

The complaint

Mr E complains Bank of Scotland plc wrongly advised him he'd be able to extend the term of his interest only mortgage.

What happened

In 2008 Mr E took out an interest only mortgage of around £520,000 with Bank of Scotland plc (BoS) for a term of 15 years. The term is due to end in August 2023.

Mr E understood from conversations he had with BoS in 2019, 2020 and 2021 that he'd be able to extend the term of his mortgage until around the age of 70 when he planned to retire provided he met their lending criteria. They included reducing the ratio of the interest only borrowing to the value of the property (LTV) to a maximum of 50%.

Mr E says he based his financial planning around what he was told. But when he started an application to extend the term in November 2021, BoS said he could only do so if he switched to capital repayment terms. That was unaffordable.

Mr E thought BoS had misled him. He said if he'd known at the outset his plan to extend on interest only terms wouldn't be possible, he'd have made alternative arrangements. Given he was over 60 years of age in 2021, his options were more limited.

Mr E complained. BoS apologised for any confusion they'd caused Mr E. They said he couldn't have applied for a term extension in 2019 due to the time left on the term. Their policies change from time to time. And until Mr E had made a formal application, they couldn't have guaranteed it would have been successful in any event.

Since Mr E was unhappy with BoS's response, he brought his complaint to the Financial Ombudsman Service.

Our investigator upheld the complaint in part. He thought BoS ought to have considered if extending the term of the mortgage was in Mr E's best interests. Even though he didn't think it was, he felt BoS should pay Mr E compensation of £300 for the distress and inconvenience they'd caused him.

BoS agreed. But since Mr E didn't accept our investigator's view, his complaint was passed to me to decide. I recently issued a provisional decision, an extract of which follows:

“What I’ve provisionally 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’m issuing a provisional decision to give the parties time to consider what I’ve said. Although I’ve come to broadly the same outcome as our investigator about how to put things right, my reasons are different.

I appreciate Mr E’s concerns about his current situation. I understand he’d like to remain in his property for as long as he can as he has family and friends close by. And he’s concerned his options for doing so may be limited now. He thinks if BoS had given him correct information he could either have re-mortgaged to a new product and extended the term with BoS or looked for another lender. Since he was under 60 years of age in 2019 he thinks he would have had more options than might be available now he’s older.

As I currently understand things, when Mr E was speaking to BoS in 2019 and 2020, their policy for extending interest only mortgages, where the repayment strategy was the sale of the mortgaged property, required an income of over £100,000 a year, equity of at least £300,000 and an LTV of no more than 50%. But when Mr E was within two years of his mortgage term ending, the policy no longer applied.

I’ve listened to calls Mr E had with BoS in June 2019, November 2019, September 2020 and November 2021. BoS haven’t located all the calls Mr E remembers having. But I think I’ve heard enough to understand what happened and come to a decision that’s fair and reasonable.

In June 2019 BoS explained it wasn’t possible for Mr E to extend the mortgage term. Since his repayment strategy was to sell his property, he’d need to reduce the LTV to 50%. BoS said he could apply again at the end of the term but warned a successful application then would depend on whether his repayment plan was acceptable at the time. I think BoS could have explained more clearly what they meant by that and whether, for example, their policy was different depending on when an application was made or could change later. But Mr E’s said that based on those discussions, he decided to sell the property - which was already on the market - as had always been his plan; and take the fixed interest rate product BoS offered until the end of October 2021 to reduce his contractual monthly payments (CMP).

In November 2019 Mr E asked for clarification about his options going forward following the discussions he’d had in June. He was considering the best way of reducing the mortgage to enable him to qualify for a term extension. He was debating whether to use a tax-free pension lump sum he would have available around nine months later and, in the meantime, increase his monthly payments.

BoS confirmed if Mr E reduced his interest only borrowing to 50% LTV by making a lump sum payment, the term could be extended if he met all the criteria. But it would need to end before his planned retirement at the age of 70. Mr E says he understood then that if he met the criteria the mortgage adviser had explained, he could extend the term. I think that was reasonable based on what BoS told him.

Mr E said his strategy for repaying the mortgage changed at that point. He decided to wait before making an application on the basis the value of his property was likely to increase and the amount he’d need to reduce the capital by would go down. He says he began tracking every six to twelve months how much he’d need to pay to reduce the LTV to 50%.

Mr E spoke to BoS again in September 2020. He was unable to pay his mortgage at the time. Unfortunately, he was out of work due to the coronavirus pandemic. He'd had two payment deferrals and was requesting an extension while he looked for work. Mr E asked about the criteria for extending the mortgage to age 70; he explained what he'd been told previously and that he'd been planning on that basis; he asked for reassurance BoS wouldn't ask him to leave in three years' time when the term ended; and he raised the possibility of taking in lodgers to help with mortgage payments.

