

The complaint

Mr and Mrs B complain that Bank of Scotland plc ('BOS') delayed adhering to the settlement set out in a previous final decision issued by an Ombudsman at this Service. Mr and Mrs B also complain that BOS rejected what they felt was an affordable solution for them to repay the arrears that have accrued on their mortgage account.

What happened

Mr and Mrs B initially took out a mortgage with BOS in or around 2006. They borrowed £1,413,370 on an interest-only basis, over a term of 15 years. In the years that followed, Mr and Mrs B increased their total mortgage borrowing to just over £2,000,000 – a very small part of which was borrowed on a capital repayment basis. In 2016, the term of the interest-only parts of the mortgage was extended for a further 10 years. The term of the capital repayment part (around £14,000 in 2016) remained unchanged.

Mr and Mrs B complained to BOS in 2020 because it said it was unable to offer them a new interest rate product, based on the loan-to-value (LTV) on their property. So, BOS arranged for a physical property valuation to take place and the valuation increased – thus reducing the LTV. BOS responded to Mr and Mrs B's complaint in December 2020. In relation to the request for a new product, it offered Mr and Mrs B a five-year fixed rate product of 3.94% based on which the contractual monthly payment ('CMP') would be around £8,000.

Mr and Mrs B didn't agree with BOS's response and raised further comments. BOS issued a further response to Mr and Mrs B's complaints in May 2021. It said it wouldn't comment further on Mr and Mrs B's concerns about accessing an interest rate product, because it had already responded about this. In relation to the payment arrears, it said these had accumulated because Mr and Mrs B were paying around £6,000 less than the CMP.

Mr and Mrs B referred their complaint to the Financial Ombudsman Service because they didn't agree with BOS's response. We concluded that some of Mr and Mrs B's complaint had been raised too late under our rules. And so, we couldn't consider what had happened before April 2017, but we could look at what had happened since then.

For the parts of the complaint we could consider, an Ombudsman colleague made a final decision. The Ombudsman didn't uphold Mr and Mrs B's complaint about the valuations. But they did uphold their complaint about BOS not offering interest rate products across its trading names. They directed BOS to put things right by reworking the mortgage account to give Mr and Mrs B the lowest available interest rates they were eligible for in 2018 and 2020. They also required BOS to pay Mr and Mrs B £300 for the upset and inconvenience the matter had caused, and to update their credit files. Mr and Mrs B accepted the final decision.

Following this, in around September 2022, BOS re-worked Mr and Mrs B's account based on different interest rates being applied, which led to a significant reduction in their mortgage arrears. However, Mr and Mrs B didn't think BOS had applied the correct interest rates and so, correspondence about the interest rate and settlement calculations continued.

Following a further review of the matter and correspondence with Mr and Mrs B, BOS made

further changes to the interest rates in January 2024. It applied a lower interest rate from 31 October 2018 until November 2020 (2.24% instead of 2.54%) and a longer fixed rate of 2.40% from 1 November 2020 to January 2026 (instead of 2.29% due to end in January 2024).

Around the same time, Mr and Mrs B discussed a potential plan to repay the outstanding arrears, part of which was to extend the mortgage term. Because BOS didn't agree to extend the mortgage term, Mr and Mrs B complained. BOS responded in March 2024. It said it was unable to extend the mortgage term as Mr and Mrs B's repayment plan for their interest only mortgage doesn't meet its criteria. And that if an affordable arrangement couldn't be reached to clear the arrears within the remaining term, it may begin legal action. It also said it wouldn't address Mr and Mrs B's previous complaint again.

Mr and Mrs B didn't agree so they referred their complaint to the Financial Ombudsman Service. Our Investigator said that it wouldn't be appropriate for our Service to look into their previous complaint again. He also provided his view on the parts of the complaint he said we would consider. In summary, he noted that BOS had accepted it had used incorrect interest rates when reworking Mr and Mrs B's mortgage account. But his view was that BOS had now put that right, resulting in a further reduction of the payment arrears. The Investigator also concluded that BOS hadn't acted unfairly when declining the proposed term extension.

Mr and Mrs B didn't agree with the Investigator's conclusions and asked for an Ombudsman to review their 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.

In the previous Ombudsman's decision from August 2022, the Ombudsman concluded that it isn't unreasonable for lenders to rely on desktop valuations, so long as the lender has an appeals process if a customer is unhappy with the estimated value – something Mr and Mrs B were able to use. The Ombudsman also concluded that it wasn't unreasonable for BOS to rely on the physical valuation of the property in 2020.

