

The complaint

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

What happened

In 2008 Mr and Mrs M took a two-year fixed rate mortgage deal with Bol. Their rate was fixed at 5.99% until December 2010. They borrowed around £380,500 over 20 years on interest only terms. Mr and Mrs M self-certified their income. No proof of income was required by Bol to approve the loan. In December 2010 their mortgage reverted to Bol's standard variable rate (SVR).

Mr and Mrs M say that over the years they've been unable to switch from the SVR to a lower interest rate because they didn't meet Bol's affordability criteria. They complained to Bol about being trapped on the SVR since their fixed rate expired in 2010 and not being given access to Bol's lower 'prime' rates.

Bol didn't uphold the complaint. It said the first record it had of Mr and Mrs M calling to discuss a rate switch was in August 2016. 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 M's circumstances in 2016, they weren't eligible for the prime products. Bol didn't think Mr and Mrs M had been treated unfairly because they were offered new interest rates from the self-certified range, albeit not as competitive as they'd like.

Bol says no further contact was made until Mid-2017. Another affordability assessment was carried out. This time Mr and Mrs M provided additional income information from their rental properties. This income information wasn't previously provided in 2016 and significantly increased their joint income by around £80,000. As such they now passed Bol's affordability assessment. To proceed with the switch to a prime rate, Bol asked for further evidence to confirm their income. Mr and Mrs M didn't proceed with their application. Instead they redeemed their mortgage with Bol in late 2017 and remortgaged with a different lender.

Unhappy with Bol's response, Mr and Mrs M used a representative to bring their complaint to our service. Our investigator didn't uphold the complaint. He thought Mr and Mrs M had been treated fairly and the same as other self-certified customers in 2016 and 2017 when they enquired about new rates. He said there was no evidence to suggest any earlier rate switch applications were made with Bol and fair affordability assessments were carried out to accommodate a potential switch to prime products.

Mr and Mrs M didn't agree. They say they did try switching their rate before 2016 and that Bol is deliberately concealing earlier call records to make the outcome of this case go in its favour. They say that during earlier calls Bol told them it couldn't offer them a new rate and referred them to a broker instead. The broker told them they'd unlikely meet eligibility outside of Bol either, so their options were limited.

Our investigator considered Mr and Mrs M's response but explained why his opinion remained unchanged. Because an agreement wasn't reached, the case was

passed to me to decide.

I issued a provisional decision explaining why I was satisfied part of this complaint had been brought out of time when considering the relevant rules. Our service does have the power to consider the events that occurred in the six years leading up to the complaint being made. An extract of my provisional findings on this part of the complaint is below.

“...I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

The earliest evidence Bol has of Mr and Mrs M calling to discuss switching their interest rate is August 2016. It’s from this date I’ve focused my decision as Mr and Mrs M haven’t told our service of any other attempts to switch rates in the six years leading up to their complaint.

As such, to date, I’ve seen no evidence to suggest Mr and Mr M were unfairly declined a lower interest rate before 2016 or that their mortgage remained on the SVR as a result of unfair treatment by Bol. So, I’ve considered the events from 2016 onwards and whether Mr and Mrs M were treated fairly at the time of this application and subsequently in 2017.

Bol has shared with us its criteria for dealing with new interest rate applications from existing borrowers. Bol says that if a self-certified borrower wanted to later convert their mortgage to a prime product, that would be treated as a ‘new borrower’ application. As the borrower’s income would need to be verified for the first time. The applicant(s) would need to meet Bol’s standard lending criteria and go through a full affordability assessment for its prime mortgages as of the time of the application.

When Mrs M enquired about switching rates in 2016 and 2017, I’m satisfied Bol clearly explained the process. On both occasions the difference between prime rates and self-certified interest rates were discussed and Mr and Mrs M were told they could technically apply for prime rates on the basis that they’d both been ‘employed’ for some years.

In line with Bol’s process, income and expenditure information was taken on both occasions to assess eligibility and affordability for the prime products. Bol says that Mr and Mrs M provided different income information in 2016 and 2017 which made a difference to its lending decisions (subject to income verification) at the time. But I’m not satisfied Mr and Mrs M’s circumstances were properly considered in 2016 which led to the declined application to switch to a prime rate. I’ll explain why.

