DRN-4120686

The complaint

Mr and Mrs R complain that Bank of Scotland plc treated them unfairly when it failed to change the interest rate on their mortgage in 2017.

What happened

The background to this complaint is well known to both Mr and Mrs R and Bank of Scotland, so I don't intend to set it out in detail, instead I've summarised the main points below.

- In September 2017 Mr and Mrs R signed and accepted a product transfer request to fix the interest rate of their mortgage at 2.34% from 1 October 2017 until 31 January 2020. This meant the contractual monthly payment (CMP) for the mortgage would have been £2624.79.

- Bank of Scotland didn't action the product transfer and instead, Mr and Mrs R's mortgage continued on its standard variable rate (SVR) of interest. This had a CMP of £5464.40 in September 2017.

- Mr and Mrs R didn't maintain the CMP on the mortgage and Bank of Scotland spoke with them in November 2017 to discuss the missed payments on the account and arrears that were starting to build up. Mr and Mrs R explained they were waiting for an update about the product transfer which was accepted in September.

- Bank of Scotland said it had no record of the product transfer paperwork being received and because Mr and Mrs R's mortgage was now in arrears, it said it wasn't able to offer a product transfer.

- There was regular contact with Bank of Scotland and Mr and Mrs R about the status of their mortgage and arrears building up as they continued to not meet the CMP. In June 2018, Mr and Mrs R explained their income had been reduced as they were taking less from their business each month than they normally would. At this point Mr and Mrs R first asked Bank of Scotland to raise a complaint about not being moved onto the product they'd requested in September 2017.

- In April 2019, Bank of Scotland was granted a possession order on Mr and Mrs R's property. To avoid being evicted, Mr and Mrs R made a number of lump sum payments to the account from April to June 2019 totalling £22,500. Mrs R was diagnosed with a serious illness shortly after this and Bank of Scotland was notified of her illness.

- Bank of Scotland continued to correspond with Mr and Mrs R over the following years with requests for payment to bring the account back in order.

- In November 2021, Bank of Scotland accepted it made an error. It said Mr and Mrs R's product transfer should have been applied in 2017 as requested and agreed at the time. As a result the repayments on the mortgage were considerably higher than they ought to have been and the account fell into arrears.

- To put things right, Bank of Scotland refunded £87,989.08 of interest to the mortgage and offered to pay Mr and Mrs R £300 for the distress and inconvenience caused.

- Mr and Mrs R didn't think this went far enough and brought their complaint to this service, they felt Bank of Scotland needed to do the following:

    1. Reconstruct their account as if the product transfer had been honoured from 2017 onwards – recognising they'd likely have been offered subsequent product transfers after its expiry in 2020.

    2. To provide financial redress for the hardship caused, including the threat of possession of their home.

    3. Agree a new mortgage contract that would allow Mr and Mrs R to start afresh.

Our investigator looked at this complaint and agreed that Bank of Scotland hadn't done enough to put things right. She felt it was clear its actions had caused significant distress and inconvenience to Mr and Mrs R. It added to the stress of what would have been a very difficult time when Mrs R was unwell and she thought the regular contact and threat of eviction would likely have been avoided had it put the product transfer in place in 2017.

With the mortgage, our investigator looked at what Mr and Mrs R paid towards this between 2017 and 2020 when the product transfer should have been in place. She said she felt this was indicative of what they would have paid had the transfer been completed and had this been the case, it is likely Mr and Mrs R would have been able to take a new product in February 2020. Bank of Scotland agreed and said it could have offered a two-year fixed rate of 2.34% in February 2020 until April 2022. This was the most suitable option as there was no three-year products available at this time. Bank of Scotland said, based on this, it would refund a further £76,574.57 to Mr and Mrs R's mortgage account.

Our investigator didn't think there was a product that would have been available to Mr and Mrs R after the product term ended in April 2022. So she didn't think Bank of Scotland needed to adjust the interest charged after this point as the mortgage was charged the SVR and this was all that was available.

She also felt it was likely that Bank of Scotland wouldn't have sought the possession order if Mr and Mrs R's mortgage had a product transfer when requested. This meant costs had been added as a result that she didn't think were fair.

Overall, our investigator recommended Bank of Scotland do the following to put things right:

- Pay a further £2,000 compensation to Mr and Mrs R for the distress and inconvenience in addition to the £300 already offered in its final response of 25 November 2021.

- If it hasn't done so already, Bank of Scotland should refund all the fees associated with the 2019 litigation along with any interest accrued on those fees. This includes the cost of any further action or letters sent by the bank's solicitors seeking to enforce the 2019 possession order.

- If arrears fees were charged to the account from 1 October 2017 until 30 April 2022 that wouldn't otherwise have been incurred on the 2.34% rate being applied from 1 October 2017, these should be refunded along with any associated interest.

- If it hasn't done so already, Bank of Scotland should refund £76,574.57 to Mr and

Mrs R's account in line with the proposal it made to refund interest as though another 2.34% fixed rate product had been applied from 1 February 2020 until 30 April 2022.