Mr and Mrs B have said that their complaint now about the valuations is different. They've said the valuation in 2020 was faulty. And they're asking for BOS to disclose information on how the house price index figure was reached and ended up on their product transfer document. They feel this is a completely different matter. But I am not persuaded it is. Mr and Mrs B are still fundamentally questioning the validity of the valuation of their home in 2020, the interest rates applied as a result and, therefore, the starting point from which the matter should be redressed.

Under our rules, we don't generally look at cases again where an Ombudsman has already made a final decision, unless there is material new evidence which has subsequently become available and which is likely to affect the outcome. Here, the previous final decision in August 2022 considered the validity of the valuations and set out how things should be put right, which Mr and Mrs B accepted. I'm not persuaded the arguments they're making now amount to material new evidence, or that they're likely to affect the outcome the previous Ombudsman reached. So, I'm not going to look at the matters considered within that decision again now.

I've thought about whether BOS correctly implemented the agreed settlement, set out in the Ombudsman's decision, which was accepted in 2022. And, if it didn't, whether it caused any detriment as a result.

I think it's important to make it clear that the Ombudsman did not decide, in the 2022 final decision, that BOS had acted unfairly in relation to the property valuations that happened in 2020. Rather, Mr and Mrs B's complaint was upheld on the basis that BOS should have offered them rates from its alternative trading names in 2018 and 2020. The Ombudsman said that for BOS to do this it should base the loan to value (LTV), which is part of the criteria for interest rate products, on the desktop valuation from 2018 and the physical valuation from 2020. The correct starting point for BOS to put things right is, therefore, that it should have made more interest rates available to Mr and Mrs B, but still based on the valuations of the property and the LTV that Mr and Mrs B disputed.

I'm satisfied that BOS took steps, following Mr and Mrs B's acceptance of the 2022 decision, to implement the agreed settlement within a reasonable timescale. It applied two new interest rate products – 2.54% from 1 August 2018 to 31 October 2020 and 2.29% from 1 November 2020 to end on 31 January 2024. This led to a reduction in Mr and Mrs B's arrears balance from just over £160,000 to around £58,000. Their contractual monthly payments ('CMP') were also reduced from around £10,000 to just over £4,000.

However, Mr and Mrs B still didn't think the interest rates BOS had applied were correct and correspondence about this continued for over a year. This led to BOS reviewing the situation again and, in January 2024, BOS wrote to Mr and Mrs B to confirm that it had changed the interest rate products again. A lower interest rate of 2.24% was applied from 1 August 2018 to 31 October 2020. For the period from 1 November 2020, BOS agreed to apply a higher but longer fixed interest rate of 2.4%, which is due to end on 31 January 2026. This led to a further re-working of Mr and Mrs B's mortgage account, reducing their arrears balance to around £47,000. Their CMP increased to around £4,365 to account for the higher rate.

While I am persuaded BOS used the correct starting point to calculate how this matter should be redressed in line with the Ombudsman's decision – including basing the LTV on the 2018 and 2020 valuations – I consider BOS got it wrong by not initially giving Mr and Mrs B the choice of the correct rate for the period 2018 to 2020. This was because it had selected a product from the incorrect LTV bracket. It wasn't, however, because the 2018 and 2020 valuations themselves were later found to be incorrect.

I've gone on to consider if BOS has caused detriment to Mr and Mrs B, by not initially offering them all available rates. Had BOS given Mr and Mrs B the option of all the available interest rate products when arranging the settlement in 2022, then as set out above, the initial interest rate would have been lower. Their arrears position, albeit still significant, would also have been lower.

The Ombudsman's decision from 2022 directed BOS to provide Mr and Mrs B with the "...lowest interest rate product that they would have been eligible for...". So, in relation to the initial rate from August 2018 to October 2020, it got that wrong. BOS has already reworked the account to correct the amount of interest charged based on the new interest rate, for the period 1 August 2018 to 31 October 2020 being lower. That reduced the arrears further to around £47,000. And I think the steps it's taken in relation to that are fair. It has now put in place the lowest interest rate Mr and Mrs B would have been eligible for, as the Ombudsman directed.

But for the period from 1 November 2020 onwards, the rate it applied to Mr and Mrs B's mortgage following the Ombudsman's decision was the lowest available. So, I'm satisfied the rate it initially applied for the period from November 2020 onwards was in line with the settlement Mr and Mrs B had agreed to. In fact, BOS allowed Mr and Mrs B the option of a product within the 75-85% LTV bracket, which they weren't strictly eligible for.

