

The complaint

Mr and Mrs B complain that The Governor and Company of the Bank of Ireland (“Bol”) has unfairly charged them higher interest rates on their mortgage since 2015.

What happened

2008 Mr and Mrs B took out a mortgage with Bristol & West Mortgages (a trading name of the Governor and Company of the Bank of Ireland). They borrowed around £180,000 on interest only terms. Mr and Mrs B self-certified their income. No proof of income was required by Bol to approve the loan. Their mortgage was on an interest rate of 5.89% fixed for five years until 31 January 2013.

In 2015 Mr and Mrs B enquired about making changes to their mortgage – including switching to repayment, extending their term and switching to a fixed rate. Bol said in line with its processes at the time, to access ‘prime’ interest rates Mr and Mrs B needed to reapply as new borrowers using proof of income to verify affordability. Mr and Mrs B didn’t meet affordability checks to switch to a prime rate but Bol did switch their mortgage to repayment and extend the term.

Bol said Mr and Mrs B’s application to switch to a prime rate could be referred internally for further consideration. Bol also told Mr and Mrs B that fixed rate self-certified products were available too. They chose to switch to a new self-certified rate instead of going through Bol’s ‘internal re-mortgage’ process to access prime rates. The relevant changes were applied.

In 2020, Mr and Mrs B switched their rate again. They complained to Bol about only being offered self-certified rates. They thought they’d been on a prime rate since the changes that took place in 2015. They were unhappy about the costs involved in switching to a prime rate at this time and not having access to ‘new’ customer rates.

Bol responded by saying that any application to switch from a self-certified to a prime rate would be subject to affordability and underwriting checks. In 2015, Mr and Mrs B were offered the option of rearranging their mortgage on prime terms, but they opted for a new fixed rate on self-certified terms instead. They’ve remained self-certified customers to date.

The complaint wasn’t upheld. In summary Bol said it offers interest rates to customers based on their account types. Bol says it’s entitled to set rates and terms under which it’s prepared to lend. It also said that fee free options are usually available to customers too.

Bol says that Mr and Mrs B could look at converting their mortgage type from self-certified to prime, however there would be costs involved in ‘rearranging’ the mortgage – such as a valuation fee and solicitors costs. Bol says it offered to explore the option of converting the mortgage to prime type on multiple occasions but Mr and Mrs B chose not to proceed.

Mr and Mrs B asked our service to consider their complaint. Our investigator looked into things and upheld the complaint. He didn’t think Mr and Mrs B had been treated fairly during their most recent rate switch enquiry. He thought Bol should consider a backdated application to switch to a prime interest rate, without putting unnecessary barriers in the way

– such as excessive costs. He also awarded £100 compensation.

Mr and Mrs B agreed with our investigator's assessment, Bol didn't. It provided more information from its legal team about why such legal costs would be incurred during a switch to a prime product. After further consideration, our investigator's opinion remained unchanged. As an agreement wasn't reached, the case was passed to me to decide.

I issued a provisional decision and an extract of my provisional findings is below.

"...Our investigator explained why he wasn't persuaded Mr and Mrs B were switched to a prime rate in 2015 or that they were led to believe that was the case. As Mr and Mrs B have accepted our investigator's opinion, I won't revisit this point in detail. I'll instead focus my attention on the matters being disputed by Bol.

Having said that, for completeness I have considered the events that occurred in 2015 and I can reassure Mr and Mrs B that our investigator has presented an accurate account of the facts. I'm satisfied that Mr B, during his calls with Bol, was presented with information about both the prime and self-certified interest rates and he chose to proceed with the latter.

Because Mr and Mrs B were unlikely to be accepted for a prime rate. They either had the option to remain with Bol on a self-certified rate or shop around for a mortgage elsewhere with a different lender. Mr and Mrs B haven't said they tried moving their mortgage elsewhere. It's possible other options were available to them. So, I can't safely say that they were unfairly restricted to only remaining with Bol on a self-certified rate.

I'll now turn my attention to what happened in 2020.

