

The complaint

Mr D's complaint is about his mortgage account held with Bank of Scotland plc (BOS). Mr D said that BOS incorrectly led him to believe his interest-only mortgage account had been extended. When BOS later considered Mr D's request to extend this part of his mortgage, the bank declined the term extension, which Mr D believes is unfair.

What happened

Mr D has a mortgage with BOS which is split into five sub-accounts. Four of these are on repayment but one, on which the majority of the borrowing has been taken, is interest-only.

On 12 and 14 April 2023 Mr D spoke to BOS and discussed extending the mortgage term. The staff member to whom he spoke didn't notice that sub-account 4 was on interest-only. If he had, it would have been explained to Mr D that this part of the mortgage couldn't be extended. The end dates of the four repayment sub-accounts were extended by 3 years 5 months. Mr D was given an estimate of how much the new contractual monthly repayment (CMP) would be.

BOS called Mr D on 17 April 2023 to clarify the new CMP would be £3,244.50. However, when keying in the new term, BOS became aware that sub-account 4 couldn't be extended, and that Mr D might not have been aware of this. BOS tried to call Mr D, but wasn't able to speak to him so the bank wrote to Mr D on 17 April 2023 showing the new terms for the other sub-accounts as being 4 years 9 months, but showing sub-account 4, with almost £650,000 owing on it, as having a remaining term of 10 months.

In its final response letter, BOS apologised to Mr D, saying that it had made an error in not explaining that the term of sub-account 4 couldn't be extended, and paid £100 for this omission. The bank said its policy was that it can only review interest-only sub-accounts when the remaining term is three months or less, and invited Mr D to complete a mortgage review at that time, from 16 December 2023 onwards.

In January 2024 Mr D applied to extend the mortgage term on the interest-only sub-account. BOS was unable to agree to this, as the information provided by Mr D showed the mortgage was unaffordable. BOS said it could offer Mr D a three-month hold to enable him to sell the property.

However, Mr D didn't want this – he says he wants to extend the mortgage term to his 70th birthday in 2028. Mr D says he has been in discussion with developers for several years about selling the property for development purposes, he's already issued options to developers which have expired, but is considering issuing further options to the same, and other, developers. As a result, Mr D doesn't think it is fair for BOS to decline his request for a term extension.

An Investigator looked at what had happened. He was satisfied that the £100 offered for BOS's error in April 2023 where it had failed to tell Mr D that it couldn't extend the interest-only part of the mortgage was fair. In relation to Mr D's later request to extend the term of sub-account 4, the Investigator didn't think BOS had acted unfairly in declining the application.

Mr D disagreed and asked for an Ombudsman to review the complaint. Mr D says he believes a long-term strategy, such as selling the property in a few years, should be considered a valid repayment strategy. Mr D also says he has issued options to a developer for his land, which expired in October 2023, but he is in continuing discussions with this developer, and other interested parties, about development opportunities.

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 note that since bringing his complaint to us Mr D has raised a new issue with BOS about arrears on his account. Mr D says he has made every mortgage repayment in full and on time and so he believes the arrears are a mistake, and have arisen as a result of an error in the bank's system, or a misunderstanding regarding the processing of his repayments. This wasn't included in Mr D's original complaint, and so it's not something I'll be addressing here. It's not possible for new issues to be added to existing complaints, so Mr D will have to await the bank's final response to his complaint and if he remains dissatisfied, he can raise a new complaint about this with our service.

In relation to the issues I *am* considering here, BOS has acknowledged it made a mistake in April 2023 when it failed to tell Mr D that it couldn't extend the term on sub-account 4, because it is interest-only. Where a mistake has been made, we try to put the parties back in the position they'd have been in had the error not been made.

In this case, if BOS hadn't made the error, Mr D would have been told on 12 or 14 April 2023 that the bank couldn't extend the term of sub-account 4. The bank in fact told him this on 17 April 2023, and clarified what the new monthly repayment would be across all five sub-accounts. So the error was quickly rectified, and Mr D was made aware of the correct position.

To be clear, the error was *not* that BOS had extended the term of sub-account 4. Therefore I'm satisfied BOS was under no obligation, as Mr D has argued, to "*honour*" this. Instead BOS was entitled to consider whether or not a term extension was affordable, or whether there were any other considerations that should allow the bank to grant the extension without an affordability assessment or repayment vehicle in place, in line with its lending policy and regulatory obligations.

In this regard, there are regulations in place that have flowed from the Mortgage Market Review (MMR) carried out by the Financial Conduct Authority (FCA) which took place after the financial crash in 2008. This has led to a series of major changes, effective since 2014, in the way residential mortgages are regulated. MMR regulations have brought about requirements for stricter lending assessments, aimed at protecting consumers and encouraging mortgage lenders to act more responsibly.

The FCA recognised though that existing borrowers who wanted to make changes to their mortgages might have difficulties with this if they had passed tests under the old rules but wouldn't under the new ones. So, it introduced certain rules to address this. The rules are contained in the Mortgages and Home Finance: Conduct of Business Sourcebook (MCOB).

MCOB says a lender doesn't have to carry out an affordability assessment if a borrower wants to vary or replace an existing mortgage and there is no additional borrowing (other than for product fees) and no change to the terms of the mortgage that is material to affordability.

