

The complaint

Mr and Mrs S complain that Bank of Scotland plc (BOS) has failed to support them with their buy-to-let mortgages, and the interest rate it has charged on the mortgages has been unfair and uncompetitive.

What happened

In 2007, Mr and Mrs S took out two buy-to-let mortgages with BOS. Each mortgage was for just under £215,000 against a property value of £249,995, over a term of 20 years, on an interest-only payment basis.

The interest rate on both mortgages was initially fixed at 5.79% until 31 May 2009, at which point it switched to BOS's standard variable rate (SVR). The mortgages have been on the SVR ever since.

Mr and Mrs S say the properties were overvalued from the beginning, and as a result they haven't been able to achieve enough rental income from them to cover their costs, the properties are in negative equity, and there have been and continue to be arrears on the mortgages. They have asked BOS for help a number of times over the years but say they haven't been given the right support.

In 2019, Mr and Mrs S made the complaint at hand here. They wanted an interest rate reduction and an interest refund, a significant amount written off the mortgage balances, or for BOS to take the properties to sell and not ask them to pay any more. They also said they had paid around £50,000 towards one of the mortgages in 2015 to clear all the arrears and charges, but the balance still wasn't right.

BOS didn't uphold Mr and Mrs S's complaint, and gave them details of the departments to contact to discuss any financial difficulties. Mr and Mrs S referred their complaint to the Financial Ombudsman Service.

An Ombudsman colleague set out his conclusions on which parts of this complaint the Financial Ombudsman Service can and can't consider. He concluded that we:

- can consider the complaint about the lump sum payment in 2015;
- can consider the complaint about the interest charged, and assistance offered, since 15 March 2013 (six years before Mr and Mrs S complained to BOS on 15 March 2019); but
- can't consider the complaint about the interest rate charged, and assistance offered, before 15 March 2013.

BOS then said that Mr and Mrs S had complained about the interest rate on their mortgages in 2013, and it had sent them its final response to that complaint on 24 April 2013. But Mr and Mrs S hadn't referred the complaint to the Financial Ombudsman Service within six months.

Our Investigator said this meant we could only consider the fairness of the interest rate on Mr and Mrs S's mortgages from 24 April 2013. He looked into the parts of the complaint he could consider, but didn't recommend the complaint be upheld.

Mr and Mrs S didn't accept that, so the complaint has come to me for final determination.

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.

First of all and for the avoidance of any doubt, I agree with the conclusions the Ombudsman and subsequently, following a further submission by BOS with a copy of a 2013 final response letter, the Investigator, reached about the parts of this complaint I can and can't consider – that is:

- I can consider the complaint about the lump sum payment in 2015;
- I can consider the complaint about the interest rate charged since 24 April 2013 (although in doing so, I'll need to consider the impact of earlier changes to the rate, as those earlier changes may have influenced the rate charged during the period I can consider, and are therefore part of all the circumstances of the case);
- I can consider the complaint about the assistance offered since 15 March 2013 (six years before Mr and Mrs S's 15 March 2019 complaint to BOS); but
- I can't consider the complaints about the interest rate charged, and assistance offered, any earlier than the dates set out here.

I think it's also important to be clear that my role is to decide a fair and reasonable outcome to this complaint; it's not to require BOS to explore with Mr and Mrs S all the options they would like it to offer them. I'm also not required to answer in detail each and every point either Mr and Mrs S or BOS has made, although I confirm I've considered carefully everything both parties have said.

Financial difficulty

Mr and Mrs S say they've been asking BOS for help for many years, since soon after they took out the mortgages. It's clear from what they've said, BOS's records, and the arrears on the mortgages, that they've found themselves in a very difficult position. It's unfortunate that Mr and Mrs S's plans haven't worked out as they expected. This doesn't mean, though, that BOS should fairly have provided them with the level of support and financial assistance that they would have liked.

The mortgages in question are unregulated buy-to-let mortgages, so the rules that apply to residential mortgages don't apply to them and lenders aren't required to provide the same level of support as they are for residential mortgage borrowers. These mortgages are for investment purposes; they aren't secured on Mr and Mrs S's home. I would nevertheless expect a lender to treat buy-to-let borrowers fairly and consider whether and what forbearance might be appropriate where there is financial difficulty. What level of support is appropriate will depend on the borrower's specific circumstances.

BOS has offered Mr and Mrs S payment breaks, reduced payment arrangements, and to discuss term extensions. It capitalised arrears in 2016. Mr and Mrs S don't consider any of this to be a viable long-term solution. They want BOS to discuss options with them which go above and beyond what it might ordinarily offer, such as a lower interest rate for longer than just the short term, or a significant balance reduction.

Mr and Mrs S hold BOS partly responsible for their predicament, because it agreed to lend against what they consider to be overvalued properties in 2007. They have complained about the valuations and lending decisions before, so while they're not for me to consider here, I understand why Mr and Mrs S consider them relevant context.

In all the circumstances, however, I find no basis on which I might fairly conclude that BOS should go further than it has done to support Mr and Mrs S. Theirs is a long-term problem: the properties have been in negative equity for years, there's no indication that the situation will improve, the mortgage balances have increased due to arrears, and Mr and Mrs S can't secure enough rental income from the properties to cover their costs. Forbearance is generally intended to give borrowers some breathing space until circumstances change or their situation improves. I'm satisfied that BOS has been open to discussing options with Mr and Mrs S, but it's not the bank's job to make their investment viable. BOS must also treat all its customers fairly and equitably – whilst taking account of Mr and Mrs S's individual circumstances.

