

The complaint

This complaint is about a mortgage held jointly by Mr O and Mrs and Mr R with The Governor and Company of the Bank of Ireland trading as Bank of Ireland (hereafter referred to as BOI).

In essence, there are three broad strands to the complaint; these are:

- in 2007 or 2008, Mr O asked to be removed from the mortgage and hasn't been;
- in 2009, BOI began sending correspondence to an address that none of the borrower have connection to; and
- the mortgaged property has a defective title and therefore unmortgageable and unsaleable.

What happened

The above summary is in my own words. The basic background to this complaint is well known to both parties so I won't repeat all the details here. Instead I'll give a brief summary, and then focus on giving the reasons for my decision. If I don't mention something, it won't be because I've ignored it. It'll be because I didn't think it was material to the outcome of the complaint.

The mortgage was taken out in 2005. Mr O is a joint borrower alongside Mrs and Mr R, but has no beneficial interest in the mortgaged property, which I'll refer to hereafter as 33C. None of the borrowers occupy 33C. It was a condition of the mortgage that Mr O seek independent legal advice before entering into the mortgage. The offer notes that Mr O had nominated a firm of solicitors I'll refer to as CH to provide that advice.

Mr O and Mrs and Mr R say that in 2007 or 2008, they wrote to BOI asking for Mr O to be removed from the mortgage. BOI says it has no record of receiving such a request, and Mr O continues to be a joint borrower.

In 2009, in addition to sending them to the borrowers' own addresses, BOI began sending mortgage-related correspondence (annual statements etc.) to an address I'll refer to as 13D. Mr O and Mrs and Mr R say this was a mistake and that they have no connection with that address.

A different firm of solicitors, which I'll refer to here as L, carried out the conveyancing work for the purchase. Mr O and Mrs and Mr R say that L made a mistake with the registration of the title for 33C, leaving them with a property they can neither sell nor re-mortgage, due to the defective title. They're unhappy that BOI has done nothing to resolve this.

The complaint was raised in 2024 following a phone conversation in late 2023, when Mr O and Mrs and Mr R say they first found about 13D being used as a correspondence address, and that Mr O was still on the mortgage. BOI issued a final response on 26 March 2024, rejecting the complaint. BOI said it was asked to begin using 13D for correspondence in a phone call on 28 July 2009 in which the borrowers asked to change from capital repayment to interest-only. BOI says it sent the paperwork for the switch to 13D, received it back signed

by all borrowers on 20 August 2009 and the change to interest-only took effect from September 2009.

Also in the final response, BOI pointed out that Mr O and Mrs and Mr R were in breach of the mortgage conditions by letting 33C out without consent.

After the case came to us, BOI accepted that the use of 13D as a correspondence address was a mistake and made an offer of £200 to settle this. Our investigator recommended it should pay compensation of £400. On the remaining elements of the complaint, she wasn't persuaded that BOI was at fault. Both parties have asked for the complaint to be reviewed by an ombudsman.

What I've decided – and why

I'll start with some general observations. We're not the regulator of financial businesses, and we don't "police" their internal processes or how they operate generally. That's the job of the Financial Conduct Authority (FCA). We deal with individual disputes between businesses and their customers. In doing that, we work within the rules of the ombudsman service and the remit those rules give us. We don't replicate the work of the courts.

We're impartial, and we don't take either side's instructions on how we investigate a complaint. We conduct our investigations and reach our conclusions without interference from anyone else.

I should add that although the events giving rise to this complaint are potentially caught by the time limits in our rules, BOI has consented to us looking into it. And to be clear, I'm not looking into anything regarding the apparent letting out of 33C without permission. That's not part of the complaint that was presented to this service to consider.

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

Having done so, what follows are my conclusions on the three core elements of the complaint, and the reasons for them.

Use of 13D as a correspondence address

Since the case came to us, BOI has accepted that this was a mistake, so I don't have to make a finding on that. What remains for me to decide here is what fair redress should be. BOI has challenged the investigator's reasoning that the potential for stress and embarrassment, and the amount of time the error went uncorrected, warrant an increase to £400 from its offer of £200.

