

The complaint

This complaint is about two buy-to-let (BTL) mortgages that Mr J used to hold with Bank of Ireland (UK) Plc (BOI). The essence of the complaint is that Mr J believes BOI has overcharged interest on both mortgages.

What happened

The broad circumstances of this complaint are known to all parties. I'm also aware that the investigator issued a detailed response to the complaint, a copy of which has been sent to both parties, and so I don't need to repeat all the details here. Our decisions are published, and it's important that I don't include any information that might result in Mr J being identified.

Instead I'll give a summary of the key issues 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.

Mr J took the mortgages out in 2003, via a third party intermediary. Both mortgages were what is known as "tracker" mortgages, where the interest rate charged moves in line with change to a specified reference point. In Mr J's case, the specified reference point was the Bank of England Base Rate (BEBR); the mortgage conditions specified that Mr J's rate would be BEBR + 1.50%, but included a clause that allowed for the differential to be varied in certain circumstances.

In May 2013, the differential was varied; BOI increased it from 1.50% to 4.49%. Mr J complained about this in 2016, and BOI issued a final response giving Mr J six months to refer the complaint to us. He didn't do so. Mr J repaid the mortgages in 2024; he also raised the complaint again, and this time, did refer it to us. BOI didn't consent to us looking at the complaint, saying it was time-barred under our rules.

Our investigator said that he could look into the fairness, or otherwise, of the interest rates charged by BOI in the six years immediately preceding the start of the complaint, bearing in mind earlier variations to the interest rate as part of all the circumstances of the complaint.

The investigator also said that, under s140A of the Consumer Credit Act 1974 (CCA), he could consider whether there had been an unfair relationship between BOI and Mr J as a result of the way the interest rate had operated - taking into account all matters relevant to the fairness of that relationship whenever they occurred, and even where they would be time-barred if subject to a complaint in their own right. However, he considered that no unfair relationship had been created and that BOI hadn't charged interest unfairly.

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

We can consider the interest rate charged in the six years leading up to the complaint, but bearing in mind earlier interest rates and variations as part of all the circumstances.

We can consider whether the relationship between Mr J and BOI was fair, taking into account all matters relevant to the fairness of that relationship whenever they occurred, and even where they are time-barred if subject to a complaint in their own right.

Mr J's complaint is based on three key points:

- the mortgages were mis-sold in 2003 because Mr J wasn't informed the differential could change;
- the widening of the differential in May 2013; and
- the interest rate actually charged from May 2013 until the mortgages were repaid.

I'll address each in turn, but first I'll address Mr J point about the remediation order against BOI's parent company by the regulator of finance services in the Republic of Ireland.

I understand why he believes the order should apply to his complaint, but his complaint is about unregulated mortgages on properties in the UK. That being so, I don't consider the order relevant to the outcome of this complaint.

The sale of the mortgages in 2003

BOI lent the money, but it didn't sell the mortgages to Mr J. The sale was conducted by a third party, whose responsibility it was to ensure the mortgages were suitable for Mr J's needs and circumstances, and that he understood the terms of the contracts he was entering into. In making this observation, I imply no criticism of the party who sold the mortgages to Mr J, and none should be inferred. But clearly, I can't hold BOI liable to Mr J for an activity conducted by another party.

The widening of the interest rate differential in May 2013.

The mortgage terms and conditions permitted BOI to vary the differential in certain circumstances, provided it gives 30 days' notice of its intention to do so. One of those conditions is:

"if we believe that the increase or reduction is necessary to maintain the viability of our business following a serious adverse change in the market conditions or the relationship between the base rate and the rate which we pay on the funds we raise for use in our mortgage lending business".

BOI has supplied evidence to show that the cost of funding its mortgage book had significantly increased when taking into account both direct funding and the increased cost associated with the changes in regulatory requirements and equity to debt ratios. That evidence provided demonstrates that BOI had to take action in order to maintain financial stability and this translated to the widening of the differential.

Looking at BOI's decision to widen the differential in the context of the above circumstances, and the evidence BOI has been able to provide, I'm satisfied it has been able to show both that it did so in line with the relevant terms and conditions and that it had good commercial reasons for making the changes that it did. It has shown it balanced its need to meet its funding and regulatory costs and the needs of the consumers impacted by the changes. The borrower had the option to switch to alternative BOI rates or to re-mortgage without incurring potential early repayment charges (where applicable).

The interest rate actually charged from May 2013 until redemption in 2024.

Having found that BOI was permitted to widen the differential to 4.49%, I've then looked at the rate(s) it actually charged Mr J from May 2013 until the mortgages ended. At all times, the rate charged was BEBR plus 4.49%. From this, I find that BOI charged Mr J a fair rate that the contracts between them allowed it to charge.

Putting all of the above together, I'm not persuaded there is anything in the actions as set out above that would have created an unfair relationship between it and Mr J, or that there was any unfairness flowing from those actions which BOI was under an obligation to remedy at or before the end of the relationship in 2024.

My final decision

My final decision is that I don't uphold this complaint or make any order or award against Bank of Ireland (UK) Plc.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 30 April 2025.

Jeff Parrington

Ombudsman