

The complaint

Mr and Mrs B complain that Bank of Scotland plc has treated them unfairly in relation to the term of their mortgage ending. They specifically say that they've been charged an unfair rate of interest on their mortgage since their fixed rate deal ended in 2016 and they're unhappy that Bank of Scotland is now expecting full repayment of the outstanding capital without agreeing to a further hold on the account.

What happened

In 2006 Mr and Mrs B took a mortgage with Bank of Scotland. They borrowed around £1,550,000 on interest only terms over five years. The mortgage was to be repaid by the sale of the property.

Since taking out the mortgage, Mr and Mrs B have extended its term and taken out further interest rate products. Unfortunately, over the years Mr and Mrs B have had problems meeting the mortgage payments due to ill health and so arrears accrued.

Mr and Mrs B's mortgage term was due to end in the summer of 2017. Their current fixed interest rate ended sooner in 2016.

I can see that in 2017 our service answered two complaints raised by Mr and Mrs B about Bank of Scotland. Our ombudsmen issued final decisions on both complaints.

Mr and Mrs B complained that their mortgage had been mis-sold to them. This complaint wasn't upheld.

Mr and Mrs B also complained that once their fixed interest rate ended in 2016, Bank of Scotland recalculated their payments which caused a dramatic increase to the monthly amount due. This was because the arrears were capitalised on repayment terms over the short remaining period until the end of the mortgage term in 2017. They were also unhappy that Bank of Scotland would not agree to a new fixed interest rate until the end of the mortgage term.

The ombudsman upheld the complaint in part, he thought that Bank of Scotland had unfairly increased Mr and Mrs B's payments. He said that the account should be reworked from 1 February 2016 so that the arrears are repayable on interest only terms and Mr and Mrs B should be paid £600 for the distress and inconvenience caused. The ombudsman didn't agree that Bank of Scotland should offer a new fixed rate that would run beyond the remaining term of the mortgage, as that would mean Mr and Mrs B would incur an early repayment charge (ERC) upon redemption of their mortgage. He also didn't think it was in Mr and Mrs B's best interest to extend the term of the mortgage to accommodate a new fixed interest rate.

Later that year in 2017, Bank of Scotland agreed to extend the term of Mr and Mrs B's mortgage until 31 August 2018. The reason for this was so that Mr and Mrs B could continue to claim against their payment protection policy – as the policy would only pay out on a live mortgage. Mr and Mrs B were receiving £3,000 monthly from the policy, intended to be used

towards the mortgage payments. During this time, it was agreed that Mr and Mrs B would continue to try and sell their property.

Bank of Scotland says that a subsequent complaint was raised with our service after the term extension was agreed. Bank of Scotland said that Mr and Mrs B made a new complaint as they felt that they should be offered a new rate now that the term was being extended. Due to the time that's passed, a copy of our service's response to this complaint is not locatable. But as no fixed interest rate was subsequently agreed, the complaint was likely not upheld.

Since the end of the term extension in 2018, Bank of Scotland has agreed an ongoing hold on the mortgage account to allow Mr and Mrs B time to sell their property and their case was referred to the Customer Priority team for specialist support because of their ongoing health conditions and circumstances.

In May 2024 Bank of Scotland wrote to Mr and Mrs B to say that their account was being passed back to the End of Term team to find a solution to clearing the outstanding mortgage balance. No payments had been made towards the account since 2016 which has exacerbated the ongoing arrears and as of May 2024 the arrears balance stood at around £773,000.

Unhappy that they received this letter, Mr and Mrs B complained to Bank of Scotland. They also complained that they'd been charged an unfairly high rate of interest over the years which has increased the overall debt due.

Bank of Scotland didn't uphold either complaint. It said that because Mr and Mrs B were in financial difficulty it couldn't agree to a new fixed interest rate that would incur an ERC upon sale or repossession. The balance of the mortgage is more than £1.8 million and if a product was applied to the account and the property then sold, an ERC of up to £90,000 would become due.