BoS said they'd look for him to repay the mortgage in the shortest possible time depending on what was affordable for him. And they couldn't consider his options until he was back in work. But that was mentioned in the middle of a lengthy discussion. Although BoS didn't confirm whether the policy still applied, or whether it was likely to be available later in the term, I think it was reasonable for Mr E to think nothing had changed. I'd expect BoS's teams to be joined up about the information they give customers about what options might be available to them at different stages of the mortgage term. Again, I think BoS could have made the position clearer for him.

The call Mr E had with BoS in October 2021 isn't available. Mr E says he rang to discuss extending the term. But the application didn't go ahead then, and Mr E was to call back. Mr E next approached BoS in November 2021 when his fixed rate product had come to an end. He was told he'd need to extend the term to be eligible for a new product. He had less than two years remaining, and the shortest fixed rate product ran for two years. BoS didn't give the impression it wouldn't be possible to extend the term to accommodate a new product and provided details of the rates and terms involved. He was referred to BoS's end of term team to discuss his options.

I can understand why Mr E was disappointed when BoS told him then that extending the term on an interest only basis wasn't possible. BoS explained that since he was within two years of his mortgage term ending, the only option for a term extension would be by converting to repayment terms. It was obvious that would be unaffordable without looking into his income and expenditure in detail.

Mr E says he delayed making an application until the value of the property had increased and the amount he'd need to pay to get the LTV to 50% had reduced to around £30,000. He says if he'd known sooner the policy would no longer apply to him, he would have applied earlier or re-mortgaged elsewhere. I've considered whether Mr E would have been able to do either of those things, if so, at what point and whether he would have succeeded. And I've thought about whether BoS treated him fairly.

Mr E didn't meet BoS's criteria in June or November 2019. He said he'd have funds available in around August 2020. By then he'd been out of work since March 2020. Since he had no income, he didn't meet BoS's policy at the time. It wasn't until March 2021 that Mr E had brought his account up to date following a nil payment arrangement for October to December 2020. I don't think Mr E was in a position to consider an application until March 2021 at the earliest.

It's possible that if Mr E had made an application to BoS between March and August 2021 - before the term remaining fell below two years - it would have succeeded. It's unclear if Mr E had funds available to reduce the LTV at the time. He had other loans. And he's mentioned he used the pension lump sum for other things. But even if he had, I can't say for certain his application would have succeeded. Even if he was able to show he met the policy conditions, BoS would have required a full application and their full lending criteria to be met. It's too speculative to say that would have happened. And Mr E's acknowledged the success of any application wasn't guaranteed.

BoS didn't consider an application to extend the term on an interest only basis. But I've thought about whether, if he had applied at any stage, it would have been fair for them to decline it on the basis of their policy.

Mr E took out his mortgage in 2008. And, as far as I'm aware, he hasn't taken on any additional borrowing. Under the relevant mortgage rules, BoS could consider extending the term on an interest only basis - even if the affordability rules and those about using the mortgaged property as the repayment vehicle weren't met - if it was in Mr E's best interests to do so. BoS aren't required to do that but, if they didn't, and they declined the application on those grounds, we might consider they'd treated him unfairly.

Even though Mr E would like to remain in his property and has plans about how he'd pay the mortgage, that doesn't mean it would be in his best interests. He'd pay additional interest over a longer period making it more expensive for him overall. And he'd still have to sell at the end of the term. By then house prices may have affected the equity available to buy an alternative property, his financial situation could change as he approaches retirement and his borrowing options could be more limited. On balance, I don't think it would be in Mr E's best interests to delay what is the inevitable sale of his property to pay the mortgage back.

In any event, I'd need to be fair to both parties. BoS are entitled to be repaid at the end of the term. I'd expect them to allow Mr E time to sell if he hasn't managed to do so when the term ends next year and to treat him fairly if he finds himself in financial difficulties. I note they've already said they'd allow an additional six months to allow time for a sale to go through. But Mr E will need to take steps to market the property within a reasonable time before the term ends.

It's possible Mr E would have applied for a mortgage with alternative lenders between November 2019, when his strategy changed, and March 2020 before he was out of work, or from March 2021 onwards. I can't be sure an application would have succeeded. Since he would have been applying for a new mortgage, the relevant mortgage rules may have prevented another lender from offering him a mortgage on interest only terms given the sale of the property was the planned repayment strategy. And he may not have met their lending criteria. It's too speculative to say he's missed out on an extended term with other lenders.

