

The complaint

Miss P complains that Bank of Scotland plc didn't offer her a new interest rate product on her mortgage.

What happened

Miss P took out an interest only mortgage with Bank of Scotland in 2008 after receiving advice from a mortgage broker. The mortgage was taken on a fixed interest rate of 6.39% until 31 May 2011. After that date the mortgage reverted to the standard variable rate (SVR). The mortgage was agreed on a self-certification basis, which meant Miss P didn't need to provide any evidence of her income before the mortgage was approved.

Miss P says she called Bank of Scotland in 2018 and 2021 to ask about switching her mortgage to repayment, or taking out a lower interest rate product. She says she was told that because of her income at the time, nothing was available for her.

In 2023, after discussing her situation with a financial adviser, Miss P contacted Bank of Scotland again about taking out a new interest rate, and a new rate of 5.56% fixed until 30 April 2026 was agreed.

Miss P complained in March 2024. She was unhappy that she hadn't been given a new rate sooner when she'd asked over the years. Bank of Scotland didn't uphold that part of the complaint, but it did offer Miss P £30 to apologise for a customer service error that occurred during her mortgage appointments.

Miss P brought her complaint to our service. As well as her concerns about the interest rate, she was also unhappy about how the mortgage had been lent in the first place. She recognised she'd been advised to take the mortgage by a broker, but that broker was no longer in business. She said Bank of Scotland still shouldn't have lent the mortgage to her when she had no way of repaying it at the end of the term.

Bank of Scotland didn't give our service consent to consider all of Miss P's complaint. It said Miss P's concerns about the sale of the mortgage had been brought outside the relevant time limits. It also said Miss P's concerns about the interest rate charged more than six years before the complaint was made had been brought out of time too.

Our Investigator looked into things and agreed Miss P's complaint about the sale of the mortgage had been brought too late for us to be able to look at it. She also said our service could only consider Miss P's complaint about Bank of Scotland declining her requests for a new rate during the last six years, as a complaint about the period before that had been made too late. She didn't think the complaint had been made late as a result of exceptional circumstances. The Investigator didn't think the complaint should be upheld.

Miss P said she was never told that the mortgage would go on to the SVR after the fixed rate ended, and she was never given any information to suggest she'd be able to change her interest rate during the remainder of the term.

I issued a decision which said we couldn't consider Miss P's complaint about the sale of the mortgage as it had been made out of time. I said we could only consider Miss P's complaint about Bank of Scotland declining her requests for a new interest rate product from March 2018 onwards. I will now issue my decision on that part of her complaint.

My provisional decision

I issued a provisional decision in which I said:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

There was no regulatory requirement or expectation for Bank of Scotland to pro-actively reach out to individual borrowers on the SVR and invite them to apply for a new product at the relevant time being complained about. If Miss P wanted to take out a new product on her mortgage, she needed to contact the bank and ask for one.

But Miss P did call Bank of Scotland in September 2018. Bank of Scotland has been able to provide part of the call recording for that conversation, but unfortunately it doesn't cover everything that was discussed. Miss P called in response to Bank of Scotland's letter it had sent her asking her to review her repayment strategy for the mortgage to ensure it was on track. She told it that when the term ended in 2033, she planned to use the proceeds of sale of one of her father's properties to repay the balance. She also said she'd been doing renovation works recently but when she'd finished paying for those, she'd be able to make overpayments on the mortgage. Miss P also asked about whether there were any other interest rate products available to her. At that point the call is transferred to another colleague, and Bank of Scotland hasn't been able to provide the recording of that part of the call.

But we do have Miss P's recollections of the conversation, and Bank of Scotland has also said what it thinks could have happened in that call based on the circumstances at the time. Miss P says she was told that there weren't any interest rate products available to her because of her income. Bank of Scotland has said that there was a product Miss P would have been eligible for at the time, but the rate was higher than the SVR she was paying. Bank of Scotland has given our service details of the product it says it would have offered to Miss P and explained that it was a specific product available for borrowers who had taken their mortgage out on a self-certification basis. The fixed rate available was 6.59%, whereas the SVR Miss P was paying at the time was 5.2%.