Mr and Mrs B are unhappy that the self-certified rates available to them in 2020 were higher than the equivalent rates offered to prime and new customers. They say they didn't apply for a prime rate because of the costs involved. They also say that they didn't explore applying for a re-mortgage with a different lender because of the early repayment charge applicable. So, they felt the most cost-effective option was to switch to a product from the self-certified range.

I've considered whether it's fair for Mr and Mrs B to be treated differently to other new and existing customers, in terms of the costs they'd incur to access prime interest rates.

Bol has agreed that Mr and Mrs B could apply for a prime rate. What's in dispute is, whether they should be liable for paying the costs involved as part of Bol's internal re-mortgage process. As well as being required to meet affordability and credit checks, Bol says a new valuation of Mr and Mrs B's property would be required and that legal costs would be incurred, which would need to be covered by Mr and Mrs B. Bol says these costs arise because switching from a self-certified to a prime product involves re-mortgaging on new business terms.

It says a valuation is required because changing the type of account Mr and Mrs B hold to 'prime' would need to be considered in line with current lending requirements. Due to the time that's now passed since Mr and Mrs B initially took their self-certified mortgage in 2008 (more than 10 years), Bol says it requires an up to date valuation, as it's not unreasonable to expect the value of their property to have changed since.

Bol also says that because the switch to a prime rate involves re-mortgaging to a new business product, a legal transaction needs to take place for the existing mortgage to be closed and a new one taken out. And that Mr and Mrs B need to cover the legal costs

involved which specifically relate to the need for a new mortgage deed to be created and registered at the land registry.

Our investigator thought it was reasonable to expect a new valuation to be carried out at Mr at Mrs B's expense, but they shouldn't reasonably be expected to pay the legal costs described by Bol. I disagree and don't think it's fair or reasonable to expect Mr and Mrs B to incur either cost. I'll explain why.

According to Bol's website, it offers its new customers the option of prime products with free standard valuations and legal fees. Existing prime customers can also switch their product without incurring any of these costs. So, it's unclear why Mr and Mrs B are being treated differently to other Bol borrowers.

Whilst I accept there will be some internal legal administration involved in closing one account and re-opening another one, it's unclear why Bol would need to make changes with the land registry to a legal charge it already holds over Mr and Mrs B's property and expect them to incur the legal costs for this.

Mr and Mrs B have also been given different information about the costs involved if they chose to switch to a prime rate. During both calls to discuss their rate switch options in 2015, valuation costs weren't mentioned. During the initial pre-advice call, Mr B was informed that switching to prime rate does involve a rearrangement of the mortgage. But he was told that all that meant for them was a new account number. There would be legal costs involved but Bol would cover that. Mr B was told that there may be an arrangement fee depending on the selected product. The only guaranteed fee mentioned was an exit fee of around £195.

When considering everything, I'm not convinced Mr and Mrs B have been given clear, fair and not misleading information over the years about the requirements for switching to a prime rate. They say the information given to them about the costs involved in switching to a prime rate impacted their decision to apply in 2020. For the reasons I've explained, I don't think it's fair in the circumstances for Bol to impose the fees it's described.

Mr and Mrs B have also questioned whether it is fair for Bol to offer new customers better rates than existing 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 and/or to attract new business. Mr and Mrs B, as existing customers of Bol, have access to the same product range as other existing customers of Bol. I can't see they've been treated any differently. So, in the circumstances I don't think it's unreasonable for Mr and Mrs B to be offered existing borrower prime interest rates.

Putting things right

For the reasons I've explained, Bol should have made its prime interest rates accessible to Mr and Mrs B in 2020 without the expectation of them having to pay unreasonable fees.

To put things right Bol should arrange for a mortgage adviser to discuss the alternative options that were available to Mr and Mrs B in 2020. If, after discussing their options, Mr and Mrs B feel a prime interest rate would have been more suitable to them at that time, Bol should let them apply and fairly consider their application. The lending decision is ultimately for Bol to make, I can't influence or guarantee a successful outcome. But Bol should be transparent during the process and give clear reasons for the decision its reached. There should be no valuation or legal costs incurred.

Our investigator has already managed Mr and Mrs B's expectations by setting out in detail

why they may not be able to access all of the prime interest rates available at the time due to different loan to value restrictions and variations amongst products that may or may not come with a product fee.