It seems to me that BOS has later given Mr and Mrs B the option to choose a longer fixed

rate from November 2020 onwards, following ongoing correspondence about the agreed settlement. Mr and Mrs B were able to choose this option with the benefit of hindsight – knowing what they do now about interest rates and how they have increased generally since 2022. And I am persuaded this is likely to save them a significant amount of interest over the term of the fixed rate, compared to choosing another product in 2024 (when the previously applied rate would have ended).

I note that the qualifying LTV for this product was also lower than the actual LTV based on the 2020 valuation – which the Ombudsman had directed it should be based on. So, Mr and Mrs B were not strictly eligible for this product either, but BOS allowed them the opportunity to choose it anyway. And I consider Mr and Mrs B are better off financially as a result, compared to the position they would now otherwise be in. For example, interest rates on offer through BOS's trading name of Halifax at the start of 2024 were, at best, in the region of 4%, which would make a significant difference to Mr and Mrs B's monthly payments.

In conclusion, BOS did give the wrong interest rate details to Mr and Mrs B, but only regarding the initial two-year period (2018 to 2020). So, BOS hasn't acted unfairly to the extent Mr and Mrs B think it has in relation to implementing the agreed settlement. And BOS has since put things right, in relation to the initial two-year period, by adjusting Mr and Mrs B's account. I think the steps it has taken to do that are fair and I don't consider it should take any further steps in relation to this. I am also not persuaded that BOS's actions around implementing the settlement, including the adjustments in 2024, have led to Mr and Mrs B's arrears position being higher than it should be. If anything, by giving them a rate from 2020 at a lower LTV which they weren't therefore entitled to, BOS has left Mr and Mrs B better off than they would otherwise have been.

I have considered whether BOS's actions have led to Mr and Mrs B experiencing distress and inconvenience – and whether BOS should do anything further to recognise that. I appreciate the arrears position remained higher than it should have been until 2024 and that this wasn't ideal. But the correct arrears position was still significant and would make no difference to factors such as Mr and Mrs B's credit file. I'm also mindful that much of Mr and Mrs B's correspondence about the settlement being incorrect was, and still is, about matters that were previously investigated by this Service. Put simply, Mr and Mrs B still dispute the property valuations that were carried out and the resulting LTV, and they feel the interest rates should be lower. But I've explained that this isn't something I'm going to reconsider now.

I am not persuaded that BOS getting the interest rate (for the period 2018 to 2020) correct in 2022 would have significantly changed the correspondence and discussions that followed. I think Mr and Mrs B would have continued to raise concerns in any case. And I've already explained that I won't be revisiting Mr and Mrs B's concerns about the valuations or the impact of that on their interest rates. For these reasons, while I appreciate Mr and Mrs B feel very strongly about what's happened, I do not consider BOS should do anything further regarding this part of their complaint.

I've also considered if BOS acted fairly when considering Mr and Mrs B's requests for forbearance to find an affordable solution to repay the arrears.

I can see BOS attempted to discuss a plan for Mr and Mrs B to repay the arrears and bring the account back on track following the initial settlement being processed. However, as Mr and Mrs B disputed the arrears position and didn't think the interest rates were correct, meaningful discussions about a way to bring the arrears back on track didn't take place until the start of 2024. Mr and Mrs B had maintained their CMP for around a year at this point.

In February 2024, Mr and Mrs B provided details of their income and expenditure and

discussed potential options with BOS. The outcome of this was that Mr and Mrs B had sufficient disposable income to pay something towards reducing the arrears each month. But even if they used all their disposable income, this wouldn't be enough to repay the arrears by the end of the existing mortgage term. So, BOS suggested that it could consider extending the term of the mortgage, which would give Mr and Mrs B more time to repay the arrears. It also said that after a term extension, it could look at potentially capitalising the arrears. Mr and Mrs B were keen to do that as it would help to improve their credit file.

When asked how they would repay the mortgage at the end of the term, Mr and Mrs B initially said they would repay their mortgage using the sale proceeds from a property they own abroad. Later, they said they would instead repay the mortgage by sale of the mortgaged property, which had around £700,000 of equity. BOS considered the potential term extension but declined it because Mr and Mrs B's proposed repayment vehicles didn't meet its lending criteria requirements.

BOS also said it would only lend on an interest only basis where the term wouldn't exceed the borrowers reaching 70 years of age. And extending Mr and Mrs B's mortgage term would not meet that criterion either.

I think factors including the repayment vehicle and whether it's credible are relevant for a lender considering a term extension on an interest only basis. But I don't consider that alone is necessarily a fair reason to decline a term extension for forbearance purposes – as the repayment strategy would be the same whether the term was extended or not. I'd also expect a lender to consider whether the change would be in a consumer's best interests, so I've thought about that.

