

## **The complaint**

Ms C's complaint relates to a mortgage she has with Bank of Scotland plc trading as Intelligent Finance (BoS). She is unhappy that BoS didn't remove her ex-husband from the mortgage on the numerous occasions she asked for it to be done. Nor does she think the information she was given about the process was adequate and she doesn't think BoS has provided her with appropriate support.

In settlement of the complaint Ms C wants BoS to provide its consent for her ex-husband to be removed from the mortgage and title deeds. She also wants it to remove a charging order from its records and apologise for the stress it has caused her.

## **What happened**

In 2005 Ms C and her ex-husband split up. Shortly thereafter the joint mortgage fell into arrears. It was subsequently agreed that Ms C would pay the contractual monthly payment plus £20 in order to clear the arrears on the account.

In 2007 Ms C's was finalised. The financial settlement ordered by the Court required Ms C's ex-husband to transfer his legal and beneficial interest in the mortgaged property to Ms C. No mention of what should happen to the mortgage was made.

Ms C's solicitors first wrote to BoS in February 2007 about having her ex-husband removed from the mortgage. The solicitors were told that BoS required a written instruction from both mortgagors before any changes could be made. It was confirmed that Ms C's solicitors would make the necessary arrangements. While BoS chased the solicitors for the required document, it was not provided. Ms C was told separately by BoS that it could not change the mortgage into her sole name without her ex-husband's written authority.

In August 2008 a charging order that had been placed against the property was discharged and an interim charging order dismissed. The order was removed from the property title shortly thereafter due to the instructions of the solicitors acting on behalf of the business the debt was owed to. That business was not BoS.

In August 2009 Ms C's solicitors wrote to BoS again and asked for the necessary paperwork for a transfer of equity application to have Ms C's ex-husband removed from the title deeds. Included with this letter was a document signed by both Ms C and her ex-husband. However, its contents were not what BoS had said was needed the previous year – it was a joint authority for the paperwork needed for an application to be sent to Ms C. It did not state that Ms C's ex-husband consented to being removed from the mortgage. BoS informed the solicitors that it would not allow the mortgage to be changed into Ms C's sole name as it was in arrears.

In October 2010 BoS offered to capitalise the remaining arrears as Ms C had been maintaining the monthly contractual payments and the additional £20 per month towards the arrears. Ms C didn't accept the offer. During this process, BoS reminded Ms C that it needed her ex-husband's authority to remove him from the mortgage.

In January 2012 Ms C contacted BoS again about removing her ex-husband from the mortgage. She was at that time told she needed to make an application for a new mortgage in her sole name, but she would need to be clear of arrears for six months first. Ms C raised a complaint about BoS not being willing to remove her ex-husband from the mortgage. BoS upheld the complaint and paid Ms C £100 compensation. Due to the passage of time, it is not known why BoS paid Ms C the compensation.

Ms C raised the issue again in April 2014 when she was close to clearing the arrears on the mortgage. She asked BoS to confirm in writing that once she had cleared the arrears and paid the mortgage for six months, it would remove her ex-husband from the mortgage. BoS said it would not guarantee to do so and explained its process again. The process to remove a mortgagor was also confirmed in writing.

Ms C has told us that following clearing the arrears on the mortgage, she received correspondence addressed to just her, rather than jointly to her and her ex-husband. She has explained that at this point she assumed this was because BoS had removed him from the mortgage.

Ms C didn't contact BoS again until August 2022. At that time she asked for details of the mortgage balance and for confirmation of whether the mortgage was in her sole name. It was confirmed that it was not. Ms C complained.

BoS responded to Ms C's complaint in a letter of 12 October 2022. In relation to the removal of the joint mortgagor, it said it had explained the process to Ms C's solicitors and also made the solicitors aware that before this could be done, Ms C would need to pay the monthly mortgage payments, plus an additional amount towards the arrears, for six consecutive months. BoS also said that as its process for removing a party altered over time, it kept Ms C up to date with the changes. BoS informed Ms C that it would not now allow the joint mortgagor to be removed from the mortgage as there was less than three years left of the term. It was also confirmed that removal of the joint mortgagor from the title was a legal matter and Ms C would need to appoint solicitors to deal with that process.

