

The complaint

Mrs D's complaint is about the property she has mortgaged with Bank of Scotland plc (BoS) being in negative equity and cannot be sold because unaffordable repairs are needed to its drainage system.

Mrs D is represented in her complaint, but for ease, I will generally refer to submissions and comments as hers.

What happened

Mrs D and her husband (the late Mr D) re-mortgaged their home with BoS in 2002. At that time the property was valued at £220,000 and it was estimated that would increase to £250,000 after proposed improvements.

In 2007 they re-mortgaged with BoS again in order to be able to consolidate some debts onto the mortgage. They borrowed around £238,000 over a term of nine years on an interest-only basis. The term was due to end in February 2016. The mortgage offer detailed that the property had been valued at just over £392,000.

In October 2015 Mrs D wrote to BoS and explained that they would not be able to repay the mortgage at the end of the term. She confirmed that their original plan had been to sell the property and downsize, but they no longer wanted to do that. This was because they had an elderly relative living next door. However, they subsequently told BoS they'd put the property on the market for sale. BoS initially gave Mr and Mrs D an additional six months to sell the property, which was extended again. However, in October 2017 BoS extended the mortgage term to end in November 2022.

In November 2022 Mrs D's representative contacted BoS as he had only just become aware the mortgage was due to be repaid. It was confirmed that the repayment method was to sell the property and that could be done. In addition, it was mentioned that the neighbour might want to buy the property privately – BoS said it could give Mrs D an additional six months to sell and repay the mortgage. The property was valued by a local estate agent the same month. It said that the property would achieve a sale price of between £235,000 and £250,000. Mrs D has recently confirmed that this valuation did not take account of the fact that works might be needed to the drainage system.

BoS was told in December 2022 about an offer that the neighbour had made to buy the property of £230,000, which was below the amount owed on the mortgage. BoS said it did not match with its criteria for a shortfall sale. Mrs D also told BoS that there would be problems selling the property as it needed maintenance and it was not on mains drainage, which she considered made it unsellable. It was later confirmed that the neighbour had been declined for a mortgage on Mrs D's property due to its position and problems with its condition.

A complaint was raised as Mr and Mrs D considered the mortgage had been mis-sold due to the fact that it was arranged on an interest-only basis with no repayment vehicle in place.

This complaint was eventually referred to the Financial Ombudsman Service, where an Ombudsman colleague concluded that because of when the complaint had been made, it did not fall within our jurisdiction.

Mr D passed away toward the end of 2022. The mortgage transferred into Mrs D's sole name.

Mrs D raised a complaint with BoS about the fact that the property was in negative equity and there were problems with selling the property due to the drainage system. BoS didn't investigate the complaint as it thought it was effectively the same complaint Mrs D had made previously about the mortgage having been mis-sold. Mrs D asked us to consider the complaint. When she did, she mentioned on the complaint form that BoS had refused to allow a sale at below the amount owed on the mortgage (a shortfall sale) to the neighbour in 2022. We informed BoS that the complaint had been received.

BoS responded to the complaint in a letter of 15 March 2024. It paid Mrs D £150 to apologise for having closed her complaint down, having assumed it was also about the sale of the mortgage. In relation to the complaint about the property being in negative equity, it recorded that Mrs D had not wanted to pursue those issues when it had spoken to her representative. In relation to the shortfall sale being declined, BoS was satisfied it had declined the application correctly, as it didn't meet its criteria for such a sale. As for the property being unsaleable due to issues with the drainage system, BoS pointed out that maintenance of the property was the borrower's responsibility, and it was not responsible for any problems a lack of maintenance might cause in selling the property. BoS set out the options, as it saw them, for Mrs D to move forward.

Mrs D said that she thought BoS had misconstrued the nature of her complaint. She highlighted that BoS had addressed a complaint about the rejection of a shortfall sale in 2022, but she had not complained about this matter. She explained that at the end of the mortgage term, the property valuation indicated that it was likely already in negative equity. As such, she concluded that it was likely mis-valued when the mortgage was originally granted and so it would have been known that the property would be highly likely to be in negative equity at the end of the term when it had to be sold.

When we asked BoS for its papers relating to the complaint, it highlighted that its understanding of the issue with the property's drainage system was that it did not comply with current regulations (as of 2020), which was not something that could have been identified in the valuations it had completed in 2002 or 2007.

One of our Investigators considered the complaint, but he didn't recommend that it be upheld. Mrs D didn't accept the Investigator's conclusions and asked that the complaint be reviewed by an Ombudsman. She said the bank should have been more thorough with its valuation methods when dealing with retired pensioners with '*limited financial levers*'. Mrs D also said that the valuation created in 2007 was '*frankly ludicrous*' in the area the property was as no property would increase in value by 56% over such a short period.

BoS confirmed it had nothing further to add.

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 will firstly address the issue of the valuation completed in 2007. Mrs D has said that she doesn't believe that the valuation could be right as it increased so much from that completed in 2002. While I can appreciate that Mrs D considers the increase in the valuation to be very significant, when desktop valuations were produced, they were based on what was actually happening in the property markets. I don't know the exact details of the system used by BoS at that time, but the valuation would have been based on the physical valuation completed in 2002 and something like the retail house price index. Such indices give a guide to how house prices are changing and are based regional data about actual sale prices. There is nothing wrong with a lender establishing an approximate value for a property using such a system, even where a consumer has a limited income as a pensioner would have.

Mrs D has said she doesn't believe her property value would have increased by around 56% in just five years. That may well be the case in recent years, but in the 2000s, prior to the financial crash in 2008, property prices increased very significantly over relatively short periods. For the region in which Mrs D's property is located, during the period between the two valuations property prices on average increased by nearly 70%. So while Mrs D thinks an increase in the valuation of the property of 56% was not possible, at that time, it was. Property prices plummeted in most areas following the financial crash in 2008 and it is unfortunate that in some area's prices have not recovered. Furthermore, Mrs D has highlighted, the condition of the property may also have affected the current value, as I note that she has mentioned that the roof now needs to be replaced.

Overall, I am not persuaded that there was anything wrong with BoS using the valuation that was produced in 2007 or that BoS should have known that the property would end up in negative equity by the time it was due to be sold to repay the mortgage.

I will now comment on the saleability issue. Mrs D has explained to us that there are problems with the drainage system that mean it isn't possible to sell the property. It's not clear whether that is due to it being in need of repair, or whether it needs to be upgraded to comply with current regulations before the property can be sold. In either case, this is not something that BoS could have been aware of when it made the decisions to lend in 2002 and 2007. If the system needs repairing, that would be something that BoS would assume a borrower would do as part of the normal maintenance of their property, as required by the mortgage contract. If the issue is to do with the system needing to be upgraded, that is not something BoS could have known would happen. The requirement for systems to be upgraded before properties can be sold was only introduced in 2020 – more than a decade after BoS made its most recent lending decision. So I can't hold BoS responsible for the problems Mrs D is currently experiencing in relation to being able to sell the property.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Mrs D to accept or reject my decision before 28 June 2024.

Derry Baxter
Ombudsman