She explained that Mr and Mrs R would like to agree a new mortgage with Bank of Scotland, but as she didn't think there was anything available in May 2022, she didn't think it was fair to ask Bank of Scotland to do anything else from this point. She said if Mr and Mrs R now wish to request changes to their mortgage, she asked that Bank of Scotland give reasonable consideration to their request.

Our investigator also explained that this Service doesn't have the authority to strike out the possession order granted on 1 April 2019. But she felt it would be unreasonable for Bank of Scotland to rely on this order with any future enforcement action in light of the failures and what is known now about these and the subsequent consequences for Mr and Mrs R.

Bank of Scotland accepted the recommendations but Mr and Mrs R did not.

Mr and Mrs R said they don't accept there wouldn't have been a product available for them to move their mortgage to in April 2022. They feel Bank of Scotland should extend the term of the mortgage to allow for another product transfer from this point and have also asked that their credit file be updated to remove the missed payments.

Our investigator explained that she was satisfied there was no product available to Mr and Mrs R in April 2022. This was based on the remaining term of the mortgage being less than two years. And if Mr and Mrs R wanted to extend the term to attempt to take a product, they would have needed to make this request. But this was a new request and not something she could direct it to do or say it should have done retrospectively. She also explained that although the arrears on the mortgage had been cleared in 2020, payments to the account since then were sporadic and there were long periods where no payment was made. So even if a fixed rate had been in place from 2020, there would still have been arrears by 2022. A credit file needs to be an accurate reflection of how an account is managed and she didn't think it would be fair to ask Bank of Scotland to do anything else here as it was correct to record missed payments.

Mr and Mrs R still disagreed and because of this, the complaint has been passed to me for decision.

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 decided to uphold this complaint for much the same reasons as our investigator. I know Mr and Mrs R will be disappointed that I haven't agreed with all they say, but I'll explain why I've made this decision.

It isn't disputed that Bank of Scotland made an error when it failed to apply the product transfer in 2017 and Mr and Mrs R are happy with the redress from this point until April 2022. They don't think it's fair that after this, interest is charged in line with Bank of Scotland's SVR. I've considered whether I think Bank of Scotland should do more for Mr and Mrs R based on their circumstances and the financial difficulty they were facing.

Should another product have been offered in April 2022?

I understand why Mr and Mrs R are unhappy about the mortgage remaining on the SVR from April 2022 as it has a significant impact on the CMP. But I don't think Bank of Scotland has acted unfairly when it said it wouldn't have been able to offer anything else.

When the mortgage product expired at the end of January 2020, Mr and Mrs R's mortgage had just over three years left on the term with it due to finish on 31 July 2023. At this time I'm satisfied Bank of Scotland didn't have a fixed rate product available with a three-year term, so offering a product transfer that matched or was closer to the total amount of time left on the mortgage term wasn't an option. A two year rate was the only rate available that didn't extended beyond the remaining mortgage term.

Between February 2020 and April 2022, Mr and Mrs R made two payments to their mortgage totalling less than £21,000. Even when allowing for the interest adjustment following the application of the new retrospective interest rate for this period, this was still considerably less than the payments they needed to make during this time. And as a result, the mortgage was in arrears of more than one month's CMP when the product term ended in April 2022.

Bank of Scotland said it will only consider a product transfer if there is a product available for the customer to transfer to and if the account is up to date or has arrears of less than one month's CMP.

Based on this, Bank of Scotland said it would not have been able to offer a product transfer to Mr and Mrs R. They had more than one month's arrears on the account and as there were only fifteen months left on the mortgage term, it didn't have a product available which had a term of less than two years. So even if Mr and Mrs R's mortgage was up to date, it didn't have a product which matched the outstanding term of the mortgage. And I don't think it's acted unfairly when it said it wasn't able to offer a further product transfer in April 2022 because of this, for the reasons I explain below.

Mr and Mrs R's payment history over the previous four years prior to 2022 demonstrates that they'd been struggling to make regular payments to their mortgage. The income and expenditure assessments completed in 2017,2018 and 2021 indicated they'd be unlikely to increase their repayment amount to start to meet the CMP or reduce the arrears. Bank of Scotland had been in regular contact about the mortgage since it first fell into arrears after the initial product transfer wasn't put in place. It is fair to say it failed to recognise that it should have applied the product transfer in 2017 and this had a knock-on effect on Mr and Mrs R, but I don't think this changes the fact that in April 2022, it didn't have a product available, or that by then they would have been in substantial arrears even with fixed rates in place.

I've considered whether it would have been fair for Bank of Scotland to have offered a short term extension in April 2022 to math a two year interest rate, and whether this would have made a difference to Mr and Mrs R's request to take out a new product at this point. Having done so, I don't think it would have, mainly for the reasons set out above. The overarching issue is that Mr and Mrs R, regardless of the adjustments to the interest, would have had significant arrears on their mortgage in April 2022 and this meant an application to move products would have been declined because of this, even if the term could be extended to accommodate a new product.