Ms C was not satisfied with BoS' response and referred her complaint to this Service. When she did so, she said that she hadn't understood the process for having her ex-husband removed from the mortgage. She also told us she had sent to BoS her ex-husband's signed consent to the mortgage being transferred into her sole name. Ms C also said that the charging order that was dismissed in 2008, was not removed from the mortgage until 2023 because BoS needed to deal with its removal from the title deeds, which it refused to do. Ms C also raised an additional complaint point – that BoS had ignored a recent request for the term of the mortgage to be extended by a year to allow us to complete our assessment of her complaint.

BoS confirmed that the charging order Ms C had referenced in her complaint had been to do with lending by another bank. As such, it was that bank's responsibility to have the charging order removed from the title deeds and to inform BoS to remove the charging order from its records. The other bank did not do so. BoS confirmed it had checked the title deeds for Ms C's property and as the other bank had removed the charging order, BoS had changed its records to reflect the removal.

One of our Investigators considered the complaint and recommended that it be upheld. She considered that BoS should have removed the other mortgagor from the mortgage when she reverted to it in 2022. In addition, the Investigator recommended that BoS pay Ms C £300 for the upset and inconvenience its handling of the matter had caused her. It was confirmed that the charging order had been removed from BoS' records. The Investigator didn't comment on the matter of the term extension Ms C had mentioned, as it was a separate issue and had

not formed part of the complaint she had raised with us. Subsequently, we referred this matter to BoS as a new complaint issue that needed to be addressed.

BoS confirmed that it accepted the Investigator's recommendation.

Ms C accepted the Investigator's conclusion about the removal of her ex-husband from the mortgage. However, she didn't think £300 compensation was enough. She reiterated that she recollected having been told that six months after the arrears were cleared from the mortgage her ex-husband would be removed from the account. She highlighted that her solicitors were told in 2007 that all that was needed for him to be removed from the account was a signed letter with both of their consent to that happening and the arrears to have been cleared. Ms C said BoS was provided with the consent in 2008, so she considered it had been reasonable that she believed he had been removed from the mortgage in 2014. Ms C highlighted that it took years for BoS to tell her that this information had been wrong. She said this had impacted her financial future as:

- going forward she will only be able to obtain a mortgage with a term of 15 years, but had BoS removed her ex-husband when she thought it had following the arrears having been paid off, she could have re-mortgaged over a term of 25 years;
- she could have sold her house '*years ago*' but had been prevented from doing so because of BoS' actions. She said she had been trying to move since 2014 when an elderly relative's health deteriorated;
- had BoS removed the charging order in 2008 she could have entered into a debt management plan which would have seen her debts written off within five years. As she still had unsecured debts, her options for future mortgages would be impacted;
- she'd had to get a signed affidavit signed by her ex-husband, which had caused great conflict and took time to put in place, only for BoS to refuse to remove him from the mortgage. Ms C considers this meant the time, stress and costs involved were pointless and unnecessary;
- she only found out about her ex-husband not having been removed from the mortgage until 2022, which has left her having to sort everything out at the eleventh hour; and
- the delay in her finding out about her ex-husband still being on the deeds has meant that she's had to go back to Court to get the documentation required by the Land Registry completed, with the associated costs.

The Investigator commented further on the merits of the complaint, but she was not persuaded to change her conclusions. She also reiterated that we could not consider the earlier complaint Ms C had made about this issue. Furthermore, it was explained that it was unlikely that we would be able to consider any complaints made about events not previously complained about, but which had taken place more than six years earlier. That said, even if we could consider such issues, the complaint would need to be made to BoS in the first instance.

Ms C responded by saying that she considered all of the issues from 2007 should be considered as she was not aware of the cause for complaint until 2022. She also said that, having looked at our website, she had been expecting a compensation payment above £500.

As agreement couldn't be reached, it was decided that the complaint should be referred to an Ombudsman for consideration.

### **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.

Initially I would confirm the scope of the complaint I am considering here. From BoS' records, Ms C previously complained about it not being willing to remove her ex-husband from the mortgage in 2012. As the Investigator confirmed, there are time limits in our rules that affect what complaints we can consider. Ms C contacted us for the first time in April 2023. This means that the previous complaint and any interactions Ms C had with BoS before that about removing her ex-husband from the mortgage would not fall within our remit.