If Mr and Mrs B's application is successful, to account for any overpayments made since 2020, depending on their 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 rate applied until the end of the current fixed term period; or*
- Pay Mr and Mrs B 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 B how much it's taken off. It should also give Mr and Mrs B a certificate showing this if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.*

I also feel BOI should pay an increased compensation award of £350 to Mr and Mrs B to recognise the avoidable inconvenience caused by them having to revisit their rate switch application from 2020, due to not being treated fairly at that time"

Both parties responded to my provisional decision. Bol accepted the provisional decision. Mr and Mrs B had some further questions. In summary they said:

1. They are in a much different financial situation than they were in 2020. They're concerned their application will be declined and they won't receive the overpayments as set out in my provisional decision.
2. In 2020 they would have applied to switch to a prime rate with a different lender had they not been subject to an early repayment charge (ERC) on their mortgage with Bol; and
3. They'd like the option to apply for a prime rate with Bol at a later date or moving to a new lender without being charged an ERC.

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've also given careful consideration to all of the submissions made before arriving at my decision, including those in response to the provisional decision. I'll now address the specific points Mr and Mrs B have raised in response to the provisional decision.

1. When exploring the alternative options that were available to Mr and Mrs B in 2020 it's only fair Bol considers what it would have taken into account in 2020. Under the relevant rules, lenders are required to act fairly and reasonably when considering an application and making their lending decision. Bol must act within the rules in this respect.
2. Mr and Mrs B's previous five-year fixed rate deal ended in July 2020. Shortly after, they started making enquiries about switching to a new interest rate. I think if they

wanted to explore options through different lenders, they could have reasonably done so around this time. In such circumstances, once their previous fixed rate deal had ended, they were not prevented from re-mortgaging with a different lender and would not have incurred an ERC. As such, in the circumstances, I don't hold Bol responsible for their decision not to explore options with different lenders at that time.

3. In response to my provisional decision Bol has agreed to consider the options available to Mr and Mrs B in 2020. If approved for a prime interest rate option, any future rate switch applications Mr and Mrs B make with Bol will also be agreed on prime terms. If Mr and Mrs B choose to remain on their current self-certified interest rate, they can apply to switch to a prime rate with Bol at a later date that suits them. Their circumstances will be considered at the time of application and Bol needs to act fairly and reasonably in its assessment of their application.

At this moment I'm unable to give direction to Bol in relation to any future loss that might be incurred as a result of a potential declined application to switch to a prime interest rate. If Mr and Mrs B don't meet Bol's criteria for a prime interest rate, they are entitled to raise any further concerns with Bol.

Mr and Mrs B's current five-year fixed rate deal ends in May 2025. They agreed to the rate offered in 2020 on the basis that they would be tied into it until 2025 – and so contractually, Bol would be entitled to charge the ERC if the mortgage was redeemed before then.

But if Mr and Mrs B's application to switch to a prime interest rate is declined, Bol should consider what's fair and reasonable in the circumstances when deciding whether to let them exit their mortgage early, without applying an ERC. Including, but not limited to, things like – the reasons behind the lending decision made and whether Mr and Mrs B end up qualifying for a prime interest rate with a different lender.

Having considered everything again, I've reached the same conclusions as set out in my provisional decision and for the same reasons. But I hope the above provides further clarity to both parties on how the complaint resolution should be fairly applied in the circumstances.

Putting things right

To put things right Bol should arrange for a mortgage adviser to discuss the alternative options that were available to Mr and Mrs B in 2020. If, after discussing their options, Mr and Mrs B feel a prime interest rate would have been more suitable to them at that time, Bol should let them apply and fairly consider their application. The lending decision is ultimately for Bol to make, I can't influence or guarantee a successful outcome. But Bol should be transparent during the process and give clear reasons for the decision its reached. There should be no valuation or legal costs incurred.

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BoI should pay an increased compensation award of £350 to Mr and Mrs B.

My final decision

My final decision is that I uphold this complaint and direct The Governor and Company of the Bank of Ireland to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B and Mrs B to accept or reject my decision before 25 October 2022.

Arazu Eid
Ombudsman