

The complaint

Mr and Mrs W complain that Bank of Ireland (UK) Plc (BOI) haven't done enough to assist them with the financial difficulties they've experienced with their buy to let (BTL) mortgage.

What happened

Mr and Mrs W have held an interest only BTL mortgage with BOI since 2008, although I understand they separated during this time and Mr W no longer has a legal connection with his ex-partner although the loan remains in joint names. As Mr W has provided all the submissions regarding this complaint I'll principally refer my reasons for the decision to him throughout.

Mr W says that in recent years he's experienced some financial difficulties because of the global pandemic and the remedial work that needs to be carried out on his property as a result of a cladding issue.

Around 2012 arrears built up with outstanding ground rent payments on the property which BOI was asked to pay. Over the next three years BOI eventually reached agreement with Mr W for these to be added to the loan with some arrangement to pay them back and a correction to Mr W's credit file.

But in 2019 further demands for outstanding lease payments were received from solicitors which BOI paid on Mr W's behalf. By April 2020, the total outstanding arrears on the mortgage stood at £4,542.44 which comprised the lease arrears and other mortgage arrears as Mr W hadn't made his monthly contractual payments since January 2020.

Over the next three years BOI says it spoke to Mr W on numerous occasions about repaying the arrears and agreeing some form of payment plan, but it's been unable to do so. So in October 2022 it referred the mortgage account to a receiver who has been managing the property and situation on Mr and Mrs W's behalf ever since.

Mr W says that BOI has consistently failed to respond to his requests for help and hasn't answered his most recent proposal to reduce the interest rate on the loan and make monthly payments of £1,000. He says that since the receiver was appointed, he's not been updated about his situation and doesn't even know if the property is still tenanted or if rental income is being received.

Mr W says that during this time he's been involved in a long costly legal battle to get the remedial works completed to the cladding on the property – which meant he was unable to sell the property – and, following on from problems arising from the global pandemic, meant he incurred financial difficulties with the mortgage payments.

By April 2023, the outstanding arrears were £29,699.54.

Mr W complained to BOI about its lack of support and “*unacceptable conduct*” during this time, but as he didn’t receive a reply within the guideline time of eight weeks – with consent from his ex-partner, he brought a complaint to us. One of our investigators looked into the matter but they didn’t think the complaint should be upheld and gave the following reasons to support their assessment:

- BTL mortgages are unregulated, so the account holders aren’t afforded the same support as residential mortgage borrowers. So it’s not unreasonable that when arrears are ongoing for some time receivership is considered a reasonable step by lenders.
- The annual mortgage statements showed that there was sustained period of arrears and of the contractual monthly payments not being made.
- But BOI did need to look at other options before moving to receivership. And having looked the contact notes they were satisfied BOI explained the need to complete an income and expenditure (I&E) assessment and engaged in ongoing dialogue with Mr W.
- The absence of an I&E assessment and sight of a tenancy agreement suggested that BOI were unable to agree any formal arrangement with Mr W, so it was reasonable to say it acted fairly when appointing a receiver.
- Mr and Mrs W are free to engage with the receiver, who is acting for them, in order to understand the current tenancy status.

Mr W didn’t agree. He made the following points in response:

- Part of the reason for complaining was that BOI said it was unable to respond to the complaint – which supported the claim around its lack of communication throughout the entire process. This lack of communication had contributed to the situation he and his ex-wife now found themselves in.
- He wanted us to explain what was meant by his mortgage product being “unregulated” and whether the regulator could assist him or enforce action against BOI.
- It wasn’t correct that BOI had made unsuccessful attempts to contact him as he had spoken to its debt management team on numerous occasions. And it was BOI’s responsibility to send letters to the correct address as it had been frustrating for him to learn of the appointment of the receivers from the letting agent instead of directly from BOI.
- The official appointment of the receivers was in March 2023 – not October 2022 as we had suggested. He felt this incorrect information undermined the entire investigation.
- He thought that BOI had disregarded the regulators’ guidance about support for borrowers who were experiencing financial difficulty.
- He simply didn’t think BOI gave him any assistance at a time when it knew he was experiencing a number of external challenges beyond his control – such as the pandemic and the cladding “crisis”. He thought BOI could have reduced his monthly payments for a period or allowed him to look at mortgage deals with lower interest rates for example.
- He didn’t agree that the appointment of the receiver had helped in any way. He didn’t feel the receiver was acting on their behalf and it hadn’t provided any up to date information about the tenancy status of the property or the amount of rental income being received.
- He would like some meaningful mediation with BOI around solutions to the situation, compensation for not being allowed to move to a fixed rate at a time when interest rate rises were continually passed onto them, and better communication and updates from a dedicated account manager from BOI.