Bank of Scotland has a duty to act with forbearance and consider whether concessions on the mortgage would be appropriate to assist Mr and Mrs R. For a number of years there have been times when no payments have been made and Bank of Scotland has stayed its enforcement action at different points during this time. This has been to allow for Mrs R's health as well as things like Covid-19 and the impact this had on Mr and Mrs R's income. It has also provided them with details of different organisations that could offer help and advice with their financial situation. So setting aside it's failure in 2017, I think it has tried to offer support where it can and showed understanding when payments couldn't be met. But I don't think it would have been right for it to go further and tie Mr and Mrs R into a fixed rate product by extending the mortgage term in April 2022.

A product transfer can provide a lower interest rate, but they often come with an early repayment charge (ERC) needing to be paid if the mortgage is repaid ahead of the end of the product term. This has the potential to put a customer in a worse position than they might otherwise have been, had the ERC not been there. Mr and Mrs R's mortgage had considerable arrears even after allowing for the interest rate amendment and Bank of Scotland has been threatening eviction since obtaining a possession order in 2019. I don't think it would have been appropriate to extend the term of the mortgage and add a potential ERC on top of what Mr and Mrs R already owed.

Applying a new interest rate from April 2022 wouldn't be enough to make the mortgage affordable for Mr and Mrs R. They would still have missed payments and not paid enough in other months. So granting them a new interest rate would have not resolved the underlying issue – and would left Mr and Mrs R having to pay a substantial ERC if the mortgage was ended during the term of a fixed rate. As a result, I don't think the benefits of offering a new rate outweigh the downsides and offering a new rate would risk putting them into a worse position. So I don't think it would be fair and reasonable to expect Bank of Scotland to extend the term retrospectively or apply another product transfer from April 2022.

Should Bank of Scotland extend the mortgage term now?

Our investigator explained that if Mr and Mrs R wanted to increase the term of their mortgage overall and extend this to accommodate a new fixed rate product now, they'd need to make a new application and complete a full budget assessment with Bank of Scotland.

I agree it wouldn't be fair to make a direction for it do this now and Mr and Mrs R will need to apply for this directly with Bank of Scotland if they wish to do so. And as our investigator explained, I'd expect fair consideration to be given to this.

Should Bank of Scotland amend the information held on Mr and Mrs R's credit files?

Mr and Mrs R have asked that Bank of Scotland go further than the direction of our investigator and amend their credit files.

I know they feel the missed payment information on their credit files is only there as a result of the error in 2017, but as our investigator said a credit file needs to be a fair reflection of how credit has been managed. And as there has been large periods of no payments over the years, it is fair to expect that Mr and Mrs R's credit files are reflective of this.

I would expect Bank of Scotland to amend Mr and Mrs R's credit files to reflect the mortgage as it should have been had the interest rates been in place up to April 2022. This means that the overall balance and arrears position will change – and if there are instances where Mr and Mrs R paid as much or more as a result of the revised monthly payment but less than the payment as it was on the SVR, those instances will no longer show as underpayments. But where Mr and Mrs R made no payment, or paid less than the revised monthly payment on the fixed rate, it's fair that Bank of Scotland continues to record those instances as arrears. If it hasn't already done so, Bank of Scotland should amend their credit files but only to that extent.

Overall, I agree Bank of Scotland has failed to do what it should have done with Mr and

Mrs R's mortgage following the product transfer not being applied in 2017. The failure on this happening meant they lived with the threat of eviction, regular chasing and contact from Bank of Scotland for a number of years and this will have added stress when Mrs R was unwell with a serious illness too. It is right that the extent of this is recognised with the award made for the distress and inconvenience and I feel £2,000 is a fair and reasonable amount to do so and inline with this services approach.

Bank of Scotland will also need to make sure that Mr and Mrs R haven't lost out financially as a result of the errors made and I've explained below what it needs to do to put this right.

Putting things right

- Pay a further £2,000 compensation to Mr and Mrs R for the distress and inconvenience in addition to the £300 already offered in its final response of 25 November 2021.

- If it hasn't done so already, Bank of Scotland should refund all the fees associated with the 2019 litigation along with any interest accrued on those fees. This includes the cost of any further action or letters sent by the bank's solicitors seeking to enforce the 2019 possession order.

- If arrears fees were charged to the account from 1 October 2017 until 30 April 2022 that wouldn't otherwise have been incurred on the 2.34% rate being applied from 1 October 2017, these should be refunded along with any associated interest.

- If it hasn't done so already, Bank of Scotland should refund £76,574.57 to Mr and Mrs R's account in line with the proposal it made to refund interest as though another 2.34% fixed rate product had been applied from 1 February 2020 until 30 April 2022.

- If it hasn't already done so, Bank of Scotland should amend Mr and Mrs R's credit files so that their mortgage history reflects the payments they actually made and the revised mortgage balance, monthly payments and arrears position based on the interest rates they should have had up to April 2022 rather than the SVR.

This Service is not able to strike out the possession order granted. But as our investigator has rightly pointed out, I think Bank of Scotland should consider whether it is fair and reasonable to rely on this with any future enforcement action.

My final decision

For the reasons I've explained above, I uphold Mr and Mrs R's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R and Mr R to accept or reject my decision before 16 June 2023.

Thomas Brissenden
Ombudsman