

The complaint

Mrs O complains that Bank of Ireland (UK) Plc (“Bank of Ireland”) gave her incorrect information when she amended the term and interest rate on her buy-to-let (“BTL”) property.

What happened

Mrs O held a BTL mortgage with Bank of Ireland that was due to mature in June 2027. Mrs O was on a variable interest rate that was 2.99% above Bank of England base rate. The re-mortgage would secure a fixed interest rate of 2.87% for five years and reduce the remaining term on her mortgage to five years as well.

Mrs O received a mortgage illustration dated 16 December 2021 which said that her mortgage maturity date would be December 2026, based on 61 payments of £1,936.96. This assumed her offer was accepted on the same day and was based on an outstanding mortgage balance of £109,818.29, including the £995 product fee. Mrs O spoke to Bank of Ireland on 29 December 2022 to confirm her understanding of the offer. Mrs O says she was referred to up to five different call handlers and given inconsistent information. But she ultimately decided to agree to the offer later the same day, with the understanding that she would make her usual pre-offer contractual monthly payment (“CMP”) on 30 December 2021, that her new agreement would start in January 2022, and her mortgage would mature in December 2026.

Following her acceptance of the offer, Mrs O received a confirmation letter dated 4 January 2022. The letter confirmed her new rate started on 1 January 2022 based on a balance of £109,999.96 and the first payment was due on 31 January 2022. Mrs O says she was surprised the letter didn’t confirm the maturity date of her mortgage, so she checked online and discovered her mortgage wouldn’t mature until January 2027.

Mrs O complained that her mortgage maturity date is not December 2026 as she was expecting, and she’s concerned as she thinks she’ll be making an additional payment that she wouldn’t otherwise have had to make. Mrs O says she made her payment in December 2021, so she thinks the 61 payments referred to in the offer started then. Mrs O has completed her own calculations using the outstanding mortgage balance quoted on her mortgage offer, and she believes she will be overpaying by around £1,995.81 based on the anticipated amount she’d pay during the life of the mortgage in the same offer. As such, she believes Bank of Ireland have not applied the payment she made on 30 December 2021. Mrs O says the situation has caused significant stress to her.

Bank of Ireland looked into Mrs O's concerns and issued a final response letter on 7 March 2022. It said that the mortgage had been arranged in line with the mortgage offer and illustration, but due to the timescales involved, the new term start date was later than the fixed rate start date. But, it said, Mrs O would pay the correct outstanding amount over the course of the term. It did agree that Mrs O was given misleading information during the telephone call on 29 December 2021. It said the call handler alluded to her mortgage maturing in December 2026, which was incorrect. To say sorry for that, it confirmed it would waive the lending fee of £195 which would otherwise have been charged when her mortgage matured.

Mrs O didn't accept Bank of Ireland's offer, so Mrs O brought her complaint to this service. Our investigator looked into Mrs O's concerns, but they thought Bank of Ireland's offer was fair in the circumstances. As Mrs O still disagreed, the complaint was referred to me for a decision. I issued a provisional decision on 9 December 2022. Here is an extract of what I said:

"Although Mrs O's complaint focuses on the maturity date of her mortgage. I think the real concern Mrs O has stems from that fact she thinks she will overpay on her mortgage by around one month by the time it matures. Mrs O has correctly identified there has been an error in the information presented to her, but she doesn't currently know what that error is or how it would impact on her, so she's made some assumptions and thinks her payment for December 2021 has not been reflected on her balance.

I've looked into what's happened and I'm satisfied Mrs O will pay the correct amount by the end of the term. But Mrs O has been given incorrect information about her outstanding balance which has given her legitimate cause for concern.

The mortgage offer Mrs O was sent on 16 December 2021 showed the total loan was £109,818.29, including a mortgage fee of £995. This figure was worked out on the basis that Mrs O's outstanding balance on 30 November 2021 was £112,274.74. Bank of Ireland added 15 days of interest that had accrued since that balance was calculated, totalling £139.89. It also reduced the sum by December's CMP of £1,800.00. Everything was correct up to this point, but Bank of Ireland then deducted arrears of £1,791.34 from the balance. It did this because any arrears would need to be separated from the outstanding loan amount. That's because arrears would not be built back into the new loan, but payable separately.