The investigator said:

- BOI acted fairly when giving Mr and Mrs W referral rights to this service within the appropriate timescale.
- The regulator's guidance was to protect consumers, but BTL borrowers aren't afforded the same rights as they are seen as 'micro enterprise businesses.'
- BOI passed the mortgage account to the receiver in October 2022 although the deed of appointment was dated 2 March 2023. But they didn't think this was material to the outcome of the complaint in any case.
- They had seen copies of the letters that Mr W sent to BOI in January 2023 but as these didn't result in the setting up of a payment plan and the account had already been sent to the receivers – it wasn't fair to say BOI had failed in its obligations.

Mr W asked for his complaint to be referred to an ombudsman – so it's been passed to me to review.

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.

And having done so I've reached the same conclusion as the investigator – which I know will disappoint Mr and Mrs W. I've seen the strength of Mr W's feelings – especially about the situation he now finds himself in which he believes to have been compounded by BOI's lack of assistance and communication. But I don't think BOI has acted unfairly here – so I'll explain my reasons.

BTL mortgage borrowers are considered to be running a business so are not considered to be "consumers." Mr and Mrs W took this mortgage out for business purposes. They are not living in this property, and so the regulator's rules and guidance around support for residential mortgage borrowers in financial difficulty do not apply here. Lenders aren't required to provide the same level of support as they are for residential mortgage borrowers. I've taken this into account when deciding what I think what should happen here. Although I would still expect BOI to treat Mr and Mrs W fairly and to have considered what forbearance might be appropriate where there is financial difficulty depending on the specific circumstances.

BOI's communication

Mr W says BOI has failed to communicate with him and hasn't provided any financial assistance to him during what has been a difficult time. So I've begun by looking at the communication Mr W did have with BOI. I've taken this information from the contact notes BOI provided and the submissions Mr W has made. I've set out a brief summary of events below although this doesn't reflect everything that's happened over the years. From 2015 to 2019 Mr W was in discussion with BOI about the lease arrears that it had paid on his behalf when they became outstanding. But by 2019, although I'm satisfied the original matter had been resolved, the account suffered further lease arrears.

- BOI told Mr W that after it paid the arrears they would be added to any existing arrears and an arrangement to pay would be required.
- As no arrangement was agreed, in early 2020 BOS issued an initial litigation letter and sent a field agent to visit the property. No contractual monthly payments were made to the mortgage account from this time.

- In January 2021 BOI conducted a lease arrears review and received a request for further lease arrears. It contacted Mr W to discuss the situation and sent out an I&E assessment for completion.
- In February 2021 Mr W said he hoped to pay off the arrears and to find a new tenant for the property.
- In June 2021 BOI escalated the matter as it hadn't received the I&E form and the arrears stood at £14,459.08. No monthly payments had been made since January 2020.
- In July 2021 Mr W said he was looking to make payments of £1,000 per month. BOI attempted to call Mr W (with no success) as it said it needed to complete an I&E assessment to talk about any possible arrangements.
- In October 2021 BOI received another proposal from Mr W to pay an extra £500 per month with the expectation of a further cash advance in February 2022, but it said it couldn't accept the proposal without completing an assessment – noting the arrears were now £15,906.98 with only one payment received since January 2020.
- Following receipt of a litigation letter in December 2021 Mr W confirmed that due to the ongoing remedial works on the property an EWS1 certificate would be required before the property could be sold.
- In March 2022 another legal warning letter was sent to Mr W. In April 2022 he proposed paying £1,000 in May 2022, but also explained that a repossession would be pointless and the property couldn't be sold without the certificate.
- In June 2022 Mr W explained that the cost of the remedial work to the cladding had been agreed but was unlikely to be finished until the following year. He was asked to complete a I&E assessment but said *"it was pointless as his finances are all over the place."* Mr W made a payment of £1,000 on 24 June 2022 and said he would continue with those payments using the rental income from a new tenant in the property. BOI explained the implications of any future lack of contact and the inability to complete an I&E assessment or a fact find with Mr W.
- In July 2022 a fact find was completed but not an I&E assessment. BOI requested that Mr W forwarded a copy of the new tenancy agreement.
- Mr W's proposed payments weren't received and so in October 2022 BOI referred his mortgage account to receivership and a deed of appointment was created in March 2023.
- In January 2023 Mr W proposed reducing his current interest rate for six months while paying £1,000 per month towards the loan.