In October 2016 during the pre-advice call Bol asked Mrs M for some initial income and expenditure information. Mrs M said both her and Mr M were employed earning a gross salary of £24,000 and £65,000 respectively. Bol asked Mrs M if she had any other income, to which she replied ‘no’. Mrs M said that Mr M did at time receive bonus and overtime payments, but she couldn’t confirm the amounts.

It was agreed that Mrs M would gather any necessary missing information in preparation for the fact find appointment arranged for later that day. Bol’s records show that it was noted ‘Mrs M has several other properties but she did not have the details, she hopefully will have them when the advisor calls’.

During the fact find appointment later that day, the self-certification interest rates were

discussed further. Mrs M expressed her surprise at how high they were. She asked what the prime interest rates were and if they could switch to a lower rate from that product range.

Quite soon into the conversation the advisor told Mrs M that she'd already put the previously provided income and expenditure information through an affordability calculator, and they didn't meet eligibility to switch to anything other than an interest rate from the self-certified range. As such Mrs M chose to end the call and an application didn't proceed.

It's unclear to me why a lending decision was made without a full affordability assessment being carried out. At the very least Bol knew that Mrs M didn't have all the necessary information available at the time of the pre-advice call, so it relied on partial information when providing a lending decision. In any event the purpose of the fact find is to carry out a more thorough affordability assessment. I'm satisfied this didn't happen.

Bol says Mrs M wasn't forthcoming with the information about their rental income. But upon listening to the pre-advice call it's clear Mrs M misunderstood the question when she was asked about other income. She thought the question to mean other income from her employer, as she responded to say as she works for a charity, she's not in receipt of any additional pay on top of her basic salary.

I'm persuaded that had a full fact find been carried out it's more likely Mr and Mrs M's rental income would be disclosed. Bol knew Mr and Mrs M had several other investment properties. Bol as the professional party here should have asked the direct question about rental income which I think would have prompted Mrs M to provide that information.

Bol agrees the rental properties weren't discussed further with Mrs M. Had this income been taken into account I think it's likely they'd have passed affordability, as they did in 2017, as their circumstances remained largely the same.

I appreciate the application to switch to a prime rate and any subsequent mortgage offer would still be subject to full underwriting. Mr and Mrs M didn't proceed with their application to switch to a prime rate with Bol in 2017 so I can't say for certain they'd be accepted. But when considering everything I think it's more likely they'd be approved as they were able to remortgage with a different lender on prime terms at that time.

So, when considering everything I don't think Bol treated Mr and Mrs M fairly in 2016. I'm persuaded if they'd been given a fair chance to apply for a prime rate they would have done so to reduce their monthly contractual payments as intended. Instead, as a result of being given unclear and misleading information they remained on a higher SVR rate until their mortgage was redeemed in late 2017.

Putting things right

For the reasons I've explained, Bol didn't make its prime rates fully accessible to Mr and Mrs M in 2016.

To account for the overpayments made whilst remaining on the SVR From October 2016 to the date of redemption, Bol should:

- *Confirm the lowest prime rates available to Mr and Mrs M in October 2016 – with and without a product fee.*
- *Depending on Mr and Mrs M's rate of choice (taking into account any product fee applicable of the relevant rate opted for), Pay Mr and Mrs M the relevant 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; and*
- *Pay Mr and Mrs M £400 compensation for the distress and inconvenience caused of having to pay a higher mortgage payment for 12 months and the trouble of having to remortgage with another lender unnecessarily.*
- *Any ERC that would have been retrospectively applied due to the re-mortgage should be waived as Mr and Mrs M weren't able to make an informed choice about the timing of their move given the unfair treatment by Bol.*

**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 M how much it's taken off. It should also give Mr and Mrs M a certificate showing this if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate*

My provisional decision

My provisional decision is that I intend to uphold part of this complaint and direct Bank of Ireland (UK) Plc to respond to my query about the available prime interest rates in 2016 by the deadline of 6 October 2022 and put things right thereafter as set out above."