Mr and Mrs S say BOS has overcharged them interest, because its SVR is too high – they want a lower interest rate and an interest refund. I'll deal later with the issue of the fairness of the rate. However, BOS didn't have to offer Mr and Mrs S a lower interest rate. There's no obligation on lenders to offer new interest rate products to their customers, and there are good reasons why a fixed rate product with an early repayment charge attached might not be in the best interests of a borrower who can't meet the mortgage payments: it could cost more in the long run should the early repayment be applied because the mortgage is unsustainable, for example.

In any event, Mr and Mrs S have said they've never asked for a fixed rate product – just a lower rate. I think it's far from clear that a lower interest rate would solve their problems. In all the circumstances, I also don't consider that BOS should fairly have offered them a long-term bespoke rate which wasn't available to other borrowers.

I think it's reasonable that BOS has required the mortgage arrears and charges to be on a capital and interest repayment basis where the mortgage is otherwise on an interest-only basis – particularly where the property is in negative equity. The alternative is that the mortgage balance remains at the increased level and doesn't reduce, so the situation won't improve.

Mr and Mrs S say BOS should have discussed the sale of the properties and the process for payment of a shortfall with them earlier. However, I think it's clear from the copies I've seen of Mr and Mrs S's correspondence that until recently they simply weren't prepared to sell at a loss. I understand from what Mr and Mrs S have said that they have now put both properties on the market.

The mortgage interest rate

Mr and Mrs S's mortgages switched to BOS's SVR in 2009 and have been on the SVR ever since. Mr and Mrs S complain that the SVR has been too high compared to rates charged by other lenders and relative to Bank of England (BOE) base rate. They say they've been paying a far lower rate on the mortgages they have on other investment properties – in April 2019, for example, they say they were paying interest at 4.95% on their BOS mortgages but 1.95% on their other buy-to-let mortgages, in line with the average market SVR.

The Moneyfacts Average Mortgage rate – which is based on lenders' SVRs for existing customers – was 4.89% in April 2019. BOS's SVR was only slightly above this measure. This also suggests Mr and Mrs S had exceptionally low rates on their other mortgage borrowing if they were paying 1.95% on their other lender(s) SVRs, particularly for buy-to-let

mortgages, which are often more expensive than residential mortgages – or were on some kind of preferential rate with that lender or lenders, rather than their SVR.

However, having considered other lenders' SVRs during the period I can consider, I don't find that the rates BOS has charged Mr and Mrs S have been out of line or manifestly unfair. BOS's SVR wasn't tied to BOE base rate, and I'm satisfied that the mortgage terms didn't suggest it was. The mortgage terms set out the basis on which BOS could vary its SVR. That includes, at section 7.10 (a): "*To reflect changes in the cost to us of raising the money we lend to our customers with mortgages*".

There's no general obligation on mortgage lenders for their SVRs to track BOE base rate. I've considered whether BOS's SVR variation terms were unfair and whether it applied them in a way which resulted in unfairness, and in doing so I've also considered relevant law and regulations. Having done so, I'm satisfied that the bank hasn't managed its SVR unfairly, and Mr and Mrs S haven't been overcharged interest as a result.

This is because I'm satisfied the SVR has been varied in line with the terms and conditions of the mortgage, for reasons those terms allowed. And having considered the fairness of the changes during the period I can consider, as well as whether BOS was entitled to make the earlier changes which might have impacted the fairness of the rate charged during the period I can consider, I think the interest rate charged in the six years leading up to Mr and Mrs S's complaint was fair and reasonable.

While the difference between BOS's SVR and BOE base rate increased between 2007 and 2009, this was a period of significant economic change, and BOE base rate fell from 5.25% when Mr and Mrs S took out these mortgages in 2007 to 0.5% when the mortgages moved onto the SVR in 2009.

It doesn't automatically follow that BOS's costs reduced in line with BOE base rate. BOS has provided the Financial Ombudsman Service with information about its funding costs at the relevant times and how those costs informed its decisions to set its SVR at the level it did. Having taken that into consideration, I don't find that its decision to vary its SVR in the way it did was unfair for the period I can consider, up to March 2019.

The 2015 lump sum payments

Mr and Mrs S complain that they made a large payment to one of the mortgages on the basis that it would clear all the arrears. They say BOS told them how much they needed to pay in order for this to happen, and they did so – but their monthly mortgage payments didn't then reduce by as much as they expected as they were still being asked to pay some of the balance on a repayment basis.

BOS's records show that it received five payments of £10,000 and one payment of £3,341.01 in February 2015, and that those payments were deducted from the mortgage balance. Mr and Mrs S haven't said that they paid more than that or that any payments are missing.

The mortgage records I've seen show that the balance reduced to around the amount Mr and Mrs S had originally borrowed after they made these payments, and while they hadn't made a payment to the mortgage for a few months beforehand, their monthly payments did reduce afterwards. The Financial Ombudsman isn't an auditing service, but I find no basis on which to fairly require BOS to take any corrective action in respect of these payments or the mortgage balance.

Conclusion

I recognise that Mr and Mrs S feel very strongly about this matter and they're in a difficult position. However, having carefully considered all the circumstances, I don't find that BOS has treated them unfairly.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S and Mrs S to accept or reject my decision before 13 July 2023.

Janet Millington
Ombudsman