

The complaint

Mr and Mrs W's complaint is about their mortgage account with Bank of Scotland PLC trading as Intelligent Finance and referred to here as BOS and IF where appropriate.

Mr and Mrs W say that, after their interest-only mortgage term expired in 2021, BOS failed to provide appropriate support or assistance, but instead threatened them with repossession of their property.

When the complaint was originally brought to us, Mr and Mrs W said they wanted a term extension to the age of 70, at which point they would take out an equity release mortgage. However, they have now arranged a new mortgage with another lender. Mr and Mrs W say that BOS's actions have caused them considerable stress and upset, for which they would like to be compensated.

What happened

I won't 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 all the details here. In addition, our decisions are published, so it's important I don't include any information that might lead to Mr and Mrs W 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 and Mrs W's interest-only mortgage reached the end of its term in September 2021, when the outstanding capital balance of almost £430,000 was due to be repaid to BOS. Mr and Mrs W made several requests for short extensions of time to repay the capital and put forward proposals for a term extension.

By February 2022 BOS was told that Mr and Mrs W had taken independent financial advice and their only available option would be to remortgage. Mr W explained that his income had been affected by the Pandemic, and as a result, BOS agreed to a 12-month grace period to enable Mr W's income to increase to a level where external lending could be obtained. BOS made Mr and Mrs W aware that the account balance would need to be redeemed before the end of February 2023 to prevent BOS taking legal action.

The mortgage wasn't repaid by February 2023. In December 2023 BOS was told that Mr and Mrs W hadn't been able to arrange refinance elsewhere, and weren't able to sell and move because an elderly relative was living with them.

Mr and Mrs W complained that they were being put under pressure, with the threat of legal action. In its final response letter dated 24 January 2024, BOS explained that it wasn't able to put any further hold on the account.

Mr and Mrs W raised their complaint with our service. An Investigator looked at what had happened, but didn't think the complaint should be upheld. She was satisfied BOS had shown appropriate forbearance, given that it was almost three years since the mortgage term expired.

The Investigator noted that BOS had looked at whether it could offer a new mortgage with another lender in its group (IF being a closed-book lender), and that BOS found this would have been unaffordable.

In the circumstances, the Investigator didn't think BOS had acted unfairly.

Mr and Mrs W disagreed and asked for an Ombudsman to review the complaint. They've made some further points, which I summarise below:

- Whilst they acknowledge the forbearance provided by BOS, the threat of repossession is unreasonable whilst they are looking at viable alternative funding options and continuing to pay the interest on the outstanding balance.
- The fact that IF is a closed book meant they had no option for a product transfer, which all other lenders provide for customers in their circumstances, without the need for an affordability assessment.
- Mr W has suffered severe health issues as a result of the stress of the situation. In addition, there would be “*extreme harm*” caused to their elderly relative if she had to move from the property.
- BOS changed the terms of the mortgage by making IF a closed-book lender, and it will not suffer any financial harm if the term is extended until a repayment solution has been found.
- BOS has acted “*illegally*” by instructing solicitors before a final decision has been issued on their complaint.

On 30 August 2024 Mr and Mrs W confirmed they've found a new lender and will re-mortgage to repay the BOS mortgage. However, they still wish for a final decision on their complaint, because they say BOS has caused “*irreparable harm*” to them.

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 starting point for this complaint is that the mortgage term ended in September 2021, when Mr and Mrs W were expected to repay the capital balance on the account. It's a reasonable expectation on the part of BOS that Mr and Mrs W would, over the course of the mortgage term, have put plans in place for their repayment strategy so that when the end date arrived, they'd be able to pay it off.

However, once it transpired that this wasn't going to happen, BOS agreed to several grace periods to enable Mr and Mrs W to put their repayment strategy in place. I think this was

reasonable in all the circumstances. BOS gave Mr and Mrs W until February 2023 to repay the mortgage.

As a closed book lender, IF wasn't able to offer any new interest rate products. That's a decision the bank is legitimately entitled to make as part of its commercial operations. However, consideration was given to whether a term extension would be affordable, and the conclusion reached was that it would not have been.

There is no automatic entitlement to a term extension, and so, although I've noted what Mr and Mrs W have said about this, I'm satisfied that Mr and Mrs W were never guaranteed a term extension. The fact that IF became a closed book lender in 2014 has no impact on this.

BOS looked at whether a term extension would be affordable, but in the absence of a suitable repayment vehicle, an interest-only extension wasn't possible. Mr and Mrs W didn't meet affordability criteria for a capital repayment term extension either.

Under mortgage regulations, whilst lenders have the option to disregard an affordability assessment where a customer is requesting a material change to an existing mortgage, this isn't compulsory. BOS was therefore entitled to take affordability into consideration, and specifically lending into retirement, after Mr and Mrs W said they wanted a ten-year term extension.

In the circumstances, I'm not persuaded BOS treated Mr and Mrs W unfairly, in relation to the forbearance granted, and in its decision not to grant a term extension. Initially the request made in August 2021 was for a two-year term extension, and Mr and Mrs W have had far longer than that to put their repayment plans in place.

Mr and Mrs W say that it's "*illegal*" for BOS and its solicitors to threaten legal action while a complaint is with our service. I can understand how upsetting this has been, but I don't think BOS has acted unreasonably, given the amount of time that has passed – both since the mortgage term expired in September 2021 and the February 2023 date when Mr and Mrs W said they'd repay the mortgage. I note that Mr W was made aware in February 2024 that if no evidence of repayment was provided, then BOS would instruct solicitors.

I think it is also important to explain here that lenders will generally agree to put recovery action on hold whilst we look at a complaint, but they don't have to and we can't force them to. If the Financial Ombudsman Service had that power it would undermine our impartiality between the parties to a complaint.

It would also create the potential for consumers to use our service to bring complaints with the intention of having any legal action put on hold, thereby obstructing businesses that were trying to take action through the courts to recover money legitimately owed by the consumers. (I will emphasise here that Mr and Mrs W are not in that category.)

In addition, the Mortgage Pre-Action Protocol (full title Pre-Action Protocol for Possession Claims based on Mortgage or Home Purchase Plan Arrears in Respect of Residential Property) does not apply here. The Protocol states that lenders must consider whether to postpone possession action where a complaint has been made to our service.

However, the Protocol only applies to mortgages that are in arrears. It doesn't apply where a mortgage term has reached its end and the entire debt is repayable, because this is considered to be a breach of contract, rather than a claim for possession due to mortgage arrears. In the circumstances, BOS is not precluded from taking action to recover the

outstanding debt on the basis of breach of contract. Given the length of time since the mortgage term ended, I'm not persuaded it was unreasonable for BOS and its solicitors to contact Mr and Mrs W about the possibility of legal action.

I fully acknowledge this has been a stressful time for Mr and Mrs W, and that since the mortgage term expired over three years ago Mr W has had serious health issues. In addition, an elderly relative is now living with Mr and Mrs W, and so I do understand why they don't want to sell the property, notwithstanding the substantial equity available to purchase another property, mortgage-free, if they were to do so. I am glad to see that Mr and Mrs W have been able to arrange a new mortgage with another lender, which will enable them to repay their mortgage to BOS.

However, after careful consideration of all the circumstances, I'm not persuaded BOS has treated Mr and Mrs W unfairly or unreasonably.

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 W to accept or reject my decision before 11 November 2024.

Jan O'Leary
Ombudsman