaded that the way the mortgage was originally taken out on self-certified terms is a key 'characteristic' relevant to the risk Mr and Mrs L presented in 2018.

When Mr and Mrs L approached Bol in 2018 and 2020, given they didn't meet the criteria for a repayment mortgage or prime product, I think Bol ought to have done more to consider their situation, in line with MCOB 11.8.1 E – in particular due to their inability to move to another lender. In these circumstances it would have been fair and reasonable for Bol to offer them a rate which was not less favourable than those available to a prime customer with similar characteristics. Instead they were treated less favourably than other borrowers on their mortgage book who had similar characteristics at the time of application for a product switch.

In both 2018 and 2020, I'm not persuaded Bol considered the relevance of 11.8.1 E and whether it applied in Mr and Mrs L's situation.

Mr and Mrs L have demonstrated their ability to afford their mortgage on a higher rate without any issues and they've pro-actively managed their interest only mortgage – including making regular over payments to reduce the capital, with a suitable plan to repay the remainder at the end of the term. When considering all of this, I don't think it was reasonable that Bol only offered them interest rates from the self-certified range which were higher than the rates available to other customers who had similar characteristics to Mr and Mrs L at the time of their application. As a result, I uphold this complaint.

Putting things right

For the reasons I've explained, Bol should have made its prime rates accessible to Mr and Mrs L in both 2018 and 2020. As a result, Bol should re-work Mr and Mrs L's mortgage account by applying the prime rates available at those times, that they'd most likely have opted for, given the rates they did actually take. Those being two-year fixed rate deals that came with no product fee in 2008 and 2020.

To account for the overpayments made since 2018, due to higher rates being applied, depending on Mr and Mrs L's preference, Bol should either:

- Apply the overpayments to their mortgage account to further reduce their balance which will in turn reduce the amount of interest they pay on the new interest applied until the end of the current fixed term period; or
- Pay Mr and Mrs L the overpayment amount back in cash, as well as a payment of 8% simple interest* calculated from the date of each overpayment to the date of settlement.

*Interest is at the rate of 8% a year simple. If Bol considers that it's required by HM Revenue & Customs to take off income tax from that interest, it should tell Mr and Mrs L how much it's taken off. It should also give Mr and Mrs L a certificate showing this if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

My final decision is that I uphold this complaint and direct Bank of Ireland (UK) Plc to re-work Mr and Mrs L's mortgage account as set out above, taking into account Mr and Mrs L's preference for the provision of the overpayments made to date.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L and Mrs L to accept or reject my decision before 18 August 2022.

Arazu Eid
Ombudsman