

The complaint

Mr H complains that Bank of Scotland plc trading as Birmingham Midshires ("BoS") wouldn't allow him to fix a new interest rate on his tracker mortgage, as he was in arrears.

What happened

Mr H has for some time held a specialist mortgage with BoS, with a variable interest rate tracking his bank's base rate. Mr H said that at the start of 2023, he anticipated upcoming interest rate rises would make this very difficult.

Mr H complained about the difficulties he had contacting BoS, to fix a new rate. He needed to speak to a specialist team to do that, and he just wasn't able to contact them. But unfortunately, our service isn't able to consider this point for him. I have written to Mr H separately, to explain why.

Mr H also complained that when he did manage to speak to BoS, it wouldn't offer him a new fixed rate. It didn't think this was in his interest.

BoS said Mr H had existing mortgage arrears when it discussed fixing a new mortgage rate with him. The fixed rate mortgages it can offer, include an Early Repayment Charge ("ERC"), which has to be paid if the mortgage is redeemed before the end of the fixed rate deal. BoS said it didn't think it was in Mr H's interests to be tied into a fixed rate, with an ERC, if he was having problems paying, and might have to sell his house before the fixed rate deal ended.

Mr H asked our service to look into this for him.

Our investigator didn't think this complaint should be upheld. He said Mr H had missed his monthly mortgage payments for April and May 2023. He did pay for June 2023, but not in July and August. Mr H then paid in September, but there were no further payments after this.

Our investigator said he understood Mr H had periods off work in this time, due to illness, which affected his income. And interest rate increases during this time meant his monthly payments went up. So our investigator appreciated this had been a difficult situation, but he thought BoS had tried to offer support. He could see a number of instances where BoS had tried to speak to Mr H, and wasn't able to.

Our investigator said BoS had applied its policy, in not allowing Mr H to fix a new interest rate while his mortgage was in arrears. But he also said he thought that policy was fair in Mr H's case. He said it was very common for lenders to say they won't provide a new rate for customers experiencing financial difficulty.

When someone's in financial difficulty, the lender might begin legal action. And if Mr H was tied into a new fixed rate, he'd also be tied into an ERC. That means if repossession were to happen, Mr H would lose out on even more funds due to the ERC, worsening any financial difficulties even further. Our investigator didn't think BoS had acted unfairly by not applying a new fixed rate to Mr H's account.

Our investigator said Mr H had told BoS in May and November 2023 that he was planning on selling his property. Our investigator said this was another reason why tying him into a new rate would not have been in Mr H's best interests.

Mr H replied to disagree. He was very unhappy that our service wasn't able to consider the issues prior to the end of May 2023, when he had difficulty contacting BoS' specialist team. (I've explained I'm not looking at that issue here.) And Mr H said he didn't think it was in his interests to stay on a variable rate, because there's such a large difference between payments under that rate, and the payments required on a fixed rate. But our investigator didn't change his mind.

Mr H said he was now at risk of losing his home, so he wanted his complaint to be considered by an ombudsman. This case was then passed to me for a final 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 reached the same overall conclusion on this complaint as our investigator. I'm sorry to have to tell Mr H that I don't think the part of this complaint I am able to consider, should be upheld.

I understand the point that Mr H makes, about the costs of his mortgage having risen significantly in 2023. But I have to bear in mind that Mr H has missed a number of payments entirely, during this period. And this appears to have coincided with Mr H having a reduced income, due to illness and a dispute with his employer.

BoS said Mr H had spoken to the specialist remortgage team, either in late May or early June, and Mr H wasn't able to secure a fixed rate then, because of the existing arrears on his account. BoS has told us that it has concerns about whether someone in Mr H's position would be worse off if they were tied into a fixed interest rate deal.

It appears that Mr H wasn't able to clear the arrears in place when he spoke to BoS about a new fixed interest rate deal. And at around the same time, Mr H said he didn't want to complete income and expenditure details with BoS, to set up a repayment plan for those arrears. Mr H said his income had been affected by a period off work, and he didn't want to set out his income and expenditure for BoS before he knew more about what his income would be.

As BoS was aware Mr H was receiving a reduced income, I don't think it was unreasonable that it wanted to ensure Mr H would be able to afford his mortgage payments sustainably before tying him into a new fixed rate. Whilst Mr H may have had some arrears at the time of the assessment, I would still have expected BoS to consider agreeing to a new rate if it would have improved Mr H's ability to meet his mortgage payments in the longer term. For example, if the outcome of an income and expenditure assessment showed that Mr H would be able to afford the monthly payments on the new rate, and they could agree a way to clear the existing arrears, I would expect BoS to consider that a suitable option.

But unfortunately, at the time of Mr H's conversations with BoS, his future income was uncertain as a result of his sickness and employment situation. He didn't want to complete an income and expenditure assessment because he wasn't sure what his income was going to be. Whilst I appreciate this was a difficult time for Mr H, I'm not persuaded BoS were

acting unfairly by not agreeing to tie Mr H into a new rate when he didn't know if he could afford it.

There were other forbearance options I would have expected BoS to consider in order to ensure it was supporting Mr H through this period of financial difficulty, and I can see they attempted to contact him multiple times to discuss his situation with him. But from looking at the contact notes on the account, it appears Mr H did not want to share his income and expenditure details with BoS, and several of its calls went unanswered.

I've also thought about what Mr H has said about how BoS has applied the Consumer Duty, but for the reasons I've already stated, I'm persuaded BoS has acted fairly and reasonably in the circumstances in the way it has tried to engage with Mr H.

I know that Mr H will be disappointed, but that means I don't think this complaint should be upheld.

I appreciate that Mr H's financial position unfortunately doesn't appear to have improved, since then, and he's missed a number of subsequent mortgage payments. I can see BoS has sought to discuss these difficulties with Mr H, but that more recently it has suggested legal action is likely to be its next step. I would encourage Mr H now to contact the sources of advice that BoS and our service have signposted him to, and engage with BoS about his plans in order to avoid repossession, which should be a last resort.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 25 June 2024.

Esther Absalom-Gough
Ombudsman