In addition, the new complaint issue Ms C raised during the course of our investigation into this complaint, is not something that will be addressed in this decision. As the Investigator explained, before we can become involved with a complaint, the responsible business has to be given the opportunity to resolve it. If Ms C is unhappy with the response to that complaint, she could ask us to consider it, but it would be under a separate complaint reference.

That said, both parties accepted the Investigator's conclusion that BoS should remove Ms C's ex-husband from the mortgage, so I don't need to comment on that issue as it has been agreed. What I need to consider is the amount of compensation it would be appropriate for BoS to pay Ms C. In relation to that, as I have detailed above, I can only consider what's happened since Ms C's last complaint about this issue. That would mean in practical terms what happened in April 2014 and afterwards.

At that time, Ms C was told by BoS that her ex-husband couldn't be removed from the mortgage until she had maintained the mortgage for at least six months after the arrears had been cleared. BoS went on to tell Ms C what its process was, for after the arrears were cleared. I have seen nothing to indicate that Ms C was told her ex-husband would automatically be removed from the mortgage, rather than her having to follow BoS' normal process.

At the point that Ms C could have approached BoS to remove her ex-husband from the mortgage, she didn't do so. She's explained this is because she had received letters that were addressed to just her, rather than her and her ex-husband, and so she had assumed he had been removed from the mortgage. I can't hold BoS responsible for any consequences of Ms C having made that assumption, as BoS had been clear about the process it expected her to go through. It would also seem that Ms C didn't experience any upset or inconvenience during the period from 2014 until 2022 when she contacted BoS again, as she believed she was in the position she wanted to be in.

It was not until August 2022 that Ms C contacted BoS again. It was at this point she discovered her mistake and that her ex-husband was still on the mortgage. I am sure this was an unpleasant surprise for her, but not one that BoS was responsible for. As such, I can only award compensation for any upset or inconvenience Ms C suffered from August 2022. I think BoS could have handled things better when Ms C contacted it again and, having considered the detail of what happened, I am in agreement with the Investigator that an appropriate amount of compensation would be £300. BoS has confirmed that it has already paid this sum to Ms C, so it doesn't need to do anything more in this regard.

Ms C has said that she can now only obtain a mortgage with a term of 15 years, because of her age, and she believes that had her ex-husband been removed from the mortgage when the arrears were cleared in 2014/15, she could have arranged a 25-year mortgage. I accept what Ms C has said about the terms that would have been available to her at different times. However, I have seen no evidence that following the arrears being cleared, and her assumption that her ex-husband had been removed from the mortgage, Ms C tried re mortgaging. So the complaint point is a hypothetical one, and I will not speculate on what

might or might not have happened had Ms C acted differently. The same principle applies to Ms C's comments about the fact she had been wanting to sell her home since 2014 – there is no evidence that she tried to do so, as if she had, it is likely she would have become aware that her ex-husband had not been removed from the mortgage before 2022.

In relation to what Ms C had to do to arrange for her ex-husband to be removed from the title deeds, again I can't hold BoS responsible. Ms C was told throughout her interactions with BoS what it needed her to do in order to remove him from the *mortgage*. While that changed slightly over time, she was made aware of the changes to the process. I also feel that I should highlight that at no point did Ms C or her solicitors provide what BoS needed to be able to comply with its process. Furthermore, her ex-husband's removal from the title deeds was a separate matter to his removal from the mortgage. While BoS would have had to consent to him being removed from the title, the process, including making sure that it had obtained his signature on any necessary documents, was something that Ms C's solicitors should have handled.

Finally, I move to the matter of the charging order. The charging order didn't relate to a debt held by BoS and so it had no control over its application or removal from the title deeds. When the order was attached, BoS would have been told about it and, it would have made a note of it on its records in the event it sold the property at some point in the future. However, that would not have had any affect on Ms C unless and until BoS had needed to sell the property itself. I would also confirm that when the charging order was removed from the title, the party the debt was owed to should have also informed BoS of the discharge. This didn't happen and so BoS wasn't made aware until Ms C raised the issue in her complaint.

### **My final decision**

My final decision is that this complaint is upheld in part. In full and final settlement of the complaint Bank of Scotland Plc trading as Intelligent Finance should remove Ms C's ex husband from the mortgage, if it has not already done so.

Under the rules of the Financial Ombudsman Service, I am required to ask Ms C to accept or reject my decision before 25 July 2024.

Derry Baxter

**Ombudsman**