In its final response letter dated 12 June 2024, Bank of Scotland said that due to a change of policy, it now has some options for customers whose accounts are in arrears. To qualify, an affordable arrangement would be needed to address the arrears. Bank of Scotland said that Mr and Mrs B would need to make contact for it to assess their financial circumstances and to decide if this is a possible option for them. That said, Bank of Scotland has recently told our service that a product transfer in arrears option is only available for accounts that have a term remaining. As Mr and Mrs B's mortgage expired in 2018, a product transfer in arrears is not an option.

Bank of Scotland also said that due to the time that has passed since the mortgage ended, and the increasing arrears balance, the decision has been made to move the account back to its End of Term team to manage. It is unable to agree to hold the account indefinitely and it suggested that Mr and Mrs B contact the End of Term team to discuss possible ongoing support until the balance is repaid.

Unhappy with Bank of Scotland's response, Mr and Mrs B brought their complaint to the Financial Ombudsman Service. An investigator looked into things and didn't recommend that the complaint be upheld. She thought that Bank of Scotland had handled Mr and Mrs B's account fairly and that it has provided reasonable support to date.

Mr and Mrs B remained unhappy and asked for their case to be decided by an ombudsman. In response to the investigator's findings, Mr and Mrs B raised other reasons why they were unhappy with the service provided by Bank of Scotland.

In summary they say that in hindsight Bank of Scotland should have taken steps to repossess their property sooner, instead of agreeing to the term extension in 2017 and the subsequent hold. Instead, the mortgage has remained ongoing, and arrears have exacerbated causing negative equity in the property. Mr and Mrs B also query the arrears balance reported by Bank of Scotland.

Our investigator has explained to Mr B that as these are new complaint issues, they'll first need to be raised with Bank of Scotland before our service can look into things. I understand that Mr and Mrs B have now raised these as new complaint points with Bank of Scotland, but they've not yet referred the complaint to our service. My decision will only address the complaint issues answered by Bank of Scotland in its final response letters dated 7 June 2024 (relating to passing the account back to the End of Term team) and 12 June 2024 (relating to the interest rate charged on the account).

In response to the latter complaint, Bank of Scotland said that it did not consent to our service looking into this complaint. It says that the complaint about not being given a new interest rate has already been considered by our service in 2017. And any complaint about the interest rate charged more than six years before this new complaint was raised in 2024 has been brought too late, outside of the time limits set by the financial regulator.

I issued a decision explaining why I only have the power to consider Mr and Mrs B's complaint about their access to a new interest rate since 7 June 2018 and the fairness of their mortgage account being passed back from the Customer Priority team to the End of Term team in 2024.

I'll now issue my decision on this part of the complaint.

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.

Firstly, I'd like to thank Mr and Mrs B for all the information they've shared. I'm very sorry to hear about everything they've been through over the years, it's clear they've been through a very difficult time, and I do truly empathise with their circumstances.

I've gone on to consider Mr and Mrs B's specific complaint points that fall within our jurisdiction to decide whether I think Bank of Scotland has treated them fairly in the circumstances.

Access to interest rates

For the reasons I've explained, I'm only able to consider Mr and Mrs B's access to interest rates from 7 June 2018 onwards. At this time Mr and Mrs B only had less than three months remaining on the extended term of their mortgage, which expired on 31 August 2018. At which point the mortgage was due for immediate repayment.

From the evidence I've seen no record of Mr and Mrs B asking for a new interest rate from 7 June 2018 onwards. But even if they had done, I wouldn't expect Bank of Scotland to offer a new fixed rate that would run beyond the remaining term of the mortgage. Bank of Scotland has said that it offered fixed interest rate products running for a minimum of two years. As that ran beyond the remaining term of Mr and Mrs B's mortgage, it would mean that when the mortgage became repayable on 31 August 2018, Mr and Mrs B would incur an ERC on redemption of their mortgage.

I would expect a lender to offer some flexibility at the end of an interest only mortgage term for full repayment of a mortgage balance. That is what Bank of Scotland has done here by allowing an ongoing hold on the mortgage account to allow Mr and Mrs B time to sell their property. I appreciate that because the mortgage remains live, Mr and Mrs B may feel that they should have been given a new interest rate during this time. But a lender won't generally offer reduced rate deals after the end of the mortgage term when it is expecting the mortgage to be repaid – for the same reasons I've explained above. And Bank of Scotland has confirmed that it didn't offer interest rates that didn't come with an ERC. If the mortgage were to continue past its expected repayment date, then the only option was for the mortgage to remain on the standard variable rate which is what happened here. I don't consider that to be unreasonable.

