DRN-4679978

The complaint

Mr M complains that Bank of Scotland plc ("BoS") didn't give him a new fixed interest rate product on his mortgage.

What happened

Mr M has had a mortgage with BoS since February 2008.

Mr M's mortgage is part repayment, part interest only. The majority of the mortgage is on interest only terms. Mr M had a fixed interest rate product (of 3.09%) on his mortgage. The fixed interest product expired on 31 October 2023. Mr M wanted to secure a new fixed interest rate product on his mortgage from 1 November 2023.

BoS told him he would need to arrange an appointment with a mortgage adviser, who would take details of his financial situation and make an appropriate recommendation. However, Mr M was unwilling to give BoS details of his income. So Mr M's mortgage went on to BoS's standard variable rate ("SVR"). Mr M said he couldn't afford that. When he complained to the Financial Ombudsman Service he said the interest rate on his mortgage was 9.8%. Mr M thinks he should be on an interest rate of 5.5% - a rate that was available around 1-November 2023. He has recently told us he has been paying £2,600 each month towards his mortgage – which equates to an approximate interest rate of 5.5% - rather than the full amount BoS has asked him to pay. BoS has told us recently that Mr M's mortgage is now more than £18,000 in arrears.

Mr M is adamant that he didn't have to give BoS details of his income to switch to a new fixed interest rate product and he wasn't prepared to do so. He says that position was confirmed in 2019 when he went on to the 3.09% fixed interest rate.

BoS said it hadn't done anything wrong in relation to the product transfer. It apologised for not escalating Mr M's complaint when he first complained. BoS said it was a responsible lender that had concerns about whether Mr M's plans to pay off the mortgage at the end of its term were plausible. So it needed to assess his income in order for it advise him. It said it also had affordability concerns as Mr M had made a reduced payment of £600 in August 2023.

Mr M complained to the Financial Ombudsman Service.

Our investigator looked into the matter. He understood Mr M's position, but he didn't think BoS had done anything wrong.

Mr M remained unhappy and asked for his complaint to be reviewed by an ombudsman, so it has been passed to me to decide.

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've reached the same conclusion as our investigator. I'll explain why.

The crux of this dispute comes down to whether it would be fair and reasonable for me to say that BoS should have offered Mr M a product switch (as a stand-alone execution only application for a new interest rate product with no further borrowing) in circumstances where Mr M wasn't willing to tell it his income in late 2023. Mr M has been very clear that he wasn't willing to do that.

Having considered the particular circumstances of this case I don't think it would be fair and reasonable for me to say that.

When Mr M spoke to BoS about his mortgage in late 2023 he had around five years remaining on his mortgage term. BoS' notes of its conversations with him around that time show that he'd told BoS about his mortgage repayment strategy. BoS says it had concerns about that, and affordability generally as Mr M had made a reduced payment in August 2023. BOS said that, as an interest only customer, its policy required it to consider Mr M's repayment strategy and income and expenditure/affordability, to check whether he was on course to repay the capital and if not whether it would be affordable to switch to repayment terms, at the same time as considering an application for a new interest rate product. Although it wouldn't need to verify Mr M's income as it would if he was to apply for a new mortgage. Mr M refused to give BoS that information. So BoS said it wouldn't proceed with a new interest rate product and Mr M's mortgage went on to the SVR.

I've considered BoS' policy here. It says that when a customer wants a new mortgage product it uses that as an opportunity to check in with the customer and review their situation. It considers their income and expenditure so it's in a position to talk to the customer about their repayment strategy and available options.

I think BoS was entitled to do that. The regulator says that, for interest only mortgages (including part interest only ones like this one), BoS is required to keep in touch with its customers and discuss their plans for repaying the capital balance. That's important because if a customer doesn't have a means of repaying the capital, it's necessary to look at other options, including possibly switching to a repayment mortgage. BoS has chosen to use rate switches as an opportunity to have that discussion with its customers and I don't think that's unfair. More specifically in Mr M's case, it had noted a recent missed payment – so it was reasonable to think about whether there were affordability problems before Mr M committed to a new fixed interest rate with an early repayment charge ("ERC"). It has made it clear that it wasn't looking to verify Mr M's income and that it merely wanted to review affordability and his repayment strategy. So I can understand why it wanted to take that opportunity to talk though Mr M's options with him/guide him at that time, even if Mr M decided not to take its advice.

If Mr M had gone through that process, BoS had given him advice and Mr M declined that advice, I wouldn't think it fair to withhold a new interest rate at that point. But that's not what happened. Mr M declined even to discuss matters with BoS and therefore it wasn't in a position to assess his circumstances or recommend a new interest rate.

BoS has told us that its records show that Mr M disclosed his income in 2019 – so that's why the previous product transfer went ahead. It says that in 2019 Mr M said the majority of his income was from overseas and that he didn't earn above the tax threshold in the UK, so that's why it didn't need to verify his income. It says that a robust discussion was had about Mr M's intentions at that time and how he was going to repay the mortgage balance. But it was reasonable to want to review whether circumstances had changed four years later.

I also think it's worth pointing out here that there were other implications (apart from the interest rate) of giving Mr M a new interest rate product that BoS needed to think about. When a borrower takes out a fixed rate deal there's a risk the borrower will bring the mortgage to an end early – either through having to sell the property, or through repossession, to deal with the arrears. And if at that point the mortgage is on a fixed rate, this could trigger an ERC which would increase the amount to be paid back. I'm aware that BoS's interest rate products came with an ERC (other than the SVR that Mr M's mortgage was on). So even if he had been offered a new interest rate deal, it might not have necessarily been in Mr M's best interests. That's particularly the case if – as might be suggested by the recent reduced payment – Mr M might encounter financial difficulty and need to sell the property. That's not to say Mr M was in that position, but it was reasonable for BoS to want to understand more and take that into account if so.

So overall, I don't think BoS made a mistake when it said it wouldn't give Mr M a new fixed interest rate product without him telling it his income. I think BoS could reasonably expect Mr M to co-operate with it if he wanted it to give him a new interest rate product – something it wasn't required to do. Mr M has told us that he thinks he has been penalised and that arrears has built up on his mortgage because he wasn't willing to give BoS information he wasn't required to give. However, I'm not persuaded by that for the reasons set out above. Mr M could have taken a new interest rate if he'd been willing to engage with BoS. As he didn't, the mortgage reverted to the SVR and BoS has therefore properly charged interest on that basis since then. Because Mr M has withheld part of the payments substantial arrears have built up. Mr M will need to engage with BoS about his plans to repay those arrears to prevent BoS taking further action.

conclusion

I appreciate that this decision is likely be very disappointing for Mr M. But based on what I've seen, it wouldn't be appropriate for me to require BoS to do anything to resolve this complaint. Mr M's mortgage is now in significant, growing arrears. I hope he will work with BoS to come to an arrangement with it to get his mortgage back on track.

My final decision

For the reasons set out above, 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 M to accept or reject my decision before 4 October 2024.

Laura Forster
Ombudsman