

The complaint

Mr and Mrs S's complaint arises out of their mortgage account with Bank of Scotland PLC (referred to here as BOS). Mrs S, who has dealt with the complaint throughout, is unhappy that BOS won't agree to a term extension on the interest-only part of the mortgage without carrying out an affordability assessment.

What happened

Mr and Mrs S have a mortgage with BOS originally taken out in December 2018. It is part capital repayment, part interest-only.

The mortgage had previously been with another lender within the BOS group, but that lender had stopped offering residential mortgages in 2009. As a result, when a term extension and further advance were requested in 2018, this had to be a new mortgage through BOS.

The original request in 2018 was to extend the mortgage term to the maximum age of 80 (at the time, Mr S was 58 and Mrs S was 57), so they wanted an extension to run until 2040. They also wanted to borrow additional funds. BOS wasn't able to agree to this, on the basis of affordability, because Mr and Mrs S said their mortgage was being paid by their children, not by them. Underwriters also declined to extend the mortgage term to 2040.

Mr and Mrs S told BOS that the repayment vehicle for the interest-only part of the mortgage would be the sale of a buy-to-let (BTL) property, but this would only have covered the interest-only part of the mortgage. Whilst BOS couldn't extend the term of the interest-only part of the mortgage in 2018, it did agree to extend the repayment part of the mortgage by an additional four years in order to reduce the monthly repayments.

The mortgage is in two parts:

Part One is interest only loan of about £78,500. It was on a fixed interest rate product until 31 July 2024. It has about 14 months left to run on the term, expiring on 31 January 2026.

Part Two is a capital repayment loan with about £92,000 outstanding. It is on a fixed rate until 31 July 2027, and has just over five years left to run on the term, to 31 January 2030.

A product switch was taken out in 2022. No affordability assessment was needed for this. At this time there was sufficient time left on the capital repayment mortgage for a five-year fixed rate to be applied. But this couldn't be applied to the interest-only part of the mortgage, because this would have resulted in an early repayment charge (ERC) becoming due when the interest-only balance was due to be repaid.

In 2024 Mrs S contacted BOS to ask for a new interest rate product for Part One of the mortgage. However, the minimum fixed rate BOS offers is two years, and there was less than that left on Part One of the mortgage. As a result, Mrs S asked for a term extension on Part One of the mortgage so it would end at the same time as Part Two.

BOS explained that this would require an assessment of affordability. However, Mrs S said that her and Mr S's adult children paid the mortgage and all the household bills, and that the mortgage had originally been approved on the basis that the children would be paying the mortgage.

BOS suggested that a potential solution would be for the children to be added to the mortgage (and the property title). Mrs S said this wasn't something they wanted, as her children would want to buy their own properties and so couldn't be on this mortgage as well. Mrs S said her children were struggling to pay the mortgage and all the bills, including Mr and Mrs S's car loan.

Whilst acknowledging that Mr S is vulnerable due to health issues, BOS explained that it wasn't able to agree either to a term extension or a new interest rate product, based on what Mrs S had said. BOS said that the original mortgage would have been based on the borrower's affordability, not the children's, and so any new application would also be considered on that basis, unless the children were added to the mortgage.

Mr and Mrs S complained that they'd not been treated fairly. BOS didn't uphold the complaint, explaining why it wasn't able to agree to a term extension on the interest-only part of the mortgage. BOS signposted Mr and Mrs S to independent financial advice, to explore other options that might be available to them, for example, lifetime equity release.

Mr and Mrs S escalated their complaint to the Financial Ombudsman Service. An Investigator looked at what had happened but didn't think BOS had acted unfairly. He began by explaining that the complaint is about what happened in 2024, not earlier events in 2018 and 2022.

The Investigator was satisfied, in relation to the request for a new interest rate product on Part One of the mortgage, that the remaining term was too short, and so BOS hadn't done anything wrong in declining a request for a new product.

The Investigator also explained that a term extension was a material change to the mortgage terms that entitled BOS to carry out an affordability assessment. And whilst BOS had the option to disregard an affordability assessment, the Investigator didn't think the bank had acted unfairly in explaining that it would need to consider affordability. That's because, from what Mrs S had told BOS, it would have been necessary to have added the children to the mortgage (and property title) if their contributions were to be taken into account.

Mrs S disagreed with the Investigator's findings. She said that she'd never been made aware that BOS's minimum product term was two years. Mrs S also said that the children had always paid the mortgage.

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.

The complaint I've been asked by Mr and Mrs S to consider is about what happened in 2024 when they asked for a new interest rate product, and then a term extension, for Part One of their mortgage.

New interest rate product: Mrs S is dissatisfied that BOS wasn't able to offer a new interest rate product for Part One of the mortgage, because the length of the remaining term was under two years. Mrs S says that BOS had never told her about this. However, it is industry standard that fixed rate products are generally for a minimum term of two years. I'm unable to find BOS at fault for not offering an interest rate product that runs for less than two years, so I don't uphold this part of the complaint.