I've noted what BOI has said, but overall, I'm not persuaded by its arguments that Mr O and Mrs and Mr R should have realised a long time ago that 13D was being used for correspondence. Overall, I think it likely that correspondence was being sent to 13D *as well as* to the borrower's own addresses, rather than instead of. So I find it credible that they might not have realised it had been happening before the phone conversation in late 2023.

Assessing compensation isn't an exact science; people's reactions and responses are different in every case. It seems to me here that the shock of discovering that mortgage correspondence had been going astray for so long would have been considerable. I can't know, and won't speculate on, whether and to what extent personal information was revealed to unauthorised parties. But the worry over the potential for that to have happened during the extended period, in my view, justifies an award of £400.

Mr O not being taken off the mortgage

A person can't be released from their covenants under a mortgage simply by writing and asking to be. It requires the other parties who wish to remain on the mortgage to apply to the lender to take sole responsibility for the mortgage. The lender will then underwrite that application to satisfy itself that the application meets its lending criteria, in much the same way that it did with the original mortgage application.

I've no reason to believe BOI wouldn't have informed Mr O and Mrs and Mr R of the required process if it had received the request back in 2007 or 2008. To the extent that it didn't do that, I think it more likely than not that BOI never received a request to remove Mr O from the mortgage. It follows that I can't find it to be at fault for not dealing with a request it didn't receive.

33C having a defective title

In a purchase and mortgage transaction, solicitors have two clients, the purchaser and the lender. There are two discrete roles the solicitors carry out. For the purchaser, the solicitors ensure that the property has good title, and there are no defects, errors, restrictions or hidden claims over the title or occupiers' rights. They raise enquiries with the seller's solicitors about the property, including fixtures and fittings, neighbour disputes, boundary maintenance and other relevant matters. They go through the survey report with their client to ensure that the purchaser is aware of any issues with the property before they are committed to purchasing it.

The solicitors liaise with the seller's solicitors and the estate agents in relation to when contracts will be exchanged and completion will take place. They arrange for the deposit to be supplied by the purchaser, and transfer it over on exchange of contracts. They arrange for documents to be signed and prepared for completion. They prepare the completion statement, showing how much the entire transaction, including the amount of any fees and Stamp Duty Land Tax. After completion, they will register the purchaser's title to the property and ensure all fees and taxes are paid. In all of that, the solicitors is acting as the purchasers' agent.

For the lender, the solicitors have to ensure that the title is suitable security for the mortgage. They will arrange signature of the mortgage deed, prepare the report on title for the lender, obtain any undertakings (binding promises) from the seller's solicitors to safeguard the lender's position, they'll transfer the funds over on completion and register the lender's charge. All lenders maintain their own panels of solicitors who they are prepared to instruct to act for them on a mortgage transaction. If the buyer instructs a solicitor who is on the lender's panel, then that lender can act for both purchaser and lender.

It looks here as though L acted for both parties, simultaneously, but separately. But the alleged failure to check that the property title was correctly set up and registered relates to an activity L carried out as agent for the purchasers, i.e. Mr O and Mrs and Mr R, and *not* for the lender, BOI. I imply no criticism of L here, and none should be inferred; I have no remit to consider the actions of a firm of solicitors that is not acting as agent of a lender.

I said at the outset that I wouldn't be commenting on every single point, and I haven't. I have, as I said I would, confined myself to those matters that I consider have a material effect on the outcome. I can see from their submissions how important these matters are to Mr O and Mrs and Mr R. That's a natural reaction, and entirely understandable when you're as close to a situation as they are here.

But I have a different remit. I have to be objective, and impartial, and sometimes that means stepping back from the fine detail, taking an overview and deciding what is fair, reasonable and pragmatic in all the overall circumstances of the case. It also means that I'm not required to provide answers to every specific question that comes up if I don't consider doing so will affect the overall outcome.

My final decision

My final decision is that I uphold this complaint in part only. In full and final settlement, I direct the Governor and Company of the Bank of Ireland trading as Bank of Ireland to pay Mr O and Mrs and Mr R £400. I make no other order or award.

My final decision concludes this service's consideration of this complaint, which means I'll not be engaging in any further consideration or discussion of the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O, Mrs and Mr R to accept or reject my decision before 24 March 2025.

Jeff Parrington

Ombudsman