Based on all the information and evidence available to me, I think what's most likely to have happened in that call, is that Bank of Scotland explained to Miss P that because of the type of mortgage Miss P had, the only rate available to her was higher than what she was already paying. As Miss P's objective in this call was to reduce the amount of interest she was paying so she could start overpaying towards the capital balance, I think it's likely she decided not to take out the higher rate as it wouldn't have benefitted her at the time.

Was it fair that Bank of Scotland didn't offer Miss P a lower rate that would have been available to other customers?

When considering whether Bank of Scotland has acted fairly, I need to consider the relevant rules, guidance, law and industry practice. The Financial Conduct Authority (FCA) has set out an evidential provision in the Mortgage Conduct of Business handbook (MCOB) in relation to the fair treatment of borrowers who are unable to 'shop around' and move their mortgage to another lender. I've set this out below, as I think it's relevant when deciding whether Bank of Scotland has treated Miss P fairly.

MCOB 11.8.1 E says:

“Where a customer is unable to:

(1) enter into a new regulated mortgage contract or home purchase plan or vary the terms of an existing regulated mortgage contract or home purchase plan with the existing mortgage lender or home purchase provider; or

(2) enter into a new regulated mortgage contract or home purchase plan with a new mortgage lender or home purchase provider;

the existing mortgage lender or home purchase provider should not (for example, by offering less favourable interest rates or other terms) take advantage of the customer's situation or treat the customer any less favourably than it would treat other customers with similar characteristics.

To do so may be relied on as tending to show contravention of Principle 6 (Customers' interests).”

Principle 6 says:

“A firm must pay due regard to the interests of its customers and treat them fairly.”

I think this is relevant to Miss P's complaint. I'll explain why.

Technically, Miss P was able to vary her existing mortgage with Bank of Scotland as she was able to take out its self-certified product – albeit the interest rate on that product was higher than the bank's SVR at the time. However, I'm persuaded, on balance, that Miss P was unable to enter into a new mortgage contract with a new lender. Whilst she did have a plan to repay her interest only mortgage at the end of the term with help from her family, based on my knowledge of the industry at that time, the regulations that were in place to ensure lenders were lending responsibly, and what that meant for lending criteria across the market, I think Miss P would have struggled to re-mortgage to another lender. Her repayment strategy would not have been considered acceptable since the mortgage rules changed in 2014.

Miss P had spoken to her financial adviser about her situation in 2018 and they had encouraged her to speak to Bank of Scotland about lowering the interest rate charged on the mortgage. Based on what Miss P has told our service, I'm persuaded she had pro-actively sought advice to ensure she was in the best financial position she could be. I think if she had been able to re-mortgage, she would have done so. So I think sub-point (2) applies above – even if Miss P could access a new product with Bank of Scotland, she comes within 11.8.1 because she had no options on the wider market. 11.8.1 does not require both (1) and (2) to be satisfied before it is relevant to considering whether a borrower has been fairly treated, it requires either to be satisfied. Miss P satisfied 11.8.1 (2).

The rate Bank of Scotland made available to Miss P was higher than the rates it offered to its non self-certified borrowers (i.e. those borrowers who had provided proof of their income when the mortgage was taken out). Based on what I know about Bank of Scotland's policy as it was at the time, I don't think it would have offered Miss P the lower rates until she provided proof of her income (although it's not clear if she was even given this opportunity). Whereas I'm aware non self-certified borrowers would have been granted access to a lower rate without the need to pass an affordability assessment, or provide proof of their current income. Though proof would have been provided when those other customers took their

mortgages out – in some cases many years before when their circumstances were different – not when applying for a rate later on. Non self-certified Bank of Scotland borrowers were not required to have their income assessed or to prove it when applying for a new rate.