The problem with this is that Mrs O did not have any arrears to deduct. So, her balance was made to look lower than it actually was. This happened because Mrs O had missed a CMP in July 2021. But it has since come to light the CMP was actually received a few days late, in August 2021. This was possibly due to the date Mrs O's payment fell – I can see it was the last Saturday of the month, so the payment may not have credited her mortgage until the next working day in August. So, if the arrears hadn't been deducted in error, the total loan amount shown on the mortgage offer would have been around £111,609.63, instead of £109,818.29.

Mrs O took the figure she was given on the mortgage offer at face value at the time. So, she understandably had cause for concern when she received the confirmation of her new agreement in January 2022 that said her outstanding balance was £109,999.96 – more than the previous figure despite her having made a CMP. But the figure quoted in January 2022 was actually correct, and it was the previous figure quoted in December 2022 that was wrong.

Mrs O is also concerned that she will need to make 61 CMPs in total because she says her mortgage has a five-year term, which should equate to 60 months. I think Mrs O's concerns about this are more likely than not caused by the error explained above. The mortgage offer confirmed 61 payments would need to be made based on her accepting the offer on 16 December 2021. And Mrs O accepted that at the time.

The number of payments required to pay off the outstanding loan won't change even though the new term started later than Mrs O expected – adjustments will have been made for that in the cost of the CMPs. Ultimately, Mrs O's last payment should be on 31 January 2027 which is 60 months from the date the new term started on 1 February 2022.

So, I'm satisfied the amount Mrs O will actually pay by the time her mortgage matures is correct. But she was given cause for concern because of the misinformation in her mortgage offer and I can't see that Bank of Ireland has ever informed her of its mistake. Mrs O has been concerned about this for several months now and so I think she ought to be compensated for the distress and inconvenience caused to her.

I've considered what would be fair, taking into account everything I've said above. I've also thought about the fact that there was no actual impact on the account, and that it was a one-off administration error. Considering everything, I think £150 is appropriate in the circumstances. I know Mrs O may expect a more significant sum, but the ombudsman service is an informal dispute resolution service, so our awards are modest in comparison with formal alternatives, such as the courts. I hope my explanation of what happened has helped to resolve Mrs O's concerns.

Mrs O has said she tried to withdraw from the new mortgage product several times following her concerns about the loan amount but was told she was not allowed to. I've thought about how this might impact on Mrs O's complaint, specifically if she could have withdrawn, and whether she actually would have.

Looking at the mortgage offer, it says:

"You are free to decline this offer but we may not refund any fees you have already paid to us. If you accept this offer you can still withdraw from the contract providing you tell us you have changed your mind before the 19th of the month prior to the new rate becoming effective (see special conditions). On or after the 19th the rate switch is agreed and you can only repay the mortgage subject also to payment of any fees and early repayment charges shown in the mortgage illustration".

It goes on to say:

"If you accept this offer and we receive all additional items requested before the 19th then we will start charging interest at the new interest rate with effect from the 1st of the following month; on or after the 19th we may still process the change to your interest rate so that it is effective from the 1st of the following month but we cannot guarantee to do this and the new rate may not apply until the 1st day of the month after the following month".

The important word here is 'may', technically the new rate could have started on 1 February 2022. Instead, Bank of Ireland started it sooner, on 1 January 2022. This meant Mrs O's right to withdraw was significantly reduced, because if Bank of Ireland had delayed until 1 February 2022 as they were allowed to, Mrs O would have had the right to withdraw up until 19 January 2022. But starting the interest rate sooner, rather than later, would have benefitted Mrs O because the new interest rate was lower than her previous rate. Considering what Mrs O's complaint is about, I think it's reasonable to say that she wanted her new lower rate applied as soon as possible, which is what Bank of Ireland did.

