

## The complaint

Mr S has complained that Bank of Scotland plc (BOS) wasn't able to arrange a product transfer for him on his Personal Choice flexible mortgage because it no longer offered that type of mortgage. Instead Mr S was told he'd have to re-mortgage to another bank that is part of the same group of companies as BOS, a bank I will refer to as H.

I note a separate complaint has been raised against H about the application for a new mortgage, but as the two companies are separate, this decision covers only the actions of BOS in declining to offer Mr S a product switch.

## What happened

I do not need to set out the full background to the complaint. This is because the history of the matter is set out in the correspondence between the parties and our service, so there is no need for me to repeat the details here. In addition, our decisions are published, so it's important I don't include any information that might lead to Mr S being identified.

So for these reasons, I will instead concentrate on giving a brief summary of the complaint, followed by the reasons for my decision. If I don't mention something, it won't be because I've ignored it; rather, it'll be because I didn't think it was material to the outcome of the complaint.

Mr S took out a mortgage with BOS in 2008, on the advice of his mortgage broker. This was a Personal Choice mortgage which offered flexible features. BOS withdrew the product from sale in January 2009.

The interest-only mortgage taken out in 2007 for just under £3,000,000 was initially on a tracker rate of 0.110% below Bank of Scotland Base Rate, with the fixed rate ending on 31 July 2008. In September 2008 Mr S transferred the balance (at that point, about £2,700,000) onto a new product, a variable rate which was 1.69% above Bank of Scotland Base Rate for the remainder of the term – 24 years 3 months.

In January 2023 Mr S wanted to arrange a product transfer onto a new interest rate. BOS explained that it wasn't able to do this on this type of mortgage. Instead, Mr S was told that he'd need to re-mortgage to H, and he was put in touch with a mortgage adviser at H.

Mr S complained that BOS wasn't able to offer him a product switch on the Personal Choice mortgage. In its final response letter dated 13 March 2023 BOS explained that, because the product had been withdrawn in January 2009, product transfers were no longer available.

BOS issued a second final response letter dated 6 September 2023. In that letter BOS said:

*"When we sent you our original decision on 23 April 2023, we advised you of your right to refer your concerns to the Financial Ombudsman Service. If you remain unhappy, you're still able to refer your complaint to the ombudsman, free of charge – but you must do so within six months of the original decision letter."*

This was incorrect; the original final response letter was actually sent on 13 March 2023.

Mr S referred his complaint to our service on 26 September 2023. Mr S said that he didn't think it was fair that he was referred to H, because BOS had different interest rates for its existing customers.

The complaint had been referred to us outside the six month time limit for the 13 March 2023 final response letter. An Investigator looked at what had happened.

The Investigator thought that, even though the complaint had been referred to us more than six months after the initial final response letter sent on 13 March 2023, we could still look at it. That was because BOS had given Mr S incorrect information in the letter dated 6 September 2023, leading him to believe he had six months from 23 April 2023 to contact us. BOS gave its consent to us considering the complaint.

The Investigator considered the merits of the complaint. She was satisfied BOS was entitled to withdraw the product, which it had done in January 2009. She also noted that the mortgage, being a Personal Choice mortgage, had been structured specifically in accordance with Mr S's requirements, offering a tracker rate and flexible features not ordinarily linked to a standard mortgage.

The Investigator noted that the terms and conditions did not entitle the borrower to have a new interest rate product if one wasn't available. Mr S wanted a fixed rate, a feature not available with the Personal Choice mortgage. Mr S could have stayed on his existing tracker rate if he'd wanted to, but he wouldn't be able to switch to a new interest rate product.

The Investigator was satisfied that BOS wasn't under any regulatory obligation to offer Mr S a new mortgage interest rate product. Therefore Mr S needed to arrange a new mortgage, and was only able to do this within the Lloyds Banking Group (the parent company of BOS) if he arranged it through H.

Mr S didn't agree with the Investigator's findings and asked for an Ombudsman to review the complaint. Mr S said that it wasn't his fault that BOS had removed the Personal Choice mortgage from the market. Mr S said that he didn't even use the flexible features and had kept the mortgage at the same original amount. Therefore he thinks it's fair that he's transferred to one of the fixed interest rates available for existing BOS customers which he says are more preferential than the rates H is offering new customers.

### **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 begin by confirming that I agree with the Investigator that we can consider this complaint. Although Mr S referred it to our service more than six months after the initial final response letter dated 13 March 2023, BOS led him to believe in its second final response dated 6 September 2023 that he had six months from 23 April 2023 to contact us – and he contacted us within six months of that date.

I am glad to note that BOS gave its consent to consider the complaint; without that consent I would have used my discretion to waive the six-month time limit in this case, given the incorrect information BOS gave Mr S about this.

The Personal Choice mortgage is no longer available, having been withdrawn by BOS more than fifteen years ago. This is a commercial decision that BOS was entitled to make. I note

the mortgage provides for a tracker rate only. Mr S has told us that, due to interest rate increases, by early 2023 he was struggling to make his repayments and so needed to switch to a fixed rate.

The Personal Choice mortgage doesn't allow customers to switch to a fixed interest rate product. The mortgage is exclusively on a tracker rate. Therefore borrowers who want to switch to a new type of interest rate product need to arrange a re-mortgage. BOS only offers new mortgages through H, and so Mr S was directed to H for his new mortgage application.

I note Mr S's point that BOS's interest rate products for existing borrowers are lower than the rates offered by H to new customers. However, BOS interest rates for existing customers only apply where the mortgage allows them to switch to an interest rate product, which isn't the case here.

I can appreciate, given the size of the mortgage, that recent interest rate increases – and particularly those arising from the mini-budget in September 2022 – have impacted significantly on Mr S. However, in all the circumstances of this case, whilst I appreciate Mr S will be disappointed, I'm unable to find BOS has done anything wrong. BOS was entitled to withdraw the product in 2009 and, having done so, isn't able to switch Mr S to a different type of interest rate product on the Personal Choice mortgage. It is the same for all customers on this type of mortgage so Mr S isn't being treated any differently from other customers in the same position.

Mr S would have been able to keep the mortgage on the rate he took out in 2008, a rate of 1.69% above Bank of Scotland Base Rate, but a switch to another rate means a new mortgage. BOS only offers new mortgages through H, and so BOS did nothing wrong in directing Mr S to speak to H about this.

### **My final decision**

My final decision is that I don't uphold this complaint.

This final decision concludes the Financial Ombudsman Service's review of this complaint. This means that we are unable to consider the complaint any further, nor enter into any discussion about it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 8 July 2024.

Jan O'Leary

**Ombudsman**