11.8.1 E does not require all customers to be treated the same. But it does, in my view, show that there may be unfairness where a borrower who is unable to move to another lender is treated less favourably than a borrower who shares similar characteristics, “for example, by offering less favourable interest rates or other terms”. Where the lender offers less favourable products to some customers, it may give rise to the possibility of unfair outcomes in some situations. 11.8.1 E suggests that the regulator considered there to be the potential for unfairness where borrowers are unable to shop around.

I’ve thought about whether Miss P, who originally became Bank of Scotland’s customer as a self-certified borrower, could – at the time of the conversation in 2018 - be considered as having similar characteristics as a different borrower with Bank of Scotland, who had originally provided proof of income and been offered a lower interest rate product. I think this is the central question I need to decide.

At the time of the conversation in 2018, Miss P had an interest only mortgage and was up to date with her payments. I think it’s likely that there were other Bank of Scotland borrowers whose mortgages were in much the same position as Miss P’s mortgage at the time, and whose circumstances at that time would have been substantially similar. A significant amount of time had elapsed since 2008 when this mortgage was taken out, so I’ve considered whether the way in which the mortgage was originally taken out (i.e. self-certification vs proof of income) can properly be said to be a ‘characteristic’ relevant to the risk Miss P presented in 2018.

Bank of Scotland would only offer Miss P a product from the non self-certified range if she provided proof of her income, like its other borrowers had. But I’m not persuaded that how the mortgage was initially taken out in 2008 was a relevant consideration or ‘characteristic’ in 2018. Whilst she hadn’t proved her income, Miss P had met Bank of Scotland’s eligibility and lending criteria as a new borrower in 2008. But, as these criteria changed over time, following the introduction of tighter regulation and more stringent checks – Miss P did not meet the new borrower criteria for other lenders by 2018.

If a non self-certified Bank of Scotland borrower wanted to apply for a new interest rate product in 2018, they would not have been required to pass an affordability assessment. That means that they were not required to meet the bank’s new lending criteria in order to access the cheaper rates. I think it’s likely that there were other Bank of Scotland borrowers who, although they’d passed the lending criteria in 2008, would have been unable to pass the new, stricter lending criteria that existed in 2018. And just because they chose to prove their income in 2008, doesn’t mean they had the same income, or circumstances relevant to the risk they presented in 2018, as they did in 2008. In fact, I think that’s very unlikely. But they wouldn’t have been prevented from accessing the cheaper rates. Miss P has therefore been treated less favourably than Bank of Scotland’s non self-certified customers because of the way her mortgage was approved in 2008. In my view, when considering 11.8.1 E, I think the characteristics of Miss P’s mortgage in 2018 are what’s relevant.

When Miss P asked about new interest rate products in 2018, I think Bank of Scotland ought to have looked into her situation, and considered whether or not MCOB 11.8.1 E might have been relevant, for example as here because she was unable to move to another lender. This doesn’t appear to have happened.

Miss P was treated differently from Bank of Scotland’s non self-certified borrowers as

I'm satisfied that she was likely to have been required to meet higher standards than other customers who at that time had similar characteristics in order to access the same rates. I'm not satisfied being 'self-certified' several years previously constitutes a characteristic in itself at the time the application was made. I'm satisfied that a non self-certified customer with similar characteristics at the time – not in arrears, with a similar loan to value, and with the same outcome of any affordability assessment – would have been offered a more favourable rate than Miss P was. As a result, considering all the circumstances, I think Bank of Scotland has treated Miss P unfairly.

In my view, it would have been fair and reasonable for Bank of Scotland, taking into account 11.8.1 E and all the circumstances, to have considered Miss P's circumstances, noted she was unable to move to another lender, and offered her a rate which was not less favourable than would have been offered to a non self-certified customer with similar characteristics. I am satisfied that in the circumstances it was not fair to treat Miss P less favourably than those other customers, at least some of whom would have been at a similar or possibly even a greater risk of defaulting on their mortgage, and yet were offered "cheaper" rates on their interest only mortgages without the need to pass a new customer assessment.