A key factor in this case is that Mr and Mrs B's mortgage is predominantly on an interest only basis. This means that a term extension alone will have little, if any, impact on Mr and Mrs B's CMP. It is possible that a term extension coupled with a plan to repay the arrears would help Mr and Mrs B to repay the arrears by the end of the term, if the term was extended by 9 years – something BOS discussed with Mr and Mrs B. But, during that extended term, Mr and Mrs B would continue to be charged interest on their mortgage, with the balance remaining mostly unchanged. And, due to the size of their mortgage, the additional interest charged over an extended term would be significant.

What's in a borrower's best interests, in terms of a mortgage term extension, isn't necessarily what they want to do. What also needs to be considered is that Mr and Mrs B are contractually required to repay this mortgage in 2026 and so, BOS is entitled to expect it to be repaid in full at that point.

There is also the possibility – considering how interest rates have increased generally since 2022 – that Mr and Mrs B's interest rate would increase in 2026, when their current fixed rate ends. Based on the discussions Mr and Mrs B had with BOS around their income and expenditure, I'm satisfied the the CMP based on interest rates today would be unaffordable for them. So, there's a risk that would still be the case in 2026. That would lead to further arrears accruing on their mortgage, worsening their position in the longer term, and eroding the available equity in their property.

While I'm sorry to hear of the difficult circumstances Mr B has been facing with his health, I consider that is a relevant factor here too – when thinking about whether prolonging the inevitable repayment of the mortgage is in their best interests. At the end of an extended term, Mr and Mrs B would be facing the prospect of having to sell their home later in life, which, keeping in mind Mr B's current health position, could bring further risks and challenges. From a neutral perspective, therefore, I cannot see how delaying repayment of the mortgage would be in Mr and Mrs B's best interests.

Mr and Mrs B's plan to repay their mortgage is either to sell the mortgaged property, or to sell a property they own abroad from which they've said they would receive proceeds of around €4,000,000. I haven't seen anything to suggest they wouldn't be able to take one of these options now or at the end of the current term, which is due to end in 2026. By repaying the mortgage now (or at the end of the agreed term) they would not incur the significant additional interest that a term extension would bring. And they wouldn't be open to the impact of factors such as the current higher interest rates, more interest being charged overall, having to move home later in life, or the possibility of property prices falling. If Mr and Mrs B feel they will be unable to repay the mortgage in full, I would encourage them to discuss that with BOS.

For these reasons, I'm not persuaded a lender acting fairly and reasonably would conclude that the proposed term extension would be in Mr and Mrs B's best interests. And it isn't something I consider BOS ought to have agreed to in 2024.

I'm not persuaded other potential options, such as reviewing the interest rate, or a payment arrangement, would help bring things back on track either. Mr and Mrs B's fixed interest rate was lower than the interest rates BOS had on offer in 2024 so a change to the interest rate would increase their payments. And I note that in a conversation with BOS in March 2024, Mr and Mrs B had said they couldn't increase their payments to more than the CMP. So, I am not persuaded there's anything further BOS could have offered Mr and Mrs B in terms of forbearance at that point. And I don't require BOS to do anything differently.

I'm sorry to hear about the difficult circumstances Mr and Mrs B are facing and I appreciate this outcome isn't the answer they will be hoping for. BOS might be able to support Mr and Mrs B going forward by assisting with the sale of their property, for example. Or, if their circumstances change, there may be other appropriate forbearance options available.

I would encourage Mr and Mrs B to keep in touch with BOS about their circumstances. BOS should give fair and reasonable consideration to all potential options, in line with the relevant rules and regulations in place at the time, taking into account the individual circumstances. But, ultimately, the term of this mortgage will be coming to an end in 2026 and Mr and Mrs B will need to repay the balance in full – in line with the mortgage contract.

Mr and Mrs B may also wish to seek independent advice from a debt charity to consider what options they might have. The Investigator can provide Mr and Mrs B with details of these organisations on request.

I can see Mr and Mrs B have raised some concerns about BOS not providing information they have requested, such as a copy of its lending criteria. I cannot see that this formed part of the complaint that was initially referred to this Service, or that BOS have considered and responded to a complaint about this. Mr and Mrs B would first need to raise these concerns with BOS, if they haven't already, and give it an opportunity to respond before this Service could investigate. If, after doing that, Mr and Mrs B decide to refer those concerns to this Service, we may be able to consider them under a separate case. It wouldn't be appropriate for me to decide that issue here – but, as a general observation, I would expect a lender to explain why it has refused a customer's request, but I wouldn't expect it to share its internal policies and procedures when doing so.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B and Mr B to accept or reject my decision before 5 May 2025.

Keith Barnes
Ombudsman