

The complaint

Mr and Mrs M complain that Bank of Scotland plc continue to pursue them for a mortgage debt after Mr M's bankruptcy.

What happened

Mr and Mrs M have had a joint mortgage with Bank of Scotland (BoS) for some time. In 2012, Mr M was declared bankrupt. He was later discharged from the bankruptcy in 2013.

Mr M contacted BoS in April 2024 when he became aware the mortgage was being reported as in arrears on his credit file. Mr M said he understood that following his bankruptcy the mortgage would cease to exist, including any future liability for the debt. Mr M thought BoS had wrongfully continued to charge interest on the mortgage debt and incorrectly reported the account as in arrears on his credit file.

During the complaint process, Mr M provided BoS with a letter from the Official Receiver confirming the dates of his bankruptcy and discharge. BoS responded to Mr M's complaint and confirmed it had now requested for his credit file to be amended to reflect his discharge from bankruptcy in 2013. It said it understood Mr and Mrs M had had difficulty when applying for another mortgage because of the credit file reporting. It paid £200 to Mr and Mrs M for the impact of incorrectly reporting the account on Mr M's credit file.

Mr and Mrs M didn't accept this. They wanted BoS to reduce the mortgage debt to the level it was at the time of Mr M's bankruptcy. Mr and Mrs M said they wanted to reach a settlement with BoS. Mr M referred the complaint to our Service where one of our Investigators looked into the complaint.

Our Investigator thought BoS had acted fairly. He said the bankruptcy only applied to Mr M, and BoS could still recover the debt through the property or the other party to the mortgage, being Mrs M. He didn't agree that interest shouldn't be charged on the debt following the bankruptcy. He thought the £200 offered by BoS for not updating Mr M's credit file earlier than it did was fair.

Mr and Mrs M still didn't accept this. A representative for Mr and Mrs M said that Mrs M had successfully completed an IVA, but BoS hadn't accepted this and continued to report mortgage arrears to her credit file. He said BoS were misrepresenting Mr and Mrs M's liability for the debt by ignoring the IVA and bankruptcy.

As Mr and Mrs M didn't agree with our Investigator, the complaint has been passed to me to consider and make a final decision.

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.

I'm very sorry to hear of the difficult circumstances Mr and Mrs M are in and the impact that this situation has had on Mrs M's health. I've carefully considered whether I think BoS have treated Mr and Mrs M unfairly here, but I can't agree that it has.

It's important to establish that, as a joint mortgage, both Mr M and Mrs M each agreed to be responsible for the mortgage debt with BoS. They are responsible for this debt both individually and together. The mortgage conditions say *"If the mortgage account is a joint account, these conditions apply to all of you together or any of you on your own. For example, we can claim back all of the money you owe us from any one of you or all of you"*.

Mr M entered into bankruptcy in 2012 and therefore was no longer liable for the mortgage with BoS. But Mrs M still continued to be separately responsible for the mortgage, regardless of Mr M's bankruptcy. Mr and Mrs M's representative has said that Mrs M entered into an IVA and isn't responsible for the mortgage debt either. Our Investigator requested evidence from Mr and Mrs M's representative to show the mortgage was included in Mrs M's IVA arrangements, but we've not been provided with any. A secured debt such as a mortgage can't be included in an IVA arrangement without the lender's agreement. BoS has confirmed that it didn't agree for the mortgage to be included in any IVA for Mrs M. So, I have no reason to think Mrs M is not liable for the mortgage debt with BoS.

The mortgage is secured to Mr and Mrs M's property, and BoS maintains that security even if Mr M is no longer liable for the mortgage debt. BoS is still owed the mortgage debt by Mrs M, and it can take steps to repossess the property and use the sale proceeds to recover the debt owed to it if the mortgage payments aren't maintained.

Mr M has said that his understanding was that the mortgage would essentially cease to exist following his bankruptcy. He thought the mortgage wouldn't continue to accrue interest and if BoS repossessed and sold the property to pay off the debt, he wouldn't be responsible for any shortfall in paying back the mortgage. This is correct for Mr M. But not for Mrs M who remains responsible for the mortgage and for any potential shortfall. Mr and Mrs M continued to live in the property following Mr M's bankruptcy. BoS chose not to initiate repossession proceedings at that point, and instead the mortgage continued to be active. BoS is still entitled to receive the monthly repayments for the mortgage from Mrs M while the mortgage is ongoing, and it can choose to enact its security if those payments aren't maintained.

It appears that the monthly mortgage payments haven't been maintained. And I understand that BoS has now begun proceedings for repossession of the property through the courts. It will be for the courts to decide if the property should be repossessed, and I won't comment on that further.

Mr M thinks that BoS should not have included his name on court papers seeking possession of the property. But if he is still the owner of the property and lives there, then that is unlikely to be wrong. In any case, Mr M will have the opportunity to raise that matter in court, if he wishes.

I can't say that BoS has acted unfairly by continuing to pursue repayment of the debt owed to it. The bankruptcy was in relation to Mr M only. So, even though Mr M was no longer liable for the mortgage debt, Mrs M continued to be. And BoS can fairly pursue the debt from her. It can also fairly pursue the debt through its security on the property.

It isn't unreasonable for BoS to continue to charge interest on the mortgage until it is repaid in full. This is outlined in the terms and conditions that Mr and Mrs M agreed to. So, I don't agree that the mortgage debt should have been frozen at the point of Mr M's bankruptcy. As I've explained, the mortgage has remained active, and Mrs M is still responsible for making

the mortgage payments. So, it's reasonable for BoS to continue to charge interest on the mortgage until it is repaid in full.

BoS needed to correctly report Mr M's bankruptcy and resulting default on the mortgage to his credit file. A default should have been recorded from the date of the bankruptcy, being in 2012. So, I wouldn't expect Mr M's credit file to record a default linked to the mortgage account any later than 2018. BoS has said it first became aware of Mr M's bankruptcy in 2013, but didn't receive notice of his discharge until 2024. So, it continued to report the mortgage account as in arrears until it was confirmed Mr M had been discharged from the bankruptcy. It says since receiving evidence of Mr M's discharge from bankruptcy, it has corrected his credit file to show the debt was 'partially settled/settled at the date of discharge from bankruptcy'.

I've reviewed the system notes provided by BoS and can't see it was provided with evidence that Mr M was discharged from bankruptcy earlier than 2024. I can see that a letter was received by BoS in 2014 which said the Official Receiver had applied to Land Registry to show interest in the property was vested in the 'former bankrupt'. So, although it was Mr M's responsibility to provide evidence of his discharge to BoS, I do think BoS could have followed up with Mr M after receiving this letter. Mr M's credit file incorrectly recorded the mortgage account as in arrears for years after it should have.

BoS has offered £200 for the impact of Mr M's credit file recording incorrect information. I understand Mr M did not become aware of the impact on his credit file until 2024. This will have caused Mr M a degree of worry and upset after this point, so I think it's only fair BoS compensate Mr M for this. I think the £200 paid by BoS represents a fair and reasonable way to put things right. So, I won't ask BoS to do anything further.

I'm sorry to disappoint Mr and Mrs M as this is understandably very important to them, but I can't say BoS has acted unfairly or unreasonably by continuing to pursue the mortgage debt.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs M to accept or reject my decision before 10 March 2025.

A handwritten signature in dark ink, appearing to read 'E. Taskas', with a long, sweeping horizontal line extending to the right.

Emma Taskas
Ombudsman