In any case, I've also thought about what would have happened if Bank of Ireland hadn't made a mistake in the figure on its offer letter. And based on the evidence I've seen, if Mrs O had been able to withdraw after having accepted the offer, I'm not persuaded she would have.

I say this because I think it's unlikely Mrs O would have applied and accepted a mortgage offer from a third-party lender before the start date of her new mortgage term with Bank of Ireland. So, if she wanted a five-year term, going through the process of re-mortgaging with a third party would more likely than not have extended the maturity date of her mortgage even more. Mrs O was happy with the fixed rate and estimated monthly cost at the time of the offer, so I can't see any reason why this would change if she hadn't thought she would end up overpaying – which ultimately, for the reasons I've explained above, she won't.

In addition, since the case has been with this service, Bank of Ireland offered to amend the maturity date of Mrs O's mortgage to December 2026. This would inevitably increase the CMPs as this would mean reducing the number of CMPs planned. Mrs O turned down this offer, so it seems she would rather keep her CMPs as they are than change the maturity date of her mortgage.

So considering everything, I don't think Mrs O would have withdrawn from her mortgage contract even if she could have, and I don't think Bank of Ireland needs to do anything more in terms of this.

Bank of Ireland has accepted that during a phone call on 29 December 2021 Mrs O was given the impression her mortgage would mature on 31 December 2026, even though it was clear by then that it wouldn't mature until 31 January 2027. Bank of Ireland offered to waive the lending fee of £195 that Mrs O would need to pay when her mortgage matures.

For the same reasons I've explained above, I don't think the correct information would have changed Mrs O's decision to accept the mortgage offer. So, I'm satisfied the compensation offer is reasonable in relation to this.

In summary, Mrs O's new fixed rate could have started on 1 February 2022, not January 2022 and this would have put it in line with her mortgage term start date. But as the new rate is lower than Mrs O's previous rate, Bank of Ireland started it as soon as possible on 1 January 2022 and this has likely put Mrs O in a better position overall.

Bank of Ireland has offered to amend the maturity date to coincide with the end of Mrs O's mortgage rate, but Mrs O would prefer to keep her CMPs as they are. So, I think it's more likely than not, Mrs O wouldn't have withdrawn from the mortgage contract even if she could have.

But I don't think Mrs O was given the correct information when she queried why it appeared she would have overpaid by the end of the term. The mortgage offer quoted the wrong outstanding loan amount, and this should have been corrected sooner. So, I think Bank of Ireland should compensate Mrs O with £150 for the stress and inconvenience this has caused, in addition to waiving the lending fee of £195 which it has already offered – due to the misinformation it provided over the phone in December 2021.”

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.

Having done so, I still think Mrs O's complaint should be upheld. I'll explain why.

Bank of Ireland responded to my provisional decision and wanted me to be aware it was an application to vary the contract, rather than a re-mortgage. It also said it didn't make a mistake on the original offer, that it never said the balance quoted on the mortgage offer was the total amount outstanding, but that it was the balance it was calculating payments on and doesn't include any arrears.

To confirm, I understand that the application was to vary the term and rate of the mortgage only. But I don't agree that it didn't do anything wrong in terms of the mortgage balance quoted on the offer. Bank of Ireland already accepted in an email sent to this service that it removed arrears that didn't exist from the balance when it shouldn't have. This gave Mrs O the perception the balance was lower than it actually was, regardless of whether this was or wasn't presented as being the amount required to redeem the loan. That being said, Bank of Ireland has agreed to the proposed settlement, so I have no further comments in relation to that.

Mrs O asked that I speak to her before issuing my final decision on the case. Our investigator told Mrs O that ombudsmen generally don't speak to either party and gave her the opportunity to make any submissions over the phone or by email instead. I'm satisfied I already have all the information and evidence I need to reach a fair decision and that my provisional decision clearly set out my findings and proposed settlement. So, having reviewed everything, I'm satisfied I don't need to speak to Mrs O on the phone. I have considered Mrs O's final comments received by email.