So, while considering the events above, and indeed the full extent of the communication with Mr W I can't agree that BOI hasn't engaged fairly and reasonably with Mr W.

Mr W's contact has generally been following letters of proposed action from BOI which encouraged him to discuss his situation and try to reach an arrangement or solution to the problem. But I've seen that Mr W, while he set out his proposals on several occasions, wouldn't provide BOI with the I&E assessment that it required before it could consider anything.

I think overall BOI has remained engaged with Mr W and has tried to work with him to avoid the current position, so I don't think it's done anything wrong there.

What could BOI have done?

Although I think BOI has continued to communicate and engage with Mr W I also have to consider what measures it could have taken to assist Mr W with his financial difficulties – while noting as I said previously that the regulator's guidance Mr W has referred to does not apply to BTL borrowers experiencing arrears and missed payments.

But I'm not sure what more BOI could have been expected to do here. As early as January 2020 BOI sent Mr W an I&E assessment form which he failed to complete. And on numerous subsequent calls it repeated the need to complete this form. That's because the basis on which BOI might be able to put forward any sort of forbearance measures would be after consideration of Mr W's financial picture and what sort of payments he might be able to make and whether any rental income was being received. Mr W's reluctance to provide this information simply didn't give BOI anything to work with and I think it would be unfair to expect BOI simply to make proposals which either wouldn't lead to any change in the situation or might make Mr W's position even worse.

Mr W's arrears balance was significant even in 2020 and continued to get worse with each passing year. He wasn't making his monthly contractual payments and made only two one off payments during this time. He suggested his finances were "*all over the place*" and the legal costs of the remedial cladding work on his property was clearly eroding his financial reserves. And when Mr W did propose making extra payments for a period of time to reduce the arrears balance these didn't continue beyond one solitary payment. Mr W also suggested that he would have significant capital injections in the future which he could use to pay off the arrears, but I've seen no evidence that these have materialised.

The long term nature of the arrears on the mortgage account and the fact that Mr W has been unable to reduce them in any way since around 2020 would suggest that he simply doesn't have the means to do so and therefore any measures such as interest rate reductions or payments holidays for example would be unlikely to make any difference to his position.

As the loan is interest only it wouldn't be possible to consider other measures such as extending the mortgage term or switching from capital repayment to interest only for a period of time and any arrangement to repay the arrears would likely be beyond Mr W's means at this time. In any case, as I've said previously, I don't think it's unreasonable BOI wanted to assess Mr W's overall financial position before agreeing to any of these measures – and Mr W hasn't yet agreed to complete that assessment.

Ultimately all the evidence that I've seen suggested that Mr and Mrs W's BTL mortgage was no longer viable during 2022, so I think it was reasonable for BOI to start the process of appointing a receiver when it did, rather than let the situation continue and increase the arrears even further.

Mr W is particularly frustrated that he didn't receive a response to his financial proposal in January 2023. But by this time BOI had already started the receivership process and I think it was reasonable for it to continue to do so which I note was confirmed by a deed of appointment less than two months later. I don't think BOI was obliged to give further consideration to Mr W's proposal of January 2023 as an I&E still hadn't been completed and I think BOI had made it clear that it wouldn't be able to consider any further proposal without that information.

The receiver was appointed by BOI but is acting on behalf of Mr and Mrs W here, as their agent. So as it isn't BOI's agent, this means I can't consider any of the points Mr W has raised about the service he's received as LPA receivers' actions aren't regulated by our service.

My final decision

For the reasons that I've given I don't uphold Mr and Mrs W's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs W to

accept or reject my decision before 6 September 2024.

Keith Lawrence
Ombudsman