

## **The complaint**

This complaint is about an interest-only mortgage Mrs and Mr B hold with Bank of Scotland plc (BOS). They're represented here by Mr C; the main points of the complaint, in summary are that BOS:

- issued possession proceedings on two occasions. On the last occasion, it halted those proceedings without explanation leaving Mrs and Mr B in a state of limbo and gave rise to worry and anxiety due to uncertainty;
- failed to acknowledge or reply to correspondence from Mrs and Mr B's solicitors;
- failed to acknowledge or reply to correspondence from Mrs and Mr B; and
- has continued to pursue statute-barred interest.

Other issues that formed part of the original complaint have been withdrawn.

## **What happened**

The broad circumstances of this complaint are known to Mrs and Mr B, Mr C and BOS. I'm also aware that the investigator issued a detailed response to the complaint, which has been shared with all parties, and so I don't need to repeat all of the details here.

Our decisions are published, and it's important that I don't include any information that might result in Mrs and Mr B being identified. Instead I'll provide a brief summary and then focus on giving the reasons for my decision. If I don't mention something, it won't be because I've ignored it. It'll be because I didn't think it was material to the outcome of the complaint, or because it fell outside my remit.

Mrs and Mr B have long-standing arrears on their mortgage. BOS sought a possession order in 2014; this was granted but later struck out after it was established in a separate court case that BOS had made a procedural accounting error in the way it calculated the monthly payments on mortgages in arrears. Remediation work was carried out on affected accounts (Mrs and Mr B's included) following guidance issued by the Financial Conduct Authority (FCA).

In 2017, BOS wrote saying it was planning to enforce the 2014 court order, but when Mrs and Mr B complained, it accepted this was a mistake as it related to a different property. BOS did recommence legal action in 2019 but later paused it after identifying some possible irregularities in the afore-mentioned remediation work. Before that could be resolved, the FCA stopped all repossession activity by lenders due to the COVID-19 pandemic. That wasn't lifted until April 2021, by which time this complaint had started. BOS has stayed further action whilst we considered the complaint.

When our investigator looked into the case; he issued a view in which he made the following findings:

- The correspondence in 2017 shouldn't have happened but the possession proceedings in 2014 and 2019 weren't unfairly started or paused, given the wider circumstances.

- BOS didn't deal fairly with correspondence from Mrs and Mr B's solicitors in 2019, or with correspondence from them directly in 2020. For these shortcomings, he re said BOS should pay Mrs and Mr B £300 compensation.
- It's for a court to decide if BOS is statute-barred from charging and pursuing repayment of interest. But the legal action for possession wasn't unfair.

Mr C asked for the complaint to be reviewed by an ombudsman.

### **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'll start with some general observations. We're not the regulator of financial businesses, and we don't "police" their internal processes or how they operate generally. That's the job of the FCA. We deal with individual disputes between businesses and their customers. In doing that, we don't replicate the work of the courts.

We're impartial, and we don't take either side's instructions on how we investigate a complaint. We conduct our investigations and reach our conclusions without interference from anyone else. But in doing so, we have to work within the rules of the ombudsman service, and the remit those rules give us. On that latter point, my attention was drawn to Mr C's most recent email to the investigator, in which he said:

*"The fos is being asked to consider whether the lender is treating the clients fairly by continuing to pursue a time barred debt. I hold a degree in consumer law and do not need your guidance."* (sic)

The "guidance" to which Mr C was objecting was the investigator steering him back to what he had already explained in the view, which was that Mr C was asking us to make a ruling that was outside our remit.

It seems sensible for me to start there, by confirming, quite simply, that the premise on which Mr C hangs the main thrust of this complaint is something that only a court can decide. That being so, the fairness or otherwise of BOS' action in starting – and then pausing – possession proceedings in 2014 and 2019 respectively is more simply decided than it's been made to look, once all the peripheral issues have been put to one side.

On both occasions, the conduct of the account warranted possession action starting; there is no dispute that Mrs and Mr B were in serious arrears. Everything has a context, and there that context is that Mrs and Mr B stopped paying their mortgage in 2013, and have never resumed paying it. That's nine years ago, and they still live in the mortgaged property. On that point, in response to Mr C's allegation that BOS has made Mrs and Mr C's position worse, I'm obliged to consider what they might have done differently to mitigate their situation.

I understand the mortgaged property is currently worth less than the outstanding mortgage balance, but it hasn't always been. Mrs and Mr B have known for a long time (or if they didn't, I think they should have) that they were living in a house they couldn't afford. In that context, I consider it more likely than not that they will have had – and failed to take up – an opportunity to sell it at a time they could so and still repay all of the money they owed BOS. I'm required to decide what is fair and reasonable, and no one has the right to live in a house they can't pay for.

Getting back to the possession proceedings, both were halted for a valid reason, largely beyond BOS' control. In the earlier case, it was paused due to a court order the impact of which was industry-wide, resulting in a remediation directive from the FCA. In the later case, the proceedings were initially paused to check for a possible error in the remediation and then stopped altogether by the FCA's response to the pandemic.

That leaves the shortcomings in BOS' response to correspondence from Mrs and Mr B's solicitors, and from them directly. Having considered all the wider circumstances, and the extent to which Mrs and Mr B's current situation might have been materially different if BOS had dealt with the correspondence more effectively, I agree with the investigator that £300 is fair compensation.

Mrs and Mr B don't have to accept my conclusions, and if they don't, then neither they nor BOS will be bound by my final decision. Subject to any time limits or other restrictions a court might impose, Mrs and Mr B's right to take legal action against BOS over the subject matter of this complaint won't have been prejudiced by our consideration of it.

Mrs and Mr B wouldn't necessarily have to initiate court action themselves. In the event BOS resumes possession action now that this complaint has been determined, Mrs and Mr B (or Mr C on their behalf) would have the opportunity to present their arguments, including all those that we have no power to decide, to the court to take into account when arriving at its decision.

I think it is also important to explain here that lenders will generally agree to put recovery action on hold whilst we look at a complaint, as BOS did here, but they don't have to and we can't force them to. If the Financial Ombudsman Service had that power it would undermine our impartiality between the parties to a complaint. It would also create the potential risk of consumers using our service to bring complaints with the intention of obstructing businesses that were trying to take legitimate action through the courts to recover money owed to them. I do not wish to alarm Mr and Mrs B, but I would not want them to be under any misunderstanding that we would tell BOS that it must suspend any recovery action in the event of any new complaint being raised with our service.

### **My final decision**

I uphold this complaint in part only. In full and final settlement, I direct Bank of Scotland plc to pay Mrs and Mr B £300. I make no other order or award. My final decision concludes this service's consideration of this complaint, which means I'll not be engaging in any further consideration or discussion of the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs and Mr B to accept or reject my decision before 7 November 2022.

Jeff Parrington  
**Ombudsman**