Mr and Mrs B now say that in hindsight Bank of Scotland should have taken steps to repossess their property sooner instead of agreeing to the term extension in 2017 and the subsequent hold – as doing so has caused arrears which has eroded the equity in their property. I've explained why this matter is not something I'm able to consider, so I've made no comment on that in this decision.

The transfer of the account from the Customer Priority team to the End of Term team

Mr and Mrs B's account has been in and out of arrears since 2012 with a significant period of non-payment towards the account since 2016 – causing the arrears to rapidly increase to over £750,000 in 2024.

From Bank of Scotland's contact notes, I can see that Mr and Mrs B have said that they've been trying to sell the property on and off since around 2009.

More recently following the end of their agreed term extension, Mr and Mrs B said that they'd put the property back on the market in 2019. Bank of Scotland agreed a temporary hold to allow time for the property to sell. Due to severe ill health, Bank of Scotland passed Mr and Mrs B's account to the Customer Priority team in mid-2019.

Bank of Scotland has explained that the purpose of this team is to manage accounts where a customer has a short-term support need. While an account is with this team, the amount of contact the customer will receive regarding the arrears (such as calls and letters) are reduced and legal action is placed on hold.

Mr and Mrs B have been actively trying to sell the property since 2019, albeit there was a period during the COVID-19 lockdown period that it was taken off the market due to social distancing rules. In addition, over the years Mr and Mrs B have continued to experience ongoing health issues.

It appears that, in light of Mr and Mrs B's health and what Bank of Scotland knew about their attempts to sell the property, it has agreed further temporary holds on the account. And the Customer Priority team continued to manage the account to support Mr and Mrs B as vulnerable customers. Over the years Bank of Scotland made Mr and Mrs B aware that it could not agree an indefinite hold and that it would expect Mr and Mrs B to move further towards a solution to repay the outstanding mortgage balance due.

In May 2024, Bank of Scotland reviewed the account and made the decision to take the account off hold. It wrote to Mr and Mrs B to let them know that the account had been passed to the End of Term Team who'd get in touch to discuss their current situation and help find a solution to clearing the outstanding mortgage balance.

Mr and Mrs B were unhappy about receiving this letter, they said that they've been engaging with Bank of Scotland about their circumstances, and they felt they still needed the ongoing support of the Customer Priority team, whilst their property continued to be marketed for sale.

Having considered everything, I don't think Bank of Scotland acted unfairly or unreasonably when it made the decision to pass Mr and Mrs B's account to its End of Term team.

It appears that Mr and Mrs B's only option is to sell their property to repay the overdue mortgage balance. As I've mentioned, a held account with the support of the Customer Priority team is a temporary measure. Mr and Mrs B's account has been on hold with this team for around four years. Bank of Scotland has tried to work with Mr and Mrs B during this time to allow the sale of their property to proceed. During this time significant arrears have accrued and, with no meaningful progress made towards a solution and no sale in sight, I can see why Bank of Scotland didn't think it would be in Mr and Mrs B's best interest to hold the account any further.

I know this is not the answer Mr and Mrs B were hoping for, but on the other hand I also note that they now complain that they think Bank of Scotland should have taken steps to repossess sooner. Bank of Scotland has asked that this complaint be raised as a separate issue for it to investigate before our service gets involved. If Mr and Mrs B choose to pursue that complaint with our service, it will be considered separately to the complaint that I have answered in this decision.

It's unclear what conversations have taken place between Mr and Mrs B and the End of Term team to date. But I expect Bank of Scotland to continue to work with Mr and Mrs B to find a solution to clearing the outstanding mortgage balance.

My final decision

My final decision is that I don't uphold Mr and Mrs B's complaint against Bank of Scotland plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B and Mrs B to accept or reject my decision before 28 March 2025.

Arazu Eid
Ombudsman