There are also transitional arrangements which say that a lender need not carry out an affordability assessment if:

- the borrower has an existing mortgage taken out before 26 April 2014, and is applying to vary that mortgage or replace it with a new one;
- the application wouldn't involve any additional borrowing except for essential repairs to the property, or to add product fees to the balance;
- there's been no further borrowing (with some exceptions) since 26 April 2014; and
- the proposed transaction is in the borrower's best interests.

So, under this rule, even where a change material to the affordability of the mortgage takes place, the lender can, *if it chooses*, waive an affordability assessment. If the lender decides to carry out an affordability assessment, it shouldn't use that as a reason to decline an application if allowing the application would otherwise be in the customer's best interests. But the lender can take the assessment into account as part of its consideration of best interests.

This means there are two routes that an application for an existing borrower can go down. If there's no change to the terms of the mortgage contract material to affordability, there's no obligation to carry out an affordability assessment at all. And if there is a change to the terms of the mortgage contract material to affordability, a lender could still decide to allow an application without an affordability assessment if doing so would otherwise be in the borrower's best interests.

In this case, a term extension to the age of 70 *is* a material change to the mortgage, and so I'm satisfied BOS was entitled to carry out an affordability assessment when deciding whether or not to extend the term of sub-account 4. This sub-account is the most substantial part of the mortgage, with about £650,000 owing on it. It's therefore not unreasonable for BOS to consider whether or not Mr D would be able to afford the mortgage up to the age of 70.

I've looked at the information BOS compiled about Mr D's circumstances in January 2024, and I can see that he told BOS that family members were helping him with his mortgage payments. This isn't something BOS can count as income towards affordability of the mortgage.

Although Mr D said he was hoping his income would improve, there were also substantial arrears on the mortgage (at the time about £15,000) and no proposals for how those arrears would be cleared within a reasonable period of time. I can see from the account notes that Mr D had been in discussion with BOS about the arrears over a number of years, and that they had been increasing. The income and expenditure calculation showed Mr D had surplus income of £2,468, which was insufficient to cover the CMP of just over £3,700. In the circumstances, Mr D wasn't able to pass the affordability check necessary to extend the mortgage term.

I've therefore thought about whether allowing the term extension without an affordability assessment, or without a repayment vehicle other than sale of the property, would be in Mr D's best interests. Having considered Mr D's circumstances, I'm not persuaded that it would be in his best interests.

There appears to be no realistic prospect of Mr D being able to clear the arrears on the mortgage or repay the outstanding balance other than by a sale of the property. If the arrears increase, the less equity remains in the property. Mr D doesn't have any other repayment vehicle, such as a pension lump sum or investments. I note Mr D believes the property to be worth about £1.5 million to £2 million due to the extent of the land, so I'm satisfied there is sufficient equity if the property is sold for Mr D to be able to find alternative accommodation free of mortgage.

I've noted what Mr D has said about his discussions with developers over the years, and that these discussions are continuing. However, I'm not persuaded that selling to developers is a realistic repayment strategy, given that the property is situated on Green Belt land, a fact I believe Mr D is aware of as I understand he had to demolish an extension built onto the property some years ago that had been constructed without planning permission, in breach of the local authority's policy on development on Green Belt land. I'm also aware that, although the local authority's Local Plan requires it to build a substantial number of new homes for which some Green Belt land might need to be released, there is no guarantee that this would include Mr D's property. Given this, whilst Mr D might be optimistic about the development prospects, I think there are sufficient caveats to persuade me that this might not be a viable repayment strategy if the term was extended.

In the circumstances, I'm satisfied BOS was under no obligation to extend the term of sub-account 4 in January 2024, as doing so would be likely to make Mr D's financial position worse, not better, in the long term, given the arrears situation and Mr D's overall circumstances.

I note BOS paid Mr D compensation of £100 for its error in omitting to tell him during the phone calls on 12 and 14 April 2023 that it couldn't extend the term of his interest-only sub-account. I think this is fair in all the circumstances. As I said above, the bank's error was *not* that it had extended the term by mistake, but that it had failed to tell Mr D it couldn't do so. The error was corrected within a few days. I therefore think £100 is fair, reasonable and proportionate compensation and I don't intend to order the bank to do anything further.

Other matters

The balance of about £650,000 on sub-account 4 is now overdue for repayment. I appreciate the repayment parts of the mortgage which total about £23,000 are not yet at the ends of their terms, but that doesn't detract from the fact that Mr D is required to address the outstanding balance on the interest-only part of the mortgage.

I note Mr D has raised a further complaint with BOS about arrears on the account. However, this does not preclude BOS from pursuing recovery action for repayment of the outstanding balance owed on sub-account 4. 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 risk of consumers using our service to bring complaints with the intention of obstructing businesses that were trying to take legitimate action through the courts to recover money owed to them.

I am explaining this because I would not want Mr D to be under the impression that we could compel BOS to put any recovery action on hold while we look at any new complaint. That would be a matter for the bank's discretion, or a decision to be made by a court.

If Mr D is unable to provide BOS with details of how he intends to repay the £650,000 within the near future (for example, a mortgage offer from another lender, or confirmation from solicitors that the property is being sold), BOS would be entitled to pursue recovery action through the courts. If Mr D has not already done so, he might find it helpful to take advice about his options from a financial adviser or a solicitor.

My final decision

I know this isn't the outcome Mr D was hoping for, but my 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 D to accept or reject my decision before 17 April 2025.

Jan O'Leary
Ombudsman