Term extension: There are regulations in place that have flowed from the Mortgage Market Review (MMR) carried out by the Financial Conduct Authority (FCA) which took place after the financial crash in 2008. This has led to a series of major changes, effective since 2014, in the way residential mortgages are regulated. MMR regulations have brought about requirements for stricter lending assessments, aimed at protecting consumers and encouraging mortgage lenders to act more responsibly.

The FCA recognised though that existing borrowers who wanted to make changes to their mortgages might have difficulties with this if they had passed tests under the old rules but wouldn't under the new ones. So, it introduced certain rules to address this. The rules are contained in the Mortgages and Home Finance: Conduct of Business Sourcebook (MCOB).

MCOB says a lender doesn't have to carry out an affordability assessment if a borrower wants to vary or replace an existing mortgage and there is no additional borrowing (other than for product fees) and no change to the terms of the mortgage that is material to affordability

There are also transitional arrangements which say that a lender need not carry out an affordability assessment if:

- the borrower has an existing mortgage taken out before 26 April 2014, and is applying to vary that mortgage or replace it with a new one;
- the application wouldn't involve any additional borrowing except for essential repairs to the property, or to add product fees to the balance;
- there's been no further borrowing (with some exceptions) since 26 April 2014; and
- the proposed transaction is in the borrower's best interests.

So, under this rule, even where a change material to the affordability of the mortgage takes place, the lender can, *if it chooses*, waive an affordability assessment. If the lender decides to carry out an affordability assessment, it shouldn't use that as a reason to decline an application if allowing the application would otherwise be in the customer's best interests. But the lender can take the assessment into account as part of its consideration of best interests.

This means there are two routes that an application for an existing borrower can go down. If there's no change to the terms of the mortgage contract material to affordability, there's no obligation to carry out an affordability assessment at all. And if there is a change to the terms of the mortgage contract material to affordability, a lender could still decide to allow an application without an affordability assessment if doing so would otherwise be in the borrower's best interests.

A term extension on a mortgage is a material change to affordability, and so BOS is entitled to carry out an affordability assessment, although it has the option to dispense with this, if it considers it in Mr and Mrs S's best interests to do so.

Here I'm not persuaded BOS has acted unfairly in explaining to Mr and Mrs S that, if it was being asked to consider affordability based on the mortgage and all household bills being paid by Mr and Mrs S's children, then they would need to be a party to the mortgage. (They would also need to be added to the title deeds of the property.)

I know this isn't what Mr and Mrs S want to do. They've explained that their children want to buy their own properties. But I don't think it's an unreasonable position for BOS to take, given the circumstances.

To be clear, an application for a term extension hasn't been made, and BOS hasn't given a decision on it. So Mr and Mrs S are free to apply for a term extension, and BOS will need to give fair consideration to this, in line with its regulatory obligations and lending and affordability criteria. BOS would also need to consider Mr S's vulnerabilities, and take into account his and Mrs S's best interests. But given the total circumstances, and the fact that the mortgage is being paid by third parties who aren't on the account, BOS would also be entitled to take that into consideration too.

Other matters: The fixed-rate product taken out on Part One of the mortgage expired on 31 July 2024. There is therefore no longer any ERC applicable to this part of the mortgage. This brings me to my next point.

Mr and Mrs S told BOS in 2018 that they had a repayment strategy for Part One – the sale of a BTL property. I can see that on 22 April 2022 BOS was told that the money from the sale of the BTL property was in one of their children's accounts.

Mr and Mrs S can pay off Part One of the mortgage at any time, as they won't incur an ERC. This would reduce their mortgage by about £76,000, leaving about another £92,000 on a repayment basis. I think it's likely that the interest being charged on Part One at the reversionary rate is much higher than the interest being earned on the money from the sale of the BTL property, so it might make economic sense for Mr and Mrs S to consider paying off the interest-only part of the mortgage sooner rather than later.

This would then leave Mr and Mrs S with only the capital repayment part of the mortgage, which is on a fixed rate until 31 July 2027. I appreciate that, as this is on a repayment basis over a relatively short term, the monthly repayments are fairly high, about £1,190.

Mr and Mrs S are insistent that they don't want to sell the property, which has been the family home for many years. I completely understand. But I don't think BOS has treated them unfairly in not acceding to their requests for either a new interest rate or a term extension for Part One, given that the mortgage is being paid by third parties who are under no contractual obligation to do so.

I have no doubt that Mr and Mrs S are certain that they can rely on their children to continue to support them, but, as Mrs S told BOS, the children are also intending to purchase their own properties too, and if that happened and those children were no longer able to continue to pay Mr and Mrs S's mortgage and bills, it could result in Mr and Mrs S's position significantly worsening.

For all these reasons, I think it would be sensible for Mr and Mrs S to consult an independent financial adviser to discuss their options. I see BOS has already provided them with details on how to locate one in their area.

I know this isn't the outcome Mr and Mrs S were hoping for. But after careful consideration of everything Mrs S and BOS have said, I'm unable to find BOS has done anything wrong.

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 and Mrs S to accept or reject my decision before 9 December 2024.

Jan O'Leary
Ombudsman