Mrs O responded to my provisional decision with a number of points, many that have already been raised as part of this complaint. Mrs O didn't agree with my summary of her complaint, she wanted to clarify that she complained because she doesn't believe the terms of the mortgage illustration issued to her or the advice she received over the phone were executed correctly.

I've thought about what Mrs O has said carefully but I'm satisfied my summary of her complaint broadly covers what it is about. The remainder of my decision under 'what happened' and 'my provisional findings' went on to discuss the complaint in more detail including how the mortgage illustration was implemented and the information Mrs O was given during her phone call with Bank of Ireland. And as I've previously explained, the mortgage was executed correctly as per the illustration provided to Mrs O, but the advice Mrs O was given over the phone was incorrect.

Mrs O says she was not focusing on when her mortgage would expire, but that the mortgage illustration and advice she was given led her to believe the mortgage wasn't executed properly. I explained in my provisional decision that the mortgage was executed properly, and all of the information provided to her indicated the mortgage may start and therefore end later than proposed, depending on when the terms were agreed to. I don't think this would have been different from any other lender and I'm still not persuaded Bank of Ireland did anything wrong in terms of this, other than misadvising Mrs O over the phone that the mortgage would mature in December 2026.

Mrs O also says she should have been allowed to withdraw from the product. While I appreciate her concerns about what's happened, for the reasons explained in my provisional decision, I still think it's more likely than not Mrs O would have kept her mortgage with Bank of Ireland despite the errors. I know Mrs O thinks the fact Bank of Ireland made some mistakes is enough to say that she wouldn't have, but it's not. I have to consider what Mrs O would actually have done, and I don't think it would have benefitted her to go back to her old, higher, rate. So, if the errors had been explained sooner, I don't think Mrs O would have changed her mind about taking out the product.

Mrs O says she would have been happy to accept the investigator's findings because he said the end date of her term should be amended to 31 December 2026, as per the misinformation Mrs O was given over the phone. Mrs O feels the investigator changed his assessment. But this isn't what happened. On proposing the same outcome to the business, the investigator was informed what impact changing the date would have on the CMP and he shared that information with Mrs O. It was then Mrs O's decision whether she wanted her maturity date to reduce and CMPs to go up, or whether to keep it as it was to avoid higher CMPs. Mrs O did not want her CMPs to increase, so it's her choice to keep her maturity date the same as it currently is. Ultimately, Mrs O can't avoid paying the full amount she owes – either the CMPs need to go up or the maturity date needs to remain the same.

Mrs O still thinks she'll end up paying more than she otherwise would have done. I explained in my provisional decision why that's not the case and I don't think there's much more I can say about that. I'm satisfied Mrs O will not pay more than she should over the life of the mortgage.

Finally, Mrs O asked if the lending fee Bank of Ireland has offered to refund at the end of the term can be paid to her immediately. I've thought about this but refunding the lending fee is something the business has offered to do, which I may not have offered. Mrs O hasn't paid the lending fee yet, so there's nothing to refund at this point. Bank of Ireland has already agreed to pay £150 compensation I recommended for the errors I described above, and I'm satisfied that is appropriate in the circumstances. So, I'm not minded to ask Bank of Ireland to pay the lending fee to Mrs O directly when she hasn't paid it yet herself.

So, I've considered the responses from both parties, but I still think this complaint should be upheld. For the same reasons as set out in my provisional decision, Bank of Ireland should put things right by compensating Mrs O with the below.

Putting things right

Bank of Ireland (UK) Plc should:

- Pay Mrs O £150 for the distress and inconvenience caused.
- Waive the lending fee of £195 when Mrs O redeems her mortgage – I understand steps have already been taken to ensure this happens.

My final decision

For the reasons I've given, 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 Mrs O to accept or reject my decision before 6 February 2023.

Hanna Johnson
Ombudsman