From the evidence provided to me, it seems that Bank of Scotland didn't take any account of 11.8.1 E, or consider whether it applied in Miss P's situation and whether as a result there were any particular requirements of fairness that applied to it. Had it done so, a fair assessment would have been to offer her no less favourable rates than its other borrowers with similar characteristics. As a result, I provisionally think this complaint should be upheld, subject to any further comments or evidence provided by either party.

Putting things right

I think in September 2018 Bank of Scotland should have considered Miss P's circumstances in the round and offered her a rate no less favourable than would have been offered to customers from its non self-certified product range. We haven't been provided with information about the interest rate products that were available for Miss P's loan to value at the time. So Bank of Scotland will need to provide this information in response to my provisional decision.

In order to put things right, I think Bank of Scotland should re-work Miss P's mortgage account as if the product Miss P selects from the available options had been applied to the mortgage in October 2018 (the following month after Miss P called) and offer her the option of either:

- Applying the lower rate (if it was lower) to the mortgage account which will have resulted in overpayments and a reduction of the balance. Or,
- Receiving any overpayments made as a result of the difference in the interest rates refunded to her in cash, as well as a payment of 8% simple interest* calculated from the date of each overpayment to the date of settlement.

If the rate Miss P would have selected in 2018 included a product fee, the fee can be deducted from the redress payment. And when the rate selected in 2018 would have expired, a further new rate to follow on should also be selected to form part of the re-work of the mortgage. This should continue until Miss P was able to successfully arrange a new product in 2023.

Miss P has explained that the high interest rate that she's had to pay on this mortgage has caused huge amounts of stress over the years. She's explained she's had to use credit cards to keep up with the monthly payments at times and has worried about losing the family

home. As a result, I'm satisfied Bank of Scotland should also pay Miss P £500 for the distress and inconvenience caused.

*Interest is at the rate of 8% a year simple. If Bank of Scotland considers that it's required by HM Revenue & Customs to take off income tax from that interest, it should tell Miss P how much it's taken off. It should also give her a certificate showing this if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate."

Responses to my provisional decision

Miss P didn't provide any further comments or information.

Bank of Scotland agreed to put things right for Miss P as suggested in my provisional decision, and confirmed the lowest interest rate products Miss P would have been eligible for at the relevant times were as follows:

1 October 2018 – fixed rate of 2.79% until 31 January 2021

1 February 2021 – fixed rate of 1.47% until 31 December 2023, when Miss P took out her new rate of 5.56% which applied from 1 January 2024.

Bank of Scotland said there were no product fees that need to be deducted from the overpayments Miss P made. It also agreed to pay Miss P £500 compensation for the distress and inconvenience caused.

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.

As Miss P hasn't provided any further comments, and Bank of Scotland has agreed to put things right as I suggested, I see no reason to depart from the outcome reached in my provisional decision.

I therefore adopt the reasoning set out in my provisional decision above in this final decision.

Putting things right

In order to put things right, Bank of Scotland should re-work Miss P's mortgage account as if the interest rate products set out above had been applied to the mortgage at the relevant times. If Miss P accepts this final decision, she will need to indicate whether she would rather Bank of Scotland:

- Use the overpayments Miss P has made to the mortgage each month to reduce the outstanding balance. Or;
- Refund any overpayments made as a result of the difference in the interest rates refunded to her in cash, as well as a payment of 8% simple interest* calculated from the date of each overpayment to the date of settlement.

Bank of Scotland plc will also need to pay Miss P £500 directly for the distress and inconvenience caused.

*Interest is at the rate of 8% a year simple. If Bank of Scotland considers that it's required by HM Revenue & Customs to take off income tax from that interest, it should tell Miss P how much it's taken off. It should also give her a certificate showing this if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

Considering everything, for the reasons I've explained, I uphold this complaint and instruct Bank of Scotland plc to put things right as set out above.,

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss P to accept or reject my decision before 23 December 2024.

Kathryn Billings
Ombudsman