Both parties provided their responses to my provisional decision. In summary:

Mr and Mrs M mainly agreed with the provisional findings, but they thought they should be awarded more compensation in the circumstances. They asked me to reconsider the information they've given about the several attempts they say they made to switch rates with Bol over the years, which supplements what, they refer to as, the limited information Bol can provide prior to 2016. Mr and Mrs M say that the information they've provided, albeit limited, should be taken into account when deciding a compensation award for distress and inconvenience suffered.

Bol didn't agree with the provisional findings including the redress award.

It said that that whilst a full fact-find wasn't carried out during the call with Mrs M in 2016, she could have proactively offered information about their additional income herself. If unhappy with the interest rates offered at that time, Mr and Mrs M had the option of refinancing with a different lender without incurring an ERC. Bol didn't agree that it should pay Mr and Mrs M the difference in mortgage payments following a retrospective rate adjustment, or that in any event, it would reasonably be able to reconstruct a hypothetical scenario due to the several variables that applied within its product range at that time.

Bol doesn't agree that it should pay compensation to Mr and Mrs M for moving their mortgage to a different lender. Bol says they were offered a prime interest rate (subject to application) in 2017. They would have needed to follow the same process whether internally or externally to secure a new prime interest rate. It was their choice to remortgage with a different lender in the circumstances. No additional distress or inconvenience was caused to them.

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.

Having done so, I've reached the same conclusions as set out in my provisional decision and for the same reasons. I'll now address the specific points raised in response to the provisional decision.

I can assure Mr and Mrs M that I've already considered the call log information that they provided as part of their initial submissions. As explained in my provisional decision, our service does not have the power to consider anything that happened before May 2012. I've already considered everything that happened after that date when reaching my provisional findings and making a compensation award. This centres round everything that happened in 2016 and 2017. Neither party has any record of any other calls taking place between May 2012 and August 2016. Therefore, I see no reason to reconsider the redress award for the reasons presented by Mr and Mrs M.

Bol accepts it got things wrong in 2016 by not completing a full fact find before telling Mr and Mrs M that they didn't qualify for a prime interest rate. As a result, Mrs M was given wrong information and advice from Bol. I've already explained in my provisional decision what the implications of Bol's failing were and why it's not fair or reasonable to hold Mr and Mrs M responsible in the circumstances.

I've considered Bol's point about Mr and Mrs M being free to explore options with other lenders instead of remaining on Bol's SVR. Whilst in theory, I don't disagree, the main issue here is that Bol didn't give Mr and Mrs M a fair chance to apply for a prime interest rate in 2016. Had they received the right information and advice at that time, Mr and Mrs M would have been able to make an informed decision about whether to remain with Bol or not. Again, I'm not prepared to decide that Bol shouldn't be held accountable for its failing because of something Mr and Mrs M did or didn't do off the back of the wrong advice they received. I don't accept that the redress direction is something Bol can't do, as it's not an unusual expectation or one that lenders, including Bol haven't done in the past.

I except an internal and external application to switch to a prime interest rate would require broadly the same process, but do feel Mr and Mrs M should be compensated to account for the fact that, had they been treated fairly in 2016, they would have been able to sort their financial affairs at that time without needing to revisit their options again the following year – taking both more time and effort. During that period they continued to make higher payments on the SVR and had to make further enquiries again both with Bol and externally with an independent broker, unnecessarily.

As such, my decision on how to put things right remains the same.

Putting things right

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To account for the overpayments made whilst remaining on the SVR From October 2016 to the date of redemption, Bol should:

- Confirm the lowest prime rates available to Mr and Mrs M in October 2016 – with and without a product fee.
- Depending on Mr and Mrs M's rate of choice (taking into account any product fee applicable of the relevant rate opted for), Pay Mr and Mrs M the relevant 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; and
- Pay Mr and Mrs M £400 compensation for the distress and inconvenience caused of having to pay a higher mortgage payment for 12 months and the trouble of having to remortgage with another lender unnecessarily.
- Any ERC that would have been retrospectively applied due to the re-mortgage should be waived as Mr and Mrs M weren't able to make an informed choice about the timing of their move given the unfair treatment by Bol.

*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 M how much it's taken off. It should also give Mr and Mrs M 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 put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M and Mrs M to accept or reject my decision before 11 November 2022.

Arazu Eid
Ombudsman