I don't currently think Mr E has been disadvantaged as a result of the information BoS gave him. But I do think they should have explained things more clearly and managed his expectations about what they might be able to agree at the end of the term. And I think it's fair they compensate him for the disappointment he suffered when BoS explained their position in November 2021. I think the £300 compensation BoS have agreed to pay is fair in the circumstances. Whilst I understand this isn't the outcome Mr E was hoping for, I intend to direct BoS to pay £300 compensation for distress and inconvenience to put things right.

My provisional decision

My provisional decision is that BoS should pay Mr E compensation of £300 for distress and inconvenience."

Developments

Both parties made comments in response to my provisional decision which I'll summarise.

Mr E's provided income and pension information between March 2018 and today. As I understand it, he says this shows he met the financial criteria to apply to remortgage in 2019, 2020 and 2021. And he's noted he was told by BoS they accepted sale of the property as an acceptable repayment strategy.

Mr E says he was happy to take the two year fixed interest rate product in 2019 as BoS had reassured him he'd be able to remortgage with them after that to a part interest/part repayment mortgage that would have taken him to the age of 70. He says BoS repeated that information three times between 2019 and 2021. If he'd known he wouldn't be able to remortgage, he could have shopped around for other loans.

Mr E says he never intended to repay the mortgage and always planned to sell the property. He considers that when he chooses to sell and other decisions he makes depend on changes that happen in his life and aren't relevant to the issues in his complaint.

BoS said the colleagues who Mr E spoke to about extending the term would not have been aware their policy would differ when the term had two years remaining as that would be dealt with by their specialist end of term team. They said they paid the compensation of £300 to Mr E in October 2022.

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 appreciate Mr E's strength of feeling about his complaint. But I haven't changed my mind about the outcome, as I'll explain.

I've considered the financial information Mr E's provided. Whilst it appears to show his income was the right level to meet BoS's income requirements for most of the time from March 2018 onwards, there were periods of unemployment, including between March and October 2020 and March and July 2021. Mr E moved a significant lump sum into a pension scheme in 2019, but he doesn't explain if funds were available to reduce the LTV.

In any event, even if BoS had considered an application from Mr E to extend the term in June 2019, and he'd met their financial criteria then, I can't be certain it would have succeeded. It may have been declined for other reasons. So, it's too speculative to reach any conclusions about that.

I've acknowledged BoS could have given Mr E clearer information in June 2019 about his options later on. Mr E says he would have looked at alternative lenders if he'd known he wouldn't be able to extend on the terms he'd hoped for later.

I note BoS's point that the colleagues who Mr E spoke to about extending the term would not have been aware their policy would differ when the term had two years remaining as that would be dealt with by their specialist end of term team. I still think BoS ought to have been able to give Mr E clearer information about what might happen at term end. But BoS didn't give him any guarantees in June 2019 it would be possible to extend the mortgage term on the part interest only/part repayment terms Mr E thought would be available.

As I've mentioned, the mortgage rules may have prevented an application to another lender succeeding where the repayment strategy was the sale of the property. Even if Mr E had applied to other lenders at the time, an application could have failed for other reasons. It's too speculative to reach any conclusions about what is likely to have happened and whether Mr E would have found a suitable alternative lender.

By November 2019, Mr E was tied into the two-year fixed term interest product. He may have chosen to come out of that deal if he'd understood then he wouldn't be able to apply to extend the term of his BoS mortgage later on the terms he'd hoped for. But, again, I can't be sure an application for a new mortgage with another lender would have succeeded.

I haven't seen any new evidence that persuades me an application by Mr E to BoS before the remaining term of his mortgage fell below two years is likely to have succeeded. The income information he's sent recently suggests he wasn't earning anything between March and July 2021 so that might have hindered an application during that period. Even if I'm wrong about that, once again it's not possible to say what the outcome of an application might have been.

I appreciate Mr E would like to stay in his property for as long as he can and that his plans may have changed over time. He's said he didn't plan to repay the mortgage. But the terms of his mortgage require him to repay it at the end of the term. His repayment strategy has always been to sell the property and, by implication, to use the proceeds of sale to pay the mortgage off. So, unless BoS agree to extend the term, or he can get a new mortgage with them or another lender, he will need to sell the property.

I understand Mr E will be disappointed, but I haven't seen any new evidence that persuades me to change the conclusions I reached in my provisional decision. I uphold his complaint in part and think it's fair that BoS pay compensation of £300 to put things right. Since they've already paid that sum, I don't require them to do anything further.

Putting things right

We recommended BoS pay Mr E £300 compensation. Since they paid it in October 2022, they don't need to do anything further to put things right.

My final decision

I uphold Mr E's complaint in part. The £300 Bank of Scotland plc have paid Mr E as compensation for distress and inconvenience is enough to put things right.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 21 February 2023.

Julia